CHAPTER 98-189

Committee Substitute for Senate Bill No. 244

An act relating to drycleaning solvent cleanup; creating s. 199.1055, F.S.; providing for a contaminated site rehabilitation tax credit against the intangible personal property tax; authorizing the Department of Revenue to adopt rules; amending s. 220.02, F.S.; providing for an additional cross-reference; creating s. 220.1845, F.S.; providing for a contaminated site rehabilitation tax credit against the corporate income tax; authorizing the Department of Revenue to adopt rules; creating s. 376.30781, F.S.; providing for a partial tax credit for the rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites; providing for the Department of Environmental Protection to allocate such partial credits; providing procedures for application for tax credits; providing for a nonrefundable review fee; providing verification requirements; authorizing the Department of Environmental Protection to adopt rules; providing for revocation or modification of eligibility for tax credit under certain conditions; amending s. 213.053, F.S.; providing for information-sharing; reducing appropriation provisions for fiscal year 1998-1999 for brownfield redevelopment activities; amending s. 376.30, F.S.; providing legislative intent regarding drycleaning solvents; amending s. 376.301, F.S.; providing definitions; amending s. 376.303, F.S.; providing for late fees for registration renewals; amending s. 376.3078, F.S.; providing legislative intent regarding voluntary cleanup; providing that certain deductibles must be deposited into the Water Quality Assurance Trust Fund; clarifying circumstances under which drycleaning restoration fund may not be used; providing additional criteria for determining eligibility for rehabilitation; specifying when certain deductibles must be paid; amending the date after which no restoration funds may be used for drycleaning site rehabilitation; clarifying who may apply jointly for participation in the program; providing certain liability immunity for certain adjacent landowners; providing for contamination cleanup criteria that incorporate risk-based corrective action principles to be adopted by rule; requiring certain third-party liability insurance coverage for each operating facility; eliminating a tax credit for small spills at drycleaning facilities; allowing certain group coverage policies; specifying the circumstances under which work may proceed on the next site rehabilitation task without prior approval; requiring the Department of Environmental Protection to give priority consideration to the processing and approval of permits for voluntary cleanup projects; providing the conditions under which further rehabilitation may be required; providing for continuing application of certain immunity for real property owners; requiring the Department of Environmental Protection to attempt to negotiate certain agreements with the U.S. Environmental Protection Agency; amending s. 376.308, F.S.; protecting certain immunity for real property owners; amending s. 376.313, F.S.; correcting a statutory cross-reference; amending s. 376.70, F.S.; clarifying certain registration provisions;

requiring certain facilities to pay the gross receipts tax; providing for the payment of taxes and the determination of eligibility in the program; amending s. 376.75, F.S.; providing that the tax on perchloroethylene is not subject to sales tax; amending ss. 287.0595, 316.302, F.S.; correcting statutory cross-references; amending s. 213.053, F.S.; authorizing the Department of Revenue to release certain information to certain persons; providing an effective date.

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

Section 1. Section 199.1055, Florida Statutes, is created to read:

199.1055 Contaminated site rehabilitation tax credit.—

(1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(a) A credit in the amount of 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed against any tax due for a taxable year under s. 199.032, less any credit allowed by s. 220.68 for that year:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A taxpayer, or multiple taxpayers working jointly to clean up a single site, may not receive more than $250,000 per year in tax credits for each site voluntarily rehabilitated. Multiple taxpayers shall receive tax credits in the same proportion as their contribution to payment of cleanup costs. Subject to the same conditions and limitations as provided in this section a municipality or county which voluntarily rehabilitates a site may receive not more than $250,000 per year in tax credits which it can subsequently transfer subject to the provisions in (g).

(c) If the credit granted under this section is not fully used in any one year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years.

(d) A taxpayer that receives a credit under s. 220.1845 is ineligible to receive credit under this section in a given tax year.

(e) A taxpayer that receives state-funded site rehabilitation pursuant to s. 376.3078(3) for rehabilitation of a drycleaning-solvent-contaminated site is ineligible to receive credit under this section for costs incurred by the taxpayer in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

(f) The total amount of the tax credits which may be granted under this section and s. 220.1845 is $2 million annually.

(g)1. Tax credits that may be available under this section to an entity eligible under s. 376.30781 may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner with the same limitations.

2. The entity or its surviving or acquiring entity as described in (g)1., may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitation as described in this section. Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced either as a result of a determination by the Department of Environmental Protection or an examination or audit by the Department of Revenue, such tax deficiency shall be recovered from the first entity, or the surviving or acquiring entity, to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

(h) In order to encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up and eligible for a tax credit under this section, the taxpayer may claim an additional 10 percent of the total cleanup costs, not to exceed $50,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a "No Further Action" order for that site.

(2) FILING REQUIREMENTS.—Any taxpayer that wishes to obtain credit under this section must submit with its return a tax credit certificate approving partial tax credits issued by the Department of Environmental Protection under s. 376.30781.

(3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT FORFEITURE.—

(a) The Department of Revenue may adopt rules to prescribe any necessary forms required to claim a tax credit under this section and to provide the administrative guidelines and procedures required to administer this section.

(b) In addition to its existing audit and investigation authority relating to chapters 199 and 220, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, or records of the tax credit applicant, which are necessary to verify the site-rehabilitation costs included in a tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance, when requested by

the Department of Revenue, on any technical audits performed under this section.

(c) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or information received from the Department of Environmental Protection, that a taxpayer received tax credits under this section to which the taxpayer was not entitled. In the case of fraud, the taxpayer shall be prohibited from claiming any future tax credits under this section or s. 220.1845.

1. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue and such funds shall be paid into the General Revenue Fund of the state.

2. The taxpayer shall file with the Department of Revenue an amended tax return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax within 60 days after the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

3. A notice of deficiency may be issued by the Department of Revenue at any time within 5 years after the date the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any change in its tax credit claimed, a notice of deficiency may be issued at any time. In either case, the amount of any proposed assessment set forth in such notice of deficiency shall be limited to the amount of any deficiency resulting under this section from the recomputation of the taxpayer's tax for the taxable year.

4. Any taxpayer that fails to report and timely pay any tax due as a result of the forfeiture of its tax credit is in violation of this section and is subject to applicable penalty and interest.

Section 2. Subsection (10) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(10) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 220.68, those enumerated in s. 631.719(1), those enumerated in s. 631.705, those enumerated in s. 220.18, those enumerated in s. 631.828, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, ~~and~~ those enumerated in s. 220.188, and those enumerated in s. 220.1845.

Section 3. Section 220.1845, Florida Statutes, is created to read:

220.1845 Contaminated site rehabilitation tax credit.—

(1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(a) A credit in the amount of 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed against any tax due for a taxable year under this chapter:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A taxpayer, or multiple taxpayers working jointly to clean up a single site, may not receive more than $250,000 per year in tax credits for each site voluntarily rehabilitated. Multiple taxpayers shall receive tax credits in the same proportion as their contribution to payment of cleanup costs. Subject to the same conditions and limitations as provided in this section a municipality or county which voluntarily rehabilitates a site may receive not more than $250,000 per year in tax credits which it can subsequently transfer subject to the provisions in (h).

(c) If the credit granted under this section is not fully used in any one year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for that year exceeds the credit for which the corporation is eligible in that year under this section after applying the other credits and unused carryovers in the order provided by s. 220.02(10).

(d) A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon and paid by the taxpayer that incurred the rehabilitation costs.

(e) A taxpayer that receives credit under s. 199.1055 is ineligible to receive credit under this section in a given tax year.

(f) A taxpayer that receives state-funded site rehabilitation under s. 376.3078(3) for rehabilitation of a drycleaning-solvent-contaminated site is ineligible to receive credit under this section for costs incurred by the taxpayer in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

(g) The total amount of the tax credits which may be granted under this section and s. 199.1055 is $2 million annually.

(h)1. Tax credits that may be available under this section to an entity eligible under s. 376.30781 may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner and with the same limitations.

2. The entity or its surviving or acquiring entity as described in (h)1., may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitation as described in this section. Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced either as a result of a determination by the Department of Environmental Protection or an examination or audit by the Department of Revenue, such tax deficiency shall be recovered from the first entity, or the surviving or acquiring entity, to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

(i) In order to encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up and eligible for a tax credit under this section, the taxpayer may claim an additional 10 percent of the total cleanup costs, not to exceed $50,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a "No Further Action" order for that site.

(2) FILING REQUIREMENTS.—Any corporation that wishes to obtain credit under this section must submit with its return a tax credit certificate approving partial tax credits issued by the Department of Environmental Protection under s. 376.30781.

(3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT FORFEITURE.—

(a) The Department of Revenue may adopt rules to prescribe any necessary forms required to claim a tax credit under this section and to provide the administrative guidelines and procedures required to administer this section.

(b) In addition to its existing audit and investigation authority relating to chapters 199 and 220, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, or records of the tax credit applicant, which are necessary to verify the site-rehabilitation costs included in a tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance, when requested by the Department of Revenue, on any technical audits performed pursuant to this section.

(c) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or information received from the Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. In the case of fraud, the taxpayer shall be prohibited from claiming any future tax credits under this section or s. 199.1055.

1. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue and such funds shall be paid into the General Revenue Fund of the state.

2. The taxpayer shall file with the Department of Revenue an amended tax return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax within 60 days after the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

3. A notice of deficiency may be issued by the Department of Revenue at any time within 5 years after the date the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any change in its tax credit claimed, a notice of deficiency may be issued at any time. In either case, the amount of any proposed assessment set forth in such notice of deficiency shall be limited to the amount of any deficiency resulting under this section from the recomputation of the taxpayer's tax for the taxable year.

4. Any taxpayer that fails to report and timely pay any tax due as a result of the forfeiture of its tax credit is in violation of this section and is subject to applicable penalty and interest.

Section 4. Section 376.30781, Florida Statutes, is created to read:

376.30781 Partial tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(1) The Legislature finds that:

(a) To facilitate property transactions and economic growth and development, it is in the interest of the state to encourage the cleanup, at the earliest possible time, of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas.

(b) It is the intent of the Legislature to encourage the voluntary cleanup of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas by providing a partial tax credit for the restoration of such property in specified circumstances.

(2)(a) A credit in the amount of 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed pursuant to ss. 199.1055 and 220.1845:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(10), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A taxpayer, or multiple taxpayers working jointly to clean up a single site, may not receive more than $250,000 per year in tax credits for each site voluntarily rehabilitated. Multiple taxpayers shall receive tax credits in the same proportion as their contribution to payment of cleanup costs. Tax credits are available only for site rehabilitation conducted during the tax year in which the tax credit application is submitted.

(c) In order to encourage completion of site rehabilitation at contaminated sites that are being voluntarily cleaned up and that are eligible for a tax credit under this section, the tax credit applicant may claim an additional 10 percent of the total cleanup costs, not to exceed $50,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a "No Further Action" order for that site.

(3) The Department of Environmental Protection shall be responsible for allocating the tax credits provided for in ss. 199.1055 and 220.1845, not to exceed a total of $2 million in tax credits annually.

(4) To claim the credit, each applicant must apply to the Department of Environmental Protection for an allocation of the $2 million annual credit by December 31 on a form developed by the Department of Environmental Protection in cooperation with the Department of Revenue. The form shall include an affidavit from each applicant certifying that all information contained in the application, including all records of costs incurred and claimed in the tax credit application, are true and correct. If the application is submitted pursuant to subparagraph (2)(a)2., the form must include an affidavit signed by the real property owner stating that it is not, and has never been, the owner or operator of the drycleaning facility where the contamination exists. Approval of partial tax credits must be accomplished on a first-come, first-served basis based upon the date complete applications are received by the Division of Waste Management. An applicant shall submit only one application per site per year. To be eligible for a tax credit the applicant must:

(a) Have entered into a voluntary cleanup agreement with the Department of Environmental Protection for a drycleaning-solvent-contaminated site or a Brownfield Site Rehabilitation Agreement, as applicable; and

(b) Have paid all deductibles pursuant to s. 376.3078(3)(d) for eligible drycleaning-solvent-cleanup program sites.

(5) To obtain the tax credit certificate, an applicant must annually file an application for certification, which must be received by the Department of Environmental Protection by December 31. The applicant must provide all pertinent information requested on the tax credit application form, including, at a minimum, the name and address of the applicant and the address and tracking identification number of the eligible site. Along with the application form, the applicant must submit the following:

(a) A nonrefundable review fee of $250 made payable to the Water Quality Assurance Trust Fund to cover the administrative costs associated with the department's review of the tax credit application;

(b) Copies of contracts and documentation of contract negotiations, accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving actual costs incurred for that tax year related to site rehabilitation, as that term is defined in ss. 376.301 and 376.79;

(c) Proof that the documentation submitted pursuant to paragraph (b) has been reviewed and verified by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. Specifically, the certified public accountant must attest to the accuracy and validity of the costs incurred and paid by conducting an independent review of the data presented by the applicant. Accuracy and validity of costs incurred and paid would be determined once the level of effort was certified by an appropriate professional registered in this state in each contributing technical discipline. The certified public accountant's report would also attest that the costs included in the application form are not duplicated within the application. A copy of the accountant's report shall be submitted to the Department of Environmental Protection with the tax credit application; and

(d) A certification form stating that site rehabilitation activities associated with the documentation submitted pursuant to paragraph (b) have been conducted under the observation of, and related technical documents have been signed and sealed by, an appropriate professional registered in this state in each contributing technical discipline. The certification form shall be signed and sealed by the appropriate registered professionals stating that the costs incurred were integral, necessary, and required for site rehabilitation, as that term is defined in ss. 376.301 and 376.79.

(6) The certified public accountant and appropriate registered professionals submitting forms as part of a tax credit application must verify such forms. Verification must be accomplished as provided in s. 92.525(1)(b) and subject to the provisions of s. 92.525(3).

(7) The Department of Environmental Protection shall review the tax credit application and any supplemental documentation submitted by each applicant, for the purpose of verifying that the applicant has met the qualifying criteria in subsections (2) and (4) and has submitted all required documentation listed in subsection (5). Upon verification that the applicant has met these requirements, the department shall issue a written decision granting eligibility for partial tax credits (a tax credit certificate) in the

amount of 35 percent of the total costs claimed, subject to the $250,000 limitation, for the tax year in which the tax credit application is submitted based on the report of the certified public accountant and the certifications from the appropriate registered technical professionals.

(8) On or before March 1, the Department of Environmental Protection shall inform each eligible applicant of the amount of its partial tax credit and provide each eligible applicant with a tax credit certificate that must be submitted with its tax return to the Department of Revenue to claim the tax credit. Credits will not result in the payment of refunds if total credits exceed the amount of tax owed.

(9) If an applicant does not receive a tax credit allocation due to an exhaustion of the $2-million annual tax credit authorization, such application will then be included in the same first-come, first-served order in the next year's annual tax credit allocation, if any, based on the prior year application.

(10) The Department of Environmental Protection may adopt rules to prescribe the necessary forms required to claim tax credits under this section and to provide the administrative guidelines and procedures required to administer this section. Prior to the adoption of rules regulating the tax credit application, the department shall, by September 1, 1998, establish reasonable interim application requirements and forms.

(11) The Department of Environmental Protection may revoke or modify any written decision granting eligibility for partial tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive partial tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted partial tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(12) An owner, operator, or real property owner who receives state-funded site rehabilitation under s. 376.3078(3) for rehabilitation of a dry-cleaning-solvent-contaminated site is ineligible to receive a tax credit under s. 199.1055 or s. 220.1845 for costs incurred by the taxpayer in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

Section 5. Paragraph (o) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(7) Notwithstanding any other provision of this section, the department may provide:

(o) Information relative to ss. 199.1055, 220.1845, and 376.30781 to the Department of Environmental Protection in the conduct of its official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 6. The $4,000,000 appropriated from the General Revenue Fund Specific Appropriation 1727 for Brownfield Redevelopment in the Conference Report on House Bill 4201 is hereby reduced by $1 million and the $1 million is to cover the cost of tax credit provisions authorized by this act.

Section 7. Subsection (2) of section 376.30, Florida Statutes, is amended to read:

376.30 Legislative intent with respect to pollution of surface and ground waters.—

(2) The Legislature further finds and declares that:

(a) The storage, transportation, and disposal of pollutants, drycleaning solvents, and hazardous substances within the jurisdiction of the state and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants, drycleaning solvents, and hazardous substances that occur as a result of procedures taken by private and governmental entities involving the storage, transportation, and disposal of such products pose threats of great danger and damage to the environment of the state, to citizens of the state, and to other interests deriving livelihood from the state;

(c) Such hazards have occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as set forth in this section; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in storing, transporting, or disposing of pollutants, drycleaning solvents, and hazardous substances and related activities.

Section 8. Section 376.301, Florida Statutes, is amended to read:

376.301 Definitions of terms used in ss. 376.30-376.319, 376.70, and 376.75.—When used in ss. 376.30-376.319, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

(1) “Aboveground hazardous substance tank” means any stationary aboveground storage tank and onsite integral piping that contains hazardous substances which are liquid at standard temperature and pressure and has an individual storage capacity greater than 110 gallons.

(2) “Additive effects” means a scientific principle that ~~theory under which~~ the toxicity that occurs as a result of exposure is the sum of the toxicities

of the individual chemicals to which the individual is exposed ~~of chemicals increases in linear proportion to the increase in the number of substances~~.

(3) "Antagonistic effects" means a scientific principle that the toxicity that occurs is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.

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

(5)~~(4)~~ "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(6)~~(5)~~ "Bulk product facility" means a waterfront location with at least one aboveground tank with a capacity greater than 30,000 gallons which is used for the storage of pollutants.

(7)~~(6)~~ "Cattle-dipping vat" means any structure, excavation, or other facility constructed by any person, or the site where such structure, excavation, or other facility once existed, for the purpose of treating cattle or other livestock with a chemical solution pursuant to or in compliance with any local, state, or federal governmental program for the prevention, suppression, control, or eradication of any dangerous, contagious, or infectious diseases.

(8)~~(7)~~ "Compression vessel" means any stationary container, tank, or onsite integral piping system, or combination thereof, which has a capacity of greater than 110 gallons, that is primarily used to store pollutants or hazardous substances above atmospheric pressure or at a reduced temperature in order to lower the vapor pressure of the contents. Manifold compression vessels that function as a single vessel shall be considered as one vessel.

(9) "Contaminant" means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

(10) "Contaminated site" means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.

(11)~~(8)~~ "Department" means the Department of Environmental Protection.

(12)~~(9)~~ "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, or dumping of any pollutant which occurs and which affects lands and the surface and ground waters of the state not regulated by ss. 376.011-376.21.

(13)~~(10)~~ "Drycleaning facility" means a commercial establishment that operates or has at some time in the past operated for the primary purpose

of drycleaning clothing and other fabrics utilizing a process that involves any use of drycleaning solvents. The term "drycleaning facility" includes laundry facilities that use drycleaning solvents as part of their cleaning process. The term does not include a facility that operates or has at some time in the past operated as a uniform rental company or a ~~companies, and~~ linen supply company ~~companies~~ regardless of whether the facility operates as or was previously operated as a drycleaning facility.

(14)~~(11)~~ "Drycleaning solvents" means any and all nonaqueous solvents used in the cleaning of clothing and other fabrics and includes perchloroethylene (also known as tetrachloroethylene) and petroleum-based solvents, and their breakdown products. For purposes of this definition, "drycleaning solvents" only includes those drycleaning solvents originating from use at a drycleaning facility or by a wholesale supply facility.

(15)~~(12)~~ "Dry drop-off facility" means any commercial retail store that receives from customers clothing and other fabrics for drycleaning or laundering at an offsite drycleaning facility and that does not clean the clothing or fabrics at the store utilizing drycleaning solvents.

(16)~~(13)~~ "Engineering controls" means modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.

(17)~~(14)~~ "Wholesale supply facility" means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

(18)~~(15)~~ "Facility" means a nonresidential location containing, or which contained, any underground stationary tank or tanks which contain hazardous substances or pollutants and have individual storage capacities greater than 110 gallons, or any aboveground stationary tank or tanks which contain pollutants which are liquids at standard ambient temperature and pressure and have individual storage capacities greater than 550 gallons. This subsection shall not apply to facilities covered by chapter 377, or containers storing solid or gaseous pollutants, and agricultural tanks having storage capacities of less than 550 gallons.

(19)~~(16)~~ "Flow-through process tank" means an aboveground tank that contains hazardous substances or specified mineral acids as defined in s. 376.321 and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks include, but are not limited to, seal tanks, vapor recovery units, surge tanks, blend tanks, feed tanks, check and delay tanks, batch tanks, oil-water separators, or tanks in which mechanical, physical, or chemical change of a material is accomplished.

(20)~~(17)~~ "Hazardous substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(21)~~(18)~~ "Institutional controls" means the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, use restrictions, or restrictive zoning.

(22) "Laundering on a wash, dry, and fold basis" means the service provided by the owner or operator of a coin-operated laundry to its customers whereby an employee of the laundry washes, dries, and folds laundry for its customers.

(23)~~(19)~~ "Marine fueling facility" means a commercial or recreational coastal facility, excluding a bulk product facility, providing fuel to vessels.

(24)~~(20)~~ "Natural attenuation" means an approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization. ~~the verifiable reduction of petroleum products' chemicals of concern through natural processes which may include diffusion, dispersion, absorption, and biodegradation.~~

(25)~~(21)~~ "Operator" means any person operating a facility, whether by lease, contract, or other form of agreement.

(26)~~(22)~~ "Owner" means any person owning a facility.

(27)~~(23)~~ "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(28)~~(24)~~ "Person in charge" means the person on the scene who is in direct, responsible charge of a facility from which pollutants are discharged, when the discharge occurs.

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

(30)~~(26)~~ "Petroleum" includes:

(a) Oil, including crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary methods and which are not the result of condensation of gas after it leaves the reservoir; and

(b) All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in paragraph (a).

(31)~~(27)~~ "Petroleum product" means any liquid fuel commodity made from petroleum, including, but not limited to, all forms of fuel known or sold

as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products, excluding liquefied petroleum gas and American Society for Testing and Materials (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual oils, intermediate fuel oils (IFO) used for marine bunkering with a viscosity of 30 and higher, asphalt oils, and petrochemical feedstocks.

(32)~~(28)~~ "Petroleum products' chemicals of concern" means the constituents of petroleum products, including, but not limited to, xylene, benzene, toluene, ethylbenzene, naphthalene, and similar chemicals, and constituents in petroleum products, including, but not limited to, methyl tert-butyl ether (MTBE), lead, and similar chemicals found in additives, provided the chemicals of concern are present as a result of a discharge of petroleum products.

(33)~~(29)~~ "Petroleum storage system" means a stationary tank not covered under the provisions of chapter 377, together with any onsite integral piping or dispensing system associated therewith, which is used, or intended to be used, for the storage or supply of any petroleum product. Petroleum storage systems may also include oil/water separators, and other pollution control devices installed at petroleum product terminals as defined in this chapter and bulk product facilities pursuant to, or required by, permits or best management practices in an effort to control surface discharge of pollutants. Nothing herein shall be construed to allow a continuing discharge in violation of department rules.

(34)~~(30)~~ "Pollutants" includes any "product" as defined in s. 377.19(11), pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(35)~~(31)~~ "Pollution" means the presence on the land or in the waters of the state of pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(36)~~(32)~~ "Real property owner" means the individual or entity that is vested with ownership, dominion, or legal or rightful title to the real property, or which has a ground lease interest in the real property, on which a drycleaning facility or wholesale supply facility is or has ever been located.

(37)~~(33)~~ "Response action" means any activity, including evaluation, planning, design, engineering, construction, and ancillary services, which is carried out in response to any discharge, release, or threatened release of a hazardous substance, pollutant, or other contaminant from a facility or site identified by the department under the provisions of ss. 376.30-376.319.

(38)~~(34)~~ "Response action contractor" means a person who is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(39)~~(35)~~ "Secretary" means the Secretary of Environmental Protection.

(40)~~(36)~~ "Site rehabilitation" means the assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site.

(41)~~(37)~~ "Source removal" means the removal of free product, or the removal of contaminants from soil or sediment that has been contaminated ~~by petroleum or petroleum products~~ to the extent that leaching to groundwater or surface water has occurred or is occurring ~~petroleum products' chemicals of concern leach into groundwater~~.

(42)~~(38)~~ "Storage system" means a stationary tank not covered under the provisions of chapter 377, together with any onsite integral piping or dispensing system associated therewith, which is or has been used for the storage or supply of any petroleum product, pollutant, or hazardous substance as defined herein, and which is registered with the Department of Environmental Protection under this chapter or any rule adopted pursuant hereto.

(43)~~(39)~~ "Synergistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed ~~theory under which the toxicity of chemicals exponentially increases as the number of chemicals in a combination increases~~.

(44)~~(40)~~ "Terminal facility" means any structure, group of structures, motor vehicle, rolling stock, pipeline, equipment, or related appurtenances which are used or capable of being used for one or more of the following purposes: pumping, refining, drilling for, producing, storing, handling, transferring, or processing pollutants, provided such pollutants are transferred over, under, or across any water, estuaries, tidal flats, beaches, or waterfront lands, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. In the event of a ship-to-ship transfer of pollutants, the vessel going to or coming from the place of transfer and a terminal facility shall also be considered a terminal facility. For the purposes of ss. 376.30-376.319, the term "terminal facility" shall not be construed to include spill response vessels engaged in response activities related to removal of pollutants, or temporary storage facilities created to temporarily store recovered pollutants and matter, or waterfront facilities owned and operated by governmental entities acting as agents of public convenience for persons engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants. However, each person engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such a governmental entity shall be construed as a terminal facility.

(45)~~(41)~~ "Transfer" or "transferred" includes onloading, offloading, fueling, bunkering, lightering, removal of waste pollutants, or other similar transfers, between terminal facility and vessel or vessel and vessel.

Section 9. Paragraph (d) of subsection (1) of section 376.303, Florida Statutes, is amended to read:

376.303 Powers and duties of the Department of Environmental Protection.—

(1) The department has the power and the duty to:

(d) Establish a registration program for drycleaning facilities and wholesale supply facilities.

1. Owners or operators of drycleaning facilities and wholesale supply facilities and real property owners ~~suppliers~~ shall jointly register each facility owned and in operation with the department by June 30, 1995, pay initial registration fees by December 31, 1995, and pay annual renewal registration fees by December 31, 1996, and each year thereafter, in accordance with this subsection. If the registration form cannot be jointly submitted, then the applicant shall provide notice of the registration to other interested parties. The department shall establish reasonable requirements for the registration of such facilities. The department shall use reasonable efforts to identify and notify drycleaning facilities and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The department shall provide to the Department of Revenue a copy of each applicant's registration materials, within 30 working days of the receipt of the materials. This copy may be in such electronic format as the two agencies mutually designate.

2.a. The department shall issue an invoice for annual registration fees to each registered drycleaning facility or wholesale supply facility by December 31 of each year. Owners of drycleaning facilities and wholesale supply facilities shall submit to the department an initial fee of $100 and an annual renewal registration fee of $100 for each drycleaning facility or wholesale supply facility owned and in operation. The fee shall be paid within 30 days after receipt of billing by the department. Facilities that fail to pay their renewal fee within 30 days after receipt of billing are subject to a late fee of $75.

b. Revenues derived from registration, ~~and~~ renewal, and late fees shall be deposited into the Water Quality Assurance Trust Fund to be used as provided in s. 376.3078.

Section 10. Section 376.3078, Florida Statutes, is amended to read:

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.—

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

(a) Significant quantities of drycleaning solvents have been discharged in the past at drycleaning facilities as part of the normal operation of these facilities.

(b) Discharges of drycleaning solvents at such drycleaning facilities have occurred and are occurring, and pose a significant threat to the quality of the groundwaters and inland surface waters of this state.

(c) Where contamination of the groundwater or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made, and such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to the environment; and in significantly higher costs to contain and remove the contamination.

(d) Adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and rehabilitation of contaminated sites without delay.

(e) It is the intent of the Legislature to encourage real property owners to undertake the voluntary cleanup of property contaminated with drycleaning solvents and that the immunity provisions of this section and all other available defenses be construed in favor of real property owners.

(2) FUNDS; USES.—

(a) All penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and the tax revenues levied, collected, and credited pursuant to ss. 376.70 and 376.75, and ~~registration~~ fees collected pursuant to s. 376.303(1)(d), and deductibles collected pursuant to paragraph (3)(d), shall be deposited into the Water Quality Assurance Trust Fund, to be used upon appropriation as provided in this section. Charges against the funds for drycleaning facility or wholesale supply site rehabilitation shall be made in accordance with the provisions of this section.

(b) Whenever, in its determination, incidents of contamination by drycleaning solvents related to the operation of drycleaning facilities and wholesale supply facilities may pose a threat to the environment or the public health, safety, or welfare, the department shall obligate moneys available pursuant to this section to provide for:

1. Prompt investigation and assessment of the contaminated drycleaning facility or wholesale supply facility sites.

2. Expeditious treatment, restoration, or replacement of potable water supplies as provided in s. 376.30(3)(c)1.

3. Rehabilitation of contaminated drycleaning facility or wholesale supply facility sites, which shall consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage, in accordance with the site selection and rehabilitation criteria established by the department under subsection (4), except that nothing in this subsection shall be construed to authorize the department to obligate drycleaning facility restoration funds for payment of costs that may be associated with, but are not integral to, drycleaning facility or wholesale supply facility site rehabilitation.

4. Maintenance and monitoring of contaminated drycleaning facility or wholesale supply facility sites.

5. Inspection and supervision of activities described in this subsection.

6. Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.

7. Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health ~~and Rehabilitative Services~~ in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

8. Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with contamination assessment or remedial action.

The department shall not obligate funds in excess of the annual appropriation.

(c) Drycleaning facility restoration funds may not be used to:

1. Restore sites that are contaminated by solvents normally used in drycleaning operations where the contamination at such sites did not result from the operation of a drycleaning facility or wholesale supply facility.

2. Restore sites that are contaminated by drycleaning solvents being transported to or from a drycleaning facility or wholesale supply facility.

3. Fund any costs related to the restoration of any site that has been identified to qualify for listing, or is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, or that is under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended, or has obtained, or is required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984.

4. Pay any costs associated with any fine, penalty, or action brought against a drycleaning facility owner or operator or wholesale supply facility or real property owner under local, state, or federal law.

5. Pay any costs related to the restoration of any site that is operated <u>or has at some time in the past operated</u> as a uniform rental or linen supply facility, regardless of whether the site <u>operates as or</u> was previously operated as a drycleaning facility or wholesale supply facility.

(3) REHABILITATION LIABILITY.—In accordance with the eligibility provisions of this section, no real property owner or no person who owns or

operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility shall be subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility.

(a) With regard to drycleaning facilities or wholesale supply facilities that have operated as drycleaning facilities or wholesale supply facilities on or after October 1, 1994, any such drycleaning facility or wholesale supply facility at which there exists contamination by drycleaning solvents shall be eligible under this subsection regardless of when the drycleaning contamination was discovered, provided that the drycleaning facility or the wholesale supply facility:

1. Has been registered with the department;

2. Is determined by the department to be in compliance with the department's rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities on or after November 19, 1980;

3. Has not been operated in a grossly negligent manner at any time on or after November 19, 1980;

4. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended;

5. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended (42 U.S.C.A. s. 6928(h)), or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents and has remitted all taxes due pursuant to ss. 376.70 and 376.75, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998 ~~2005~~, and has not denied the department access to the site.

(b) With regard to drycleaning facilities or wholesale supply facilities that cease to be operated as drycleaning facilities or wholesale supply facili-

ties prior to October 1, 1994, such facilities, at which there exists contamination by drycleaning solvents, shall be eligible under this subsection regardless of when the contamination was discovered, provided that the drycleaning facility or wholesale supply facility:

1. Was not determined by the department, within a reasonable time after the department's discovery, to have been out of compliance with the department rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities implemented ~~which were in effect at the time of operation~~ at any time on or after November 19, 1980;

2. Was not operated in a grossly negligent manner at any time on or after November 19, 1980;

3. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended; and

4. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act, as amended, or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, ~~December 31, 2005,~~ and has not denied the department access to the site.

(c) For purposes of determining eligibility, a drycleaning facility or wholesale supply facility was operated in a grossly negligent manner if the department determines that the owner or operator of the drycleaning facility or the wholesale supply facility:

1. Willfully discharged drycleaning solvents onto the soils or into the waters of the state after November 19, 1980, with the knowledge, intent, and purpose that the discharge would result in harm to the environment or to public health or result in a violation of the law;

2. Willfully concealed a discharge of drycleaning solvents with the knowledge, intent, and purpose that the concealment would result in harm to the environment or to public health or result in a violation of the law; or

3. Willfully violated a local, state, or federal law or rule regulating the operation of drycleaning facilities or wholesale supply facilities with the knowledge, intent, and purpose that the act would result in harm to the environment or to public health or result in a violation of the law. ~~For~~

~~purposes of this subsection, the willful discharge of drycleaning solvents onto the soils or into the waters of the state after November 19, 1980, or the willful concealment of a discharge of drycleaning solvents, or a willful violation of local, state, or federal law or rule regulating the operation of drycleaning facilities or wholesale supply facilities shall be construed to be gross negligence in the operation of a drycleaning facility or wholesale supply facility.~~

(d)1. With respect to eligible drycleaning solvent contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section by June 30, 1997, the costs of activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, less a $1,000 deductible per incident, which shall be paid by the applicant or current property owner. The deductible shall be paid within 60 days after receipt of billing by the department.

2. For contamination reported to the department as part of a completed application as required by the rules developed under this section, from July 1, 1997, through September 30, 1998 ~~June 30, 2001~~, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $5,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

3. For contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section from October 1, 1998 ~~July 1, 2001~~, through December 31, 1998 ~~2005~~, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $10,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

4. For contamination reported after December 31, 1998 ~~2005~~, no costs will be absorbed at the expense of the drycleaning facility restoration funds.

(e) The provisions of this subsection shall not apply to any site where the department has been denied site access to implement the provisions of this section.

(f) In order to identify those drycleaning facilities and wholesale supply facilities that have experienced contamination resulting from the discharge of drycleaning solvents and to ensure the most expedient rehabilitation of such sites, the owners and operators of drycleaning facilities and wholesale supply facilities are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities and wholesale supply facilities. The department shall establish reasonable guidelines for the written reporting of drycleaning contamination and shall distribute forms to registrants under s. 376.303(1)(d), and to other interested parties upon request, to be used for such purpose.

(g) A report of drycleaning solvent contamination at a drycleaning facility or wholesale supply facility made to the department by any person in accordance with this subsection, or any rules promulgated pursuant hereto, may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(h) The provisions of this subsection shall not apply to drycleaning facilities owned or operated by the state or Federal Government.

(i) Due to the value of Florida's potable water, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector. The department is authorized to adopt necessary rules and enter into contracts to carry out the intent of this subsection and to limit or prevent future contamination from the operation of drycleaning facilities and wholesale supply facilities.

(j) It is not the intent of the Legislature that the state become the owner or operator of a drycleaning facility or wholesale supply facility by engaging in state-conducted cleanup.

(k) The owner, operator, and either the real property owner or agent of the real property owner may apply for the Drycleaning Contamination Cleanup Program by jointly submitting a completed application package to the department pursuant to the rules that shall be adopted by the department. If the application cannot be jointly submitted, then the applicant shall provide notice of the application to other interested parties. After reviewing the completed application package, the department shall notify the applicant in writing as to whether the drycleaning facility or wholesale supply facility is eligible for the program. If the department denies eligibility for a completed application package, the notice of denial shall specify the reasons for the denial, including specific and substantive findings of fact, and shall constitute agency action subject to the provisions of chapter 120. For the purposes of ss. 120.569 and 120.57, the real property owner and the owner and operator of a drycleaning facility or wholesale supply facility which is the subject of a decision by the department with regard to eligibility shall be deemed to be parties whose substantial interests are determined by the department's decision to approve or deny eligibility.

(l) Eligibility under this subsection applies to the drycleaning facility or wholesale supply facility. A determination of eligibility or ineligibility shall not be affected by any conveyance of the ownership of the drycleaning facility, wholesale supply facility, or the real property on which such facility is located. Nothing contained in this chapter shall be construed to allow a drycleaning facility or wholesale supply facility which would not be eligible under this subsection to become eligible as a result of the conveyance of the ownership of the ineligible drycleaning facility or wholesale supply facility to another owner.

(m) If funding for the drycleaning contamination rehabilitation program is eliminated, the provisions of this subsection shall not apply.

(n)1. The department shall have the authority to cancel the eligibility of any drycleaning facility or wholesale supply facility that submits fraudulent information in the application package or that fails to continuously comply with the conditions of eligibility set forth in this subsection, or has not remitted all fees pursuant to s. 376.303(1)(d), or has not remitted the deductible payments pursuant to paragraph (d).

2. If the program eligibility of a drycleaning facility or wholesale supply facility is subject to cancellation pursuant to this section, then the department shall notify the applicant in writing of its intent to cancel program eligibility and shall state the reason or reasons for cancellation. The applicant shall have 45 days to resolve the reason or reasons for cancellation to the satisfaction of the department. If, after 45 days, the applicant has not resolved the reason or reasons for cancellation to the satisfaction of the department, the order of cancellation shall become final and shall be subject to the provisions of chapter 120.

(o) A real property owner shall not be subject to administrative or judicial action brought by or on behalf of any person or local or state government, or agency thereof, for gross negligence or violations of department rules prior to January 1, 1990, which resulted from the operation of a drycleaning facility, provided that the real property owner demonstrates that:

1. The real property owner had ownership in the property at the time of the gross negligence or violation of department rules and did not cause or contribute to contamination on the property;

2. The real property owner was a distinct and separate entity from the owner and operator of the drycleaning facility, and did not have an ownership interest in or share in the profits of the drycleaning facility;

3. The real property owner did not participate in the operation or management of the drycleaning facility;

4. The real property owner complied with all discharge reporting requirements, and did not conceal any contamination; and

5. The department has not been denied access.

The ~~This~~ defense provided by this paragraph does ~~shall~~ not apply to any liability under ~~pursuant to~~ a federally delegated program.

(p) A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by drycleaning solvents, provided that the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, the drycleaning facility operated at the source location;

2. Did not participate in the operation or management of the drycleaning facility at the source location; and

3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(q) Nothing in this subsection precludes the department from considering information and documentation provided by private consultants, local government programs, federal agencies, or any individual which is relevant to an eligibility determination if the department provides the applicant with reasonable access to the information and its origin.

(4) ~~SITE SELECTION AND~~ REHABILITATION CRITERIA.—It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 1999, the secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program, including a voluntary site rehabilitation program, and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner as provided in this subsection. The rule shall also include protocols for the use of natural attenuation and the issuance of "no further action" letters. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program, including a voluntary site rehabilitation program, must:

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of risk-based corrective action assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this section, to temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the voluntary cleanup agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons

receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

(c) Ensure that the site-specific cleanup goal is that all sites contaminated with drycleaning solvents ultimately achieve the applicable cleanup target levels provided in this section. In the circumstances provided below, and after constructive notice and opportunity to comment within 30 days from receipt of the notice to local government, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend, the department may allow concentrations of contaminants to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if human health, public safety, and the environment are protected.

(d) Allow the use of institutional or engineering controls at sites contaminated with drycleaning solvents, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment. The use of controls must be preapproved by the department and only after constructive notice and opportunity to comment within 30 days from receipt of notice is provided to local governments, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend. When institutional or engineering controls are implemented to control exposure, the removal of the controls must have prior department approval and must be accompanied by the resumption of active cleanup, or other approved controls, unless cleanup target levels under this section have been achieved.

(e) Consider the additive effects of contaminants. The synergistic and antagonistic effects shall also be considered when the scientific data become available.

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

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

2. Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants shall be based on the lower of the groundwater or surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. The department may set alternative cleanup target levels based upon the person responsible for site rehabilitation demonstrating, using site-specific modeling and risk assessment studies, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal that has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater, the use of groundwater near marine surface water bodies, the current and projected use of the affected groundwater in the vicinity of the site, or the use of groundwater in the immediate vicinity of the contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, provided human health, public safety, and the environment are protected.

(h) Provide for the department to issue a "no further action order," with conditions where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved, or when the person responsible for site rehabilitation can demonstrate that the cleanup target level is unachievable within available technologies. Prior to issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology in the area.

(i) Establish appropriate cleanup target levels for soils.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration. Institutional controls or other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

2. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals shall not be applicable if the department determines, based upon individual site characteristics, that contaminants will not leach into the groundwater at levels which pose a threat to human health, public safety, and the environment.

3. The department may set alternative cleanup target levels based upon the person responsible for site rehabilitation using site-specific modeling and risk assessment studies, that human health, public safety, and the environment are protected.

The department shall require source removal, if warranted and cost-effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "no further action" status, the department is encouraged to utilize natural attenuation and monitoring where site conditions warrant.

(5) DISPOSAL OR REUSE.—The cleanup criteria established pursuant to subsection (4) do not constitute disposal or reuse criteria. Offsite disposal or relocation must be in accordance with all applicable federal, state, and local regulations. ~~that drycleaning facility restoration funds in the Water Quality Assurance Trust Fund be used to fund the rehabilitation of sites that pose a significant threat to the public health, safety, or welfare.~~

~~(a) The department shall adopt rules to establish priorities for state-conducted rehabilitation at contaminated drycleaning facility or wholesale supply facility sites based upon factors that include, but need not be limited to:~~

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

~~2. The size of the population or area affected by the contamination.~~

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

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

~~Drycleaning facility restoration funds shall then be obligated for activities described in paragraph (2)(b) at individual sites in accordance with the criteria established in this subsection. However, nothing in this paragraph shall be construed to restrict the department from modifying the priority status of a drycleaning facility or wholesale supply facility rehabilitation site where conditions warrant.~~

~~(b) Criteria for determining completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:~~

~~1. Individual site characteristics, including natural rehabilitation processes.~~

~~2. Applicable state water quality standards.~~

~~3. Whether deviation from state water quality standards or from established criteria is appropriate, based upon the degree to which the desired rehabilitation level is achievable and can be reasonably and cost-effectively implemented within available technologies or control strategies; except that, where a state water quality standard is applicable, such deviation may not result in the application of standards more stringent than said standard.~~

(6) INTENT; APPLICATION.—

(a)~~(c)~~ It is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where the use of available technology is not anticipated to achieve water quality standards, the department, at its discretion, may use innovative technology that has been field-tested ~~through a federal innovative technology program~~ and that has engineering and cost data available.

(b)~~(d)~~ Nothing in this subsection shall be construed to restrict the department from temporarily postponing completion of any site rehabilitation program for which drycleaning facility restoration funds are being expended whenever such postponement is deemed necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility contamination site with a higher priority status.

(c)~~(e)~~ The department shall provide the rehabilitation of eligible drycleaning facilities and wholesale supply facilities consistent with this subsection. Nothing in this chapter shall subject the department to liability for any action that may be required of the owner, operator, or real property owner by any private party or any local, state, or federal government entity.

(6)~~(5)~~ SCORING SYSTEM.—The department shall use the following scoring system to rank and prioritize sites for rehabilitation that have been determined to be eligible for the program pursuant to subsection (3). If the application package documents that a site has one of the following characteristics, then the site shall be allocated the corresponding number of points.

(a) Any site having a condition that exhibits a fire or explosion hazard shall be of highest priority.

(b) Threat to drinking water supply wells.

1. Capacity:

a. A site shall be awarded points based on the permitted capacity of the largest uncontaminated public water supply well or the capacity of the largest uncontaminated private drinking water well constructed prior to the date of contamination discovery that is located within 1 mile of the site. If multiple uncontaminated wells of the same capacity are present within 1 mile, then select the uncontaminated well closest to the site. Points shall be awarded as follows:

For uncontaminated wells (only one shall apply):

Capacity (gallons per day)	Points
greater than 1,000,000	90
100,000 to 1,000,000	60
less than 100,000	30

b. If no points were awarded from sub-subparagraph a., and contaminated wells are present, then the site shall be awarded points based on the permitted capacity of the largest contaminated public water supply well or the capacity of the largest contaminated private drinking water well constructed prior to the date of contamination discovery that is located within 1 mile of the site. If multiple contaminated wells of the same capacity are present within 1 mile, then select the contaminated well closest to the site. Points shall be awarded as follows:

For contaminated wells (only one shall apply):

Capacity (gallons per day)	Points
greater than 1,000,000	25
100,000 to 1,000,000	15
less than 100,000	5

2. A site shall be awarded points based on the proximity of the public water supply well or private well selected in subparagraph 1. as follows. If the well selected is an uncontaminated well, then select only one from sub-subparagraph a. below. If the well selected is a contaminated well, then select only one from sub-subparagraph b. below:

a. For uncontaminated wells:

Distance	Points
within 500 feet	40
within ¼ mile	30
within ½ mile	20
within 1 mile	10

b. For contaminated wells:

Distance	Points
within 500 feet	15
within ¼ mile	10
within ½ mile	8
within 1 mile	5

(c) A site shall be awarded points based on groundwater vulnerability to contamination using the department's current DRASTIC Index (only one shall apply):

DRASTIC Index	Points
79 and below	3
80 to 99	6
100 to 119	9

DRASTIC Index	Points
120 to 139	12
140 to 159	15
160 to 179	18
180 to 199	21
200 to 266	24

(d) Aquifer Classification (select all that apply):

1. A site located in a G-I or F-I aquifer area shall be awarded 3 points.

2. A site located in a G-II aquifer area shall be awarded 2 points.

3. A site located in a United States Environmental Protection Agency designated sole source aquifer area shall be awarded 1 point.

(e) Conditions favoring a continual source (only one shall apply):

1. If a site has chlorinated drycleaning solvents in the soil at concentrations greater than or equal to 1 milligram per kilogram or in the groundwater at concentrations greater than or equal to 1,500 micrograms per liter, then the site shall be awarded 7 points.

2. If the site has chlorinated drycleaning solvents in the soil at concentrations less than 1 milligram per kilogram or in the groundwater at concentrations less than 1,500 micrograms per liter, then the site shall be awarded 2 points.

(f) Environmental Setting (select all that apply):

1. A site located within ½ mile of an uncontaminated surface water body used as a permitted public water system shall be awarded 10 points.

2. A site located within ½ mile of an Outstanding Florida Water body shall be awarded 2 points.

3. A site located within ¼ mile of a surface water body shall be awarded 1 point.

4. A site located within ¼ mile of an area of critical state concern as defined in chapter 380 shall be awarded 2 points.

(7)~~(6)~~ SCORING SYSTEM APPLICATION.—

(a) If the department determines that a site is eligible for the program, pursuant to this section, then the department shall develop a score for the site in accordance with provisions of subsection (5).

(b) A priority list of eligible sites shall be developed, by the department, based on an ordering of scored sites such that the highest-scored sites shall be of highest priority for rehabilitation.

(c) Scored sites shall be incorporated into the priority list on a quarterly basis with the ranking of all sites previously on the list being adjusted accordingly.

(d) Assignments for program tasks to be conducted by state contractors shall be made according to the current priority list and shall be based on the department determination of contractor logistics, geographical considerations, and other criteria the department determines are necessary to achieve cost-effective site rehabilitation.

(e) Assignments for the program tasks shall be made beginning with the highest-ranked sites on the priority list at the effective date the assignment is made and proceed through lower-ranked sites.

(f) All scored sites will be added to the priority list on a quarterly basis until all the sites have been assigned.

(g) Once an assignment is made, a subsequent quarterly adjustment to the priority list shall not alter that assignment unless a more cost-effective approach can be achieved by reassignment, a compelling public health condition or an environmental condition warrants a reassignment, or the reassignment is otherwise in the public interest.

(h) Regardless of the score of a site, the department may initiate emergency action for those sites that, in the judgment of the department, are a threat to human health and safety, or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment.

(8)~~(7)~~ REQUIREMENT FOR DRYCLEANING FACILITIES.—It is the intent of the Legislature that the following drycleaning solvent containment shall be required of the owners or operators of drycleaning facilities, as follows:

(a) Owners or operators of drycleaning facilities shall by January 1, 1997, install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used and around any area in which solvents or waste-containing solvents are stored. Such dikes or containment structures shall be capable of containing 110 percent of the capacity of each such machine and each such storage area. To the extent practicable, each owner or operator of a drycleaning facility shall seal or otherwise render impervious those portions of all dikes' floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released.

(b) For drycleaning facilities that commence operating subsequent to January 1, 1996, the owners or operators of such facilities shall, prior to the commencement of operations, install beneath each machine or item of equipment in which drycleaning solvents are used a rigid and impermeable containment vessel capable of containing 110 percent of the total tank capacity of each machine.

(c) Notwithstanding the provisions of subsection (3), the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than 1 quart of drycleaning solvent outside of a containment structure, on or after July 1, 1995, shall report the spill to the state through the State Warning Point pursuant to s. 403.161(1)(d) immediately upon the discovery of such spill, and immediately initiate and complete actions to abate the source of the spill, remove product from all indoor and outdoor

surface areas, remove product and dissolved product from any septic tank or catch basin in which the solvent has accumulated, and remove affected soils, if any. ~~Costs incurred by an owner or operator for such response actions, up to a maximum of $10,000 in the aggregate for all spills at a single facility, shall be credited to the owner or operator against the future gross receipts tax set forth in s. 376.70 and, in the case of a wholesale supply facility, against the future tax on production or importation of perchloroethylene, as set forth in s. 376.75.~~

(d) Failure to comply with the requirements of this subsection shall constitute gross negligence with regard to determining site eligibility in subsection (3).

(9)~~(8)~~ INSURANCE REQUIREMENTS.—The owner or operator of an operating drycleaning facility or wholesale supply facility shall, by January 1, 1999 ~~180 days after October 1, 1995~~, have purchased third-party liability insurance for $1 million of coverage for each operating facility. The owner or operator shall maintain such insurance while operating as a drycleaning facility or wholesale supply facility and provide proof of such insurance to the department upon registration renewal each year thereafter. Such requirement applies only if such insurance becomes available to the owner or operator at a reasonable rate and covers liability for contamination subsequent to the effective date of the policy and prior to the effective date, retroactive to the commencement of operations at the drycleaning facility or wholesale supply facility. Such insurance may be offered in group coverage policies with a minimum coverage of $1 million for each member of the group per year ~~that occurred both before and after the effective date of the policy~~. For the purposes of this subsection, reasonable rate means the rate developed based on exposure to loss and underwriting and administrative costs as determined by the Department of Insurance, in consultation with representatives of the drycleaning industry. ~~Failure to comply with this subsection shall subject the owner and operator to the provisions of s. 376.302.~~

(10)~~(9)~~ VOLUNTARY CLEANUP.—A real property owner is authorized to conduct site rehabilitation activities at any time pursuant to department rules, either through agents of the real property owner or through responsible response action contractors or subcontractors, whether or not the facility has been determined by the department to be eligible for the drycleaning solvent cleanup program. A real property owner or any other person ~~party~~ that conducts site rehabilitation may not seek cost recovery from the department or the Water Quality Assurance Trust Fund for any such rehabilitation activities. A real property owner that voluntarily conducts such site rehabilitation, whether commenced before or on or after October 1, 1995, shall be immune from liability to any person, state or local government, or agency thereof to compel or enjoin site rehabilitation or pay for the cost of rehabilitation of environmental contamination, or to pay any fines or penalties regarding rehabilitation, as soon ~~so long~~ as the real property owner:

(a) Conducts contamination assessment and site rehabilitation consistent with state and federal laws and rules;

(b) Conducts such site rehabilitation in a timely manner according to a rehabilitation schedule approved by the department; and

(c) Does not deny the department access to the site. Upon completion of such site rehabilitation activities in accordance with the requirements of this subsection, the department shall render a site rehabilitation completion order.

This immunity shall continue to apply to any real property owner who transfers, conveys, leases, or sells property on which a drycleaning facility is located so long as the voluntary cleanup activities continue.

(11) REOPENERS.—Upon completion of site rehabilitation in compliance with subsection (10), additional site rehabilitation is not required unless it is demonstrated:

(a) That fraud was committed in demonstrating site conditions or completion of site rehabilitation;

(b) That new information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with s. 376.3078(4), or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment;

(c) That the remediation efforts failed to achieve the site rehabilitation criteria established under this section;

(d) That the level of risk is increased beyond the acceptable risk established under s. 376.3078(4) due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the site thus causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures to assure that human health, public safety, and the environment are protected consistent with this section; or

(e) That a new discharge occurs at the drycleaning site subsequent to a determination of eligibility for participation in the drycleaning program established under this section.

(12)~~(10)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(a) Except as provided in subsection (3) and as otherwise provided by law, the department shall recover from any person causing or having caused the discharge of drycleaning solvents in relation to the operation of a drycleaning facility or wholesale supply facility, jointly and severally, all sums owed or expended from drycleaning facility restoration funds, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved to be too small or the likelihood of recovery too uncertain.

(b) Except as provided in subsection (3) and as otherwise provided by law, it is the duty of the department in administering the drycleaning facility restoration funds to diligently pursue the reimbursement to the Water

Quality Assurance Trust Fund of any sum expended from the fund for rehabilitation in accordance with the provisions of this section, unless the department finds the amount involved to be too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall commence on the last date on which any such sums were expended, and not the date that the discharge occurred.

(c) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs. In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a drycleaning site, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees to forego enforcement of federal corrective action authority at drycleaning sites that have received a site rehabilitation completion or "no further action" determination from the department or that are in the process of implementing a voluntary cleanup agreement in accordance with this section.

Section 11. Subsection (6) of section 376.308, Florida Statutes, is amended to read:

376.308 Liabilities and defenses of facilities.—

(6) Nothing herein shall be construed to affect cleanup program eligibility under ss. 376.305(6), 376.3071, 376.3072, 376.3078, and 376.3079. Except as otherwise expressly provided in this chapter, nothing in this chapter shall affect, void, or defeat any immunity of any real property under s. 376.3078.

Section 12. Paragraph (a) of subsection (5) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.319.—

(5)(a) In any civil action against the owner or operator of a drycleaning facility or a wholesale supply facility, or the owner of the real property on which such facility is located, if such facility is not eligible under s. 376.3078(3) ~~s. 376.3978(3)~~, for damages arising from the discharge of drycleaning solvents from a drycleaning facility or wholesale supply facility, the provisions of subsection (3) shall not apply if it can be proven that, at the time of the discharge the alleged damages resulted solely from a discharge from a drycleaning facility or wholesale supply facility that was in compliance with department rules regulating drycleaning facilities or wholesale supply facilities.

Section 13. Section 376.70, Florida Statutes, is amended to read:

376.70 Tax on gross receipts of drycleaning facilities.—

(1) There is levied a gross receipts tax on each drycleaning facility and dry drop-off facility, as defined in s. 376.301, for the privilege of engaging

in the business of laundering and drycleaning clothing and other fabrics in this state. The tax shall be at a rate of 2 ~~1.5~~ percent of all charges imposed by the drycleaning facility or the dry drop-off facility for the drycleaning or laundering of clothing or other fabrics. ~~Beginning January 1, 1996, the tax rate shall be 2 percent of such charges.~~ Gross receipts from coin-operated laundry machines and from laundry done on a wash, dry, and fold basis shall not be subject to tax.

(2) Each drycleaning facility or dry drop-off facility imposing a charge for the drycleaning or laundering of clothing or other fabrics is required to register with the Department of Revenue and become licensed for the purposes of this section. The owner or operator of the facility shall register the facility with the Department of Revenue. Drycleaning facilities or dry drop-off facilities operating at more than one location are only required to have a single registration. The fee for registration is $30. The owner or operator of the facility shall pay the registration fee to the Department of Revenue.

(3) The tax imposed by this section is due on the 1st day of the month succeeding the month in which the charge is imposed and shall be paid on or before the 20th day of each month. The tax shall be reported on forms and in the manner prescribed by the Department of Revenue by rule. The proceeds of the taxes, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the tax, shall be transferred by the Department of Revenue into the Water Quality Assurance Trust Fund and shall be used as provided in s. 376.3078. For the purposes of this section, the proceeds of the tax include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent taxes.

(4) Any drycleaning facility which includes in the total retail charge to a consumer of drycleaning services any portion of the tax imposed pursuant to this section shall disclose on the receipt for the amount charged for such services the amount of such tax and a statement that the imposition of the tax was requested by the Florida Dry Cleaners Coalition.

(5) Gross receipts arising from charges for services taxable pursuant to this section to persons who also impose charges to others for those same services are exempt from the tax imposed pursuant to this section.

(6)~~(5)~~(a) The Department of Revenue shall administer, collect, and enforce the tax imposed under this section pursuant to the procedures for administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this subsection. Such procedures include, but are not limited to, those regarding the filing of consolidated returns, the granting of sale for resale exemptions, and the interest and penalties on delinquent taxes. The tax shall not be included in the computation of estimated taxes pursuant to s. 212.11, nor shall the dealer's credit for collecting taxes or fees in s. 212.12 apply. The provisions of s. 212.07(4) shall not apply to the tax imposed by this section.

(b) The Department of Revenue~~, under the applicable rules of the Public Employees Relations Commission,~~ is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

The Department of Revenue is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(c) The Department of Revenue is authorized to establish audit procedures and to assess delinquent taxes.

(7) The department shall not deny eligibility in the drycleaning solvent cleanup program because of the facility owner's, the facility operator's and the real property owner's failure to remit all taxes due pursuant to ss. 376.70 and 376.75, unless the Department of Revenue:

(a) Ascertains the amount of the delinquent tax, if any, and communicates this amount in writing to the drycleaning solvent cleanup program applicant and the real property owner; and

(b) Provides a method to the facility owner, the facility operator, and the real property owner for the payment of the taxes.

Pursuant to subsection (7), the owner or operator of a drycleaning facility must demonstrate to the satisfaction of the Department of Revenue that failure to remit all taxes due in a timely manner was not due to willful and overt actions to avoid payment of taxes.

(8)~~(6)~~ The Legislature declares that the failure to promptly implement the provisions of this section would present an immediate threat to the welfare of the state. Therefore, the executive director of the Department of Revenue is authorized to adopt emergency rules pursuant to s. 120.54(4) to implement this section. Notwithstanding any other provision of law, such emergency rules shall remain effective for 180 days from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of this section shall not be subject to a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.

Section 14. Subsections (1) and (12) of section 376.75, Florida Statutes, are amended to read:

376.75 Tax on production or importation of perchloroethylene.—

(1) Beginning October 1, 1994, a tax of $5 per gallon is levied on the sale of perchloroethylene (tetrachloroethylene) in this state to a drycleaning facility located in this state or the import of perchloroethylene into this state by a drycleaning facility. This tax is not subject to sales and use tax pursuant to ch. 212.

(12) Any drycleaning facility which includes in the total retail charge to a consumer of drycleaning services any portion of the tax imposed pursuant to this section shall disclose on the receipt for the amount charged for such

services the amount of such tax and a statement that the imposition of the tax was requested by the Florida Dry Cleaners Coalition.

Section 15. Paragraph (a) of subsection (1) of section 287.0595, Florida Statutes, is amended to read:

287.0595 Pollution response action contracts; department rules.—

(1) The Department of Environmental Protection shall establish, through the promulgation of administrative rules as provided in chapter 120:

(a) Procedures for determining the qualifications of responsible potential bidders prior to advertisement for and receipt of bids for pollution response action contracts, including procedures for the rejection of unqualified bidders. Response actions are those activities described in s. 376.301(35) ~~s. 376.301(33)~~.

Section 16. Paragraph (f) of subsection (2) of section 316.302, Florida Statutes, is amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(2)

(f) A person who operates a commercial motor vehicle having a declared gross vehicle weight of less than 26,000 pounds solely in intrastate commerce and who is not transporting hazardous materials, or who is transporting petroleum products as defined in s. 376.301(29) ~~s. 376.301(27)~~, is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, 393, and 49 C.F.R. s. 396.9.

Section 17. Paragraph (o) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(7) Notwithstanding any other provision of this section, the department may provide:

(o) Information relative to ss. 376.70 and 376.75 to the Department of Environmental Protection in the conduct of its official business and to the facility owner, facility operator, and real property owners as defined in s. 376.301.

Section 18. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.