

House Bill No. 2151

An act relating to petroleum contamination site rehabilitation; amending s. 376.3071, F.S.; revising authority and procedures relating to source removal and site cleanup activities funded from the Inland Protection Trust Fund; providing an annual funding limitation for certain source removal activities; providing a time limit for negotiation of site rehabilitation and cost-sharing agreements; authorizing the Department of Environmental Protection to terminate negotiations and revoke funding eligibility and liability protections, if time limits are not met; eliminating funding ineligibility for persons who knowingly acquire title to contaminated property; amending s. 376.30711, F.S.; requiring the department to select five sites for restoration funding under an innovative technology pilot program; providing selection criteria; providing for use of certain innovative products and processes, based on competitive bid; amending s. 376.30713, F.S.; removing repeal of the preapproved advanced cleanup program; rescheduling legislative review; creating s. 376.30714, F.S.; authorizing the department to negotiate site rehabilitation agreements at certain sites with new discharges; providing legislative findings; providing definitions; providing application procedures; providing for apportionment of funding responsibilities; specifying excluded new discharges; providing negotiation procedures and timeframe; providing liability protections covered by such agreements; providing retroactive effect of the section; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) and paragraphs (c) and (g) of subsection (13) of section 376.3071, Florida Statutes, are amended to read:

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

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(c) The department shall require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the Inland Protection Trust Fund. Funding for free product recovery may be provided in advance of ~~in~~ the order established by the priority ranking system pursuant to paragraph (a) for site cleanup activities. However, a separate prioritization for free product recovery shall be established consistent with the provisions of paragraph (a). No more than \$5 million shall be encumbered from the Inland Protection Trust Fund in any fiscal year for free product recovery conducted in advance of the priority order pursuant to paragraph (a) established for site cleanup activities. Once free product ~~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 rehabilita-

tion is necessary to reach no further action status, the department is encouraged to utilize natural attenuation and monitoring where site conditions warrant.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring before January 1, 1995, subject to a copayment provided for in a preapproved site rehabilitation agreement. Eligibility shall be subject to an annual appropriation from the Inland Protection Trust Fund. Additionally, funding for eligible sites shall be contingent upon annual appropriation in subsequent years. Such continued state funding shall not be deemed an entitlement or a vested right under this subsection. Eligibility in the program shall be notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsection (5) and s. 376.30711, the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a preapproved site rehabilitation agreement with the department and a contractor qualified under s. 376.30711(2)(b). The agreement shall provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they are financially unable to comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation are unable to complete negotiation of the cost-sharing agreement within 120 days after commencing negotiations, the department shall terminate negotiations and the site shall be deemed ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(g) The following shall be excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement the provisions of this section.
2. Sites that were active facilities when owned or operated by the Federal Government.
3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which

eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

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

~~5. Any person who knowingly acquires title to contaminated property shall not be eligible for restoration funding pursuant to this subsection. The provisions of this subsection do not relieve any person who has acquired title subsequent to July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(c). The provisions of this subparagraph do not apply to any person who acquires title by succession or devise.~~

Section 2. Subsection (8) is added to section 376.30711, Florida Statutes, to read:

376.30711 Preapproved site rehabilitation, effective March 29, 1995.—

(8) The department shall select five sites eligible for state restoration funding assistance under this section, each having a low-priority ranking score pursuant to s. 376.3071(5), for an innovative technology pilot program. Such sites shall be representative of varying geographic, geophysical, and petroleum-contaminated conditions. Utilizing the department's list of mechanical, chemical, and biological products and processes which have already been deemed acceptable from an environmental, regulatory, and safety standpoint, the department shall select innovative products and processes, based upon competitive bid procedures per subsection (2), to be utilized on pilot project sites.

Section 3. Subsection (7) of section 376.30713, Florida Statutes, is amended to read:

376.30713 Preapproved advanced cleanup.—

~~(7) This section shall be subject to legislative review prior to March 1, 2001. This section is repealed effective October 1, 1999, and shall be subject to legislative review prior to that date.~~

Section 4. Section 376.30714, Florida Statutes, is created to read:

376.30714 Site rehabilitation agreements.—

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

(a) The provisions of ss. 376.3071(5)(a) and 376.30711 have delayed cleanup of low-priority sites determined to be eligible for state funding under ss. 376.305, 376.3071, and 376.3072.

(b) While compliance with the department's rules pertaining to storage tank systems is expected to significantly diminish the occurrence and extent of discharges of petroleum products from petroleum storage systems, discharges from these systems and discharges at sites with existing contamination which have been determined to be eligible for state-funded cleanup may still occur. In some cases, it may be difficult to distinguish between discharges that have been determined to be eligible for state funding from those discharges reported after December 31, 1998, which are not eligible for state funding.

(c) Restoration coverage under s. 376.3072(2)(d) is no longer provided for discharges of petroleum products from petroleum storage systems that are reported to the department after December 31, 1998. This situation may result in discharges that are not eligible for state-funded cleanup occurring on sites with existing contamination determined to be eligible for state-funded cleanup.

(d) It is necessary for the discharger, and may be desirable for the department, to address the cleanup of discharges of petroleum products reported to the department after December 31, 1998, including discharges that occur at sites with existing contamination determined to be eligible under ss. 376.305, 376.3071, and 376.3072.

(e) It is appropriate for persons assuming responsibility for cleanup of such discharges occurring after December 31, 1998, at sites with existing contamination determined to be eligible for state-funded cleanup, to share the costs associated with managing and conducting cleanup of those discharges upon application to the department and in accordance with a priority established for such cleanup in a negotiated site rehabilitation agreement.

(2) For the purposes of this section only, the term:

(a) "Applicant" means a facility owner, operator, discharger, or entity who accepts responsibility for cleanup of a new discharge on a qualified site and who applies for and enters into a site rehabilitation agreement with the department. Application for or execution of the site rehabilitation agreement shall not constitute an admission of liability for the new discharge by the applicant.

(b) "Existing contamination" means contamination that has been determined by the department to be eligible for state-funded cleanup under ss. 376.305, 376.3071, or 376.3072 prior to the new discharge.

(c) "New discharge" means a discharge of petroleum products reported after December 31, 1998, occurring at a site with existing contamination.

(d) "Qualified site" means a site with a new discharge and for which the applicant has entered into a site rehabilitation agreement with the department.

(3) Free product attributable to a new discharge shall be removed to the extent practicable and in accordance with department rules adopted pursu-

ant to s. 376.3071(5) at the expense of the owner, operator, or other responsible party. Free product attributable to existing contamination shall be removed in accordance with s. 376.3071(5), or s. 376.30711(1)(b), and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department is authorized to negotiate and enter into site rehabilitation agreements with applicants at sites with eligible existing contamination at which a new discharge occurs. The site rehabilitation agreement shall include, but not be limited to, allocation of the funding responsibilities of the department and the applicant for cleanup of the qualified site, establishment of a mechanism to guarantee the applicant's commitment to pay its agreed amount of site rehabilitation as set forth in the agreement, and establishment of the priority in which cleanup of the qualified site will occur. Under any such negotiated site rehabilitation agreement, the applicant shall be responsible for no more than the cleanup costs that are attributable to the new discharge. However, the payment of any applicable deductibles, copayments, or other program eligibility requirements under ss. 376.305, 376.3071, and 376.3072 shall continue to apply to the existing contamination and must be accounted for in the negotiated site rehabilitation agreement. The department is further authorized, pursuant to this section, to preapprove or conduct additional assessment activities at the site.

(5)(a) Applications for such site rehabilitation agreements may be submitted to the department not later than 120 days after discovery of the new discharge, on forms and instructions provided by the department, and shall include, but not be limited to:

1. A limited contamination assessment report, which shall be sufficient to demonstrate the extent of the new discharge and which may include any other evidence relevant to establish the extent or volume of the new discharge, or the impact of the new discharge relative to the existing contamination, in order to allocate the appropriate funding responsibilities of the applicant and the department. The limited contamination assessment report shall be used as a basis for establishing the respective site rehabilitation funding responsibilities of the applicant and the department for the new discharge and the existing contamination and for establishing the priority in which cleanup of the new discharge and the existing contamination will occur, based on the provisions of s. 376.3071(5)(a) and taking into consideration the cost-effectiveness associated with the timing of site rehabilitation activities.

2. Certification by the applicant that the applicant has the prerequisite authority to enter into the site rehabilitation agreement.

(b) Any costs incurred by the applicant to comply with this subsection are not refundable from the Inland Protection Trust Fund.

(c) Only one application may be submitted for any new discharge under this section.

(d) The application forms and instructions, and the terms and conditions of the site rehabilitation agreement, except as set forth in subsection (6), shall not be subject to the provisions of chapter 120.

(6) In the event the department and the applicant are unable to agree on the apportionment of the funding responsibilities and on the establishment of priority of cleanup for a site otherwise qualified under this section, the provisions of ss. 120.569 and 120.57 shall apply. The administrative law judge shall, in making any determinations or recommendations about the apportionment of the funding responsibilities of the department and the applicant for the new discharge and the existing contamination, consider any admissible evidence relating to apportionment of the discharges.

(7) The following shall be excluded from participation under this section:

(a) New discharges from storage systems owned or operated by the Federal Government when the new discharge occurred.

(b) New discharges at facilities which failed to correct a violation cited at a previous compliance inspection and at which the failure to correct the violation contributed to or caused the new discharge.

(c) New discharges intentionally caused by the owner, operator, responsible party, or applicant.

(d) Sites at which the department has been denied site access.

(e) New discharges at sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program.

(f) New discharges at sites where the person or entity required to report the new discharge upon its discovery as required by department rule, or where the person or entity required to initiate free product recovery upon discovery as required by department rule, adopted pursuant to ss. 376.303 and 376.3071(5), failed to do so.

(8) If the department, at its discretion, determines that it is not able to complete negotiation of the agreement within 90 days after commencing negotiations, except as set forth in subsection (6), the department shall terminate negotiations with the applicant and the site shall receive no further consideration under this section. However, if the parties are negotiating in good faith and require additional time in which to continue negotiations, then the parties may mutually agree to continue negotiations.

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

(10) New discharges otherwise meeting the criteria of this section, or any site rehabilitation agreement made under this section, shall not constitute an independent entitlement to continued restoration funding or to cleanup of the existing contamination in advance of its previous priority order.

(11) Upon execution of the site rehabilitation agreement, retroactive to the date of discovery of the new discharge, the provisions of s. 376.308(5) shall extend to contamination covered by a site rehabilitation agreement as long as the applicant remains in compliance with the terms and conditions of the agreement. However, if state funding of any agreement entered into under this section is discontinued, the provisions of this subsection shall no longer apply to the new discharge. For purposes of chapter 95, a cause of action to compel cleanup of the new discharge or to compel payment of costs of the new discharge shall not accrue during the time that the site rehabilitation agreement is in effect.

(12) Nothing in this section shall be construed to preclude the department from pursuing penalties in accordance with ss. 376.303(1)(k) and 376.311 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(13) The provisions of this section shall be retroactive to January 1, 1999, except as provided by subsection (11).

Section 5. Subsection (7) of section 376.30713, Florida Statutes, is repealed.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor June 17, 1999.

Filed in Office Secretary of State June 17, 1999.