CHAPTER 2014-151

Committee Substitute for House Bill No. 7093

An act relating to the Department of Environmental Protection; amending s. 287.0595, F.S.; deleting a provision exempting certain professional service contracts from pollution response action contract requirements; amending s. 376.3071, F.S.; providing legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; revising provisions relating to the duty of the Department of Environmental Protection to seek recovery and reimbursement of certain costs; providing applicability of funding under the Early Detection Incentive Program; deleting obsolete provisions relating to reimbursement for certain cleanup expenses; repealing s. 376.30711, F.S., relating to preapproved site rehabilitation; amending 376.30713, F.S.; providing for certain applicants to use a commitment to pay, a demonstrated cost savings, or both to meet advanced cleanup cost-share requirements; amending ss. 376.301, 376.302, 376.305, 376.30714, 376.3072, 376.3073, and 376.3075, F.S.; conforming provisions to changes made by the act; amending s. 161.053, F.S.; revising permit requirements for coastal construction and excavation; authorizing the Department of Environmental Protection, in consultation with the Fish and Wildlife Conservation Commission, to grant areawide permits for certain structures; requiring the department to adopt rules; creating s. 258.435, F.S.; requiring the Department of Environmental Protection to promote the public use of aquatic preserves and their associated uplands; authorizing the department to receive gifts and donations for specified purposes; providing restrictions for moneys received; authorizing the department to grant privileges and concessions for accommodation of visitors in and use of aquatic preserves and their associated uplands; providing criteria for granting such concessions; providing restrictions on such privileges and concessions and prohibiting them from being assigned or transferred without the department's consent; requiring the department to post descriptions of proposed privileges and concessions on the department's website; requiring the department to provide an opportunity for public comment on agreements for such privileges and concessions; amending s. 380.276, F.S.; authorizing the department to allow state agencies and local governments to use additional safety and warning devices at public beaches under certain conditions; providing an appropriation to the Southwest Florida Water Management District to purchase property for a specified purpose; providing construction; amending s. 258.007, F.S., prohibiting certain new concession agreements in state parks with limited shorelines; exempting existing accommodations; providing effective dates.

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

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

287.0595 Pollution response action contracts; department rules.—

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

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

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

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

(a) That significant quantities of petroleum and petroleum products are being stored in storage systems in this state, which is a hazardous undertaking.

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

(c) That, where contamination of the ground 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 that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to water resources and the environment; and in significantly higher costs to contain and remove the contamination.

(d) That 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 cleanup of contamination sites without delay.

(e) That it is necessary to fulfill the intent and purposes of ss. 376.30-376.317~~,~~ and ~~further it is hereby~~ determined to be in the best interest of, and necessary for the protection of the public health, safety, and ~~general~~ welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an instrumentality of the state to assist in financing the functions provided in ss. 376.30-376.317 and to authorize the department to enter into one or more service contracts with such corporation for the purpose ~~provision~~ of financing services related to such functions and to make payments thereunder from the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriation by the Legislature.

(f) That to achieve the purposes established in paragraph (e) and in order to facilitate the expeditious handling and rehabilitation of contamination

sites and remedial measures with respect to contamination sites ~~provided hereby~~ without delay, it is in the best interests of the residents of this state to authorize such corporation to issue evidences of indebtedness payable from amounts paid by the department under any such service contract entered into between the department and such corporation.

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

(2) INTENT AND PURPOSE.—

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

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

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

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

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

~~(e) The department is directed to adopt uniform scopes of work with templated labor and equipment costs to provide definitive guidance as to the~~

~~type of work and authorized expenditures that will be allowed for preapproved site rehabilitation tasks.~~

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

(3) CREATION.—There is ~~hereby~~ created the Inland Protection Trust Fund, hereinafter referred to as the "fund," to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made pursuant to ~~in accordance with the provisions of~~ this section.

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

(a) Prompt investigation and assessment of contamination sites.

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

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland 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 water resources, and that minimizes environmental damage, pursuant to ~~in accordance with~~ the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not ~~nothing herein shall be construed to~~ authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

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

(f) 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.

(g) Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health 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.

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

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

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

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

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

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

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

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

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

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

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) ~~(o)~~ under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before ~~prior to~~ making or providing for other disbursements from the fund. ~~Nothing in~~ This subsection does not ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are ~~shall be presumed~~ not ~~to be~~ excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

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

1. The degree to which the public ~~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; and

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

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

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary 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 and the level at which a rehabilitation program task and a site rehabilitation program are ~~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 the public ~~human~~ health, ~~and~~ safety, and welfare, water resources, and the environment in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or 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. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department may ~~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 may also ~~is authorized~~, pursuant to criteria provided for in this paragraph, ~~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, if the public ~~provided human~~ health, ~~public~~ safety, and welfare, water resources, and the environment are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must ~~shall~~ include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

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

4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of concern to humans or the environment. Use of such

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

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

6. Individual site characteristics which must ~~shall~~ include, but not be limited to, the current and projected use of the affected groundwater 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.

7. Applicable state water quality standards.

a. Cleanup target levels for petroleum products' chemicals of concern 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.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the 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.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the ~~said~~ standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may 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 storage tank area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, if the public; provided human health, public safety, and welfare, water resources, and the environment are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern 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.

b. 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 do not apply shall not be applicable if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to public human health, and safety, and welfare, water resources, or the environment.

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

(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.

1. Funding for free product recovery may be provided in advance of the order established by the priority ranking system under paragraph (a) for site cleanup activities. However, a separate prioritization for free product recovery shall be established consistent with 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 under paragraph (a) established for site cleanup activities.

2. Once free product removal and other source removal identified in this paragraph are completed at a site, and notwithstanding the order

established by the priority ranking system under paragraph (a) for site cleanup activities, the department may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. Further, the department shall determine whether ~~if~~ the reevaluated site qualifies for natural attenuation monitoring, long-term natural attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall use ~~utilize~~ natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted pursuant to ~~in accordance with~~ department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate ~~template~~ the cost of natural attenuation monitoring ~~pursuant to s. 376.30711~~ to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site from pursuing a "No Further Action" order with conditions.

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

4. A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

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

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

(c) Each contractor performing site assessment and remediation activities for state-funded sites under this section shall certify to the department that the contractor meets all certification and license requirements imposed by law. Each contractor shall certify to the department that the contractor meets the following minimum qualifications:

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

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

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

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

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

(d) The department rules implementing this section must specify that only qualified vendors may submit responses on a competitive solicitation. The department rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation and requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

(e) A contractor that performs services pursuant to this subsection may file invoices for payment with the department for the services described in the approved contract. The invoices for payment must be submitted to the department on forms provided by the department, together with evidence documenting that activities were conducted or completed pursuant to the

approved contract. If there are sufficient unencumbered funds available in the fund which have been appropriated for expenditure by the Legislature, and if all of the terms of the approved contract have been met, invoices for payment must be paid pursuant to s. 215.422. After a contractor has submitted its invoices to the department, and before payment is made, the contractor may assign its right to payment to another person without recourse of the assignee or assignor to the state. In such cases, the assignee must be paid pursuant to s. 215.422. Prior notice of the assignment and assignment information must be made to the department and must be signed and notarized by the assigning party.

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

(g) The department shall make payments based on the terms of an approved contract for site rehabilitation work. The department may, based on its experience and the past performance and concerns regarding a contractor, retain up to 25 percent of the contracted amount or use performance bonds to ensure performance. The amount of retainage and the amount of performance bonds, as well as the terms and conditions for such, must be included in the approved contract.

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

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

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

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

(l) The department shall terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties for site rehabilitation program tasks.

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

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

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

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

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

(a) Except as provided in subsection (10) ~~(9)~~ and as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund~~,~~ pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to a discharge related to the storage of petroleum or petroleum products or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such disaster. A ~~Any~~ request for reimbursement to the fund for such costs, if not paid within 30 days after ~~of~~ demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (10) ~~(9)~~ and as otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement pursuant to ~~in accordance with the provisions of~~ this section or s. 376.3073, unless the department finds the amount involved 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 begin ~~commence~~ on the last date on which ~~any~~ such sums were expended~~,~~ and not the date on which ~~that~~ the discharge occurred.

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

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

3. If the recipient does not make payment to the department within 60 days after receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover the overpayment, unless the

department finds the amount involved too small or the likelihood of recovery too uncertain.

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

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

(e)~~(c)~~ If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot ~~is~~ financially ~~unable to~~ undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department, taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

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

(10)~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program which provides ~~shall provide~~ for a 30-month grace period ending on December 31, 1988. ~~Pursuant thereto:~~

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete

written report of the incident will be required by the department at a later time, the form for which will be provided by the department.

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

1. ~~The provisions of~~ This subsection does ~~shall~~ not apply to a ~~any~~ site where the department has been denied site access to implement ~~the provisions of~~ this section.

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

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

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

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

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

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

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

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

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

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

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

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

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

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

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

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

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

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

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

(b) Intentionally damage a petroleum storage system.

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

(12)~~(11)~~ SITE CLEANUP.—

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

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

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

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

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

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

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

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

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

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of "No Further Action." Such determination acknowledges that minimal contamination exists onsite and

that such contamination is not a threat to the public ~~human~~ health, safety, or welfare, water resources, or the environment. If no contamination is detected, the department may issue a site rehabilitation completion order.

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

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

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

c. No more than $10 million for the low-scored site initiative may be encumbered from the ~~Inland Protection Trust~~ fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

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

~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.~~

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

~~(b) Conditions.—~~

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

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

~~(c) Legislative intent.—Due to the value of the potable water of this state, 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, recognizing that source removal, wherever it is technologically feasible and cost-effective, shall be considered the primary initial response to protect public health, safety, and the environment.~~

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

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

~~1. Hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department.~~

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

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

~~(f) Application for reimbursement.—Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water; soil treatment or removal; or any other tasks identified by department rule developed pursuant to subsection (5), may apply for reimbursement. Such applications for reimbursement must be submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to subsection (5), and other such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement shall not be approved for site rehabilitation program tasks which have not been completed, except for the task of remedial action and except for uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, and this subsection. Applications for remedial action may be submitted semiannually at the discretion of the person responsible for cleanup. After an applicant has filed an application with the department and before payment is made, the applicant may assign the right to payment to any other person, without recourse of the assignee or assignor to the state, without affecting the order in which payment is made. Information necessary to process the application shall be requested from and provided by the assigning applicant. Proper notice of the assignment and assignment information shall be made to the department which notice shall be signed and notarized by the assigning applicant.~~

~~(g) Review.—~~

~~1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, or to the extent proceeds of debt obligations are available for the payment of existing reimbursement obligations pursuant to s. 376.3075, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period. If the applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information~~

~~or to answer new questions raised by or directly related to such additional information.~~

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

~~3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. 120.569 and 120.57.~~

~~(h) Reimbursement.—Upon approval of an application for reimbursement, reimbursement for reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be made in the order in which the department receives completed applications. Effective January 1, 1997, all unpaid reimbursement applications are subject to payment on the following terms: The department shall develop a schedule of the anticipated dates of reimbursement of applications submitted to the department pursuant to this subsection. The schedule shall specify the projected date of payment based on equal monthly payments and projected annual revenue of $100 million. Based on the schedule, the department shall notify all reimbursement applicants of the projected date of payment of their applications. The department shall direct the Inland Protection Financing Corporation to pay applicants the present value of their applications as soon as practicable after approval by the department, subject to the availability of funds within the Inland Protection Financing Corporation. The present value of an application shall be based on the date on which the department anticipates the Inland Protection Financing Corporation will settle the reimbursement application and the schedule's projected date of payment and shall use 3.5 percent as the annual discount rate. The determination of the amount of the claim and the projected date of payment shall be subject to s. 120.57.~~

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

~~(j) Reimbursement-review contracts.—The department may contract with entities capable of processing or assisting in the review of~~

~~reimbursement applications. Any purchase of such services shall not be subject to chapter 287.~~

~~(k) Audits.—~~

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

~~2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.~~

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

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

~~5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.~~

~~a. The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (e)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic,~~

~~technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.~~

~~b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:~~

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

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

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

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

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

~~6. The Chief Financial Officer may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer alleges specific facts indicating fraud.~~

(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 Petroleum

Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement. Eligibility is ~~shall be~~ subject to an annual appropriation from the ~~Inland Protection Trust~~ fund. Additionally, funding for eligible sites is ~~shall be~~ contingent upon annual appropriation in subsequent years. Such continued state funding is ~~shall~~ not ~~be deemed~~ an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, ~~shall be~~ notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

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

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

(b) Subject to annual appropriation from the ~~Inland Protection Trust~~ fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay ~~At no time shall~~ expenses incurred beyond ~~outside~~ the scope of an approved contract ~~preapproved site rehabilitation program under s. 376.30711 be reimbursable~~.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections ~~subsection~~ (5) and (6) ~~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 Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement with the department ~~and a contractor qualified under s. 376.30711(2)(b)~~. The agreement must

~~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 cannot ~~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 cannot ~~are unable to~~ complete negotiation of the cost-sharing agreement within 120 days after beginning ~~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.

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

(e) ~~Nothing in~~ This subsection does not ~~shall be construed to~~ preclude the department from pursuing penalties under ~~in accordance with~~ s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

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

(g) The following are ~~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. Sites for which ~~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.

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

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

Section 4. Section 376.30713, Florida Statutes, is amended to read:

376.30713 ~~Preapproved~~ Advanced cleanup.—

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

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5)(a) may substantially impede or prohibit property transactions or the proper completion of public works projects.

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

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

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

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

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

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

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

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

3. A limited contamination assessment report.

4. A proposed course of action.

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

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who ~~that~~ proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that ~~which~~ exceed the funds available to commit to all such proposals during the ~~preapproved~~ advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that ~~which~~ exceed funding availability must ~~shall~~ be so notified by the department and ~~shall be~~ offered the opportunity to raise their individual cost-share commitments, in a period ~~of time~~ specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to ~~in accordance with~~ this paragraph.

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

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

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

(4) The department may ~~is authorized to~~ enter into contracts for a total of up to $15 million of ~~preapproved~~ advanced cleanup work in each fiscal year. However, a facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved ~~preapproved~~ for more than $5

million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes ~~shall include~~, but is not ~~be~~ limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

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

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

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

~~(4) "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.~~

~~(30) "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).~~

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

376.302 Prohibited acts; penalties.—

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

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

376.305 Removal of prohibited discharges.—

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

establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

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

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

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

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

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

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

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

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

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

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

~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~ person who has acquired title after ~~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).

Section 8. Paragraph (a) of subsection (1) and subsections (3), (4), and (9) of section 376.30714, Florida Statutes, are amended 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 s. ~~ss.~~ 376.3071(5)(a) ~~and 376.30711~~ have delayed cleanup of low-priority sites determined to be eligible for state funding under that section and ss. 376.305~~, 376.3071,~~ and 376.3072.

(3) Free product attributable to a new discharge shall be removed to the extent practicable and pursuant to ~~in accordance with~~ department rules adopted pursuant 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 pursuant to ~~in accordance with~~ s. 376.3071(5) and (6)~~, or s. 376.30711(1)(b),~~ and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department may ~~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 must ~~shall~~ include, but is 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 a negotiated site rehabilitation agreement, the applicant may not ~~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 may ~~is further authorized~~, pursuant to this section, ~~to preapprove or~~ conduct additional assessment activities at the site.

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

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

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(2)(a) An ~~Any~~ owner or operator of a petroleum storage system may become an insured in the restoration insurance program at a facility if ~~provided~~:

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

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

3. Notwithstanding paragraph (b), a site where an application is filed with the department before ~~prior to~~ January 1, 1995, where the owner is a small business under s. 288.703(6), a state community college with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(m), a charitable institution as defined by s. 212.08(7)(p), or a county or municipality with a population of less than 50,000, is ~~shall be~~ eligible for up to $400,000 of eligible restoration costs, less a deductible of $10,000 for small businesses, eligible community colleges, and religious or charitable institutions, and $30,000 for eligible counties and municipalities, if ~~provided that~~:

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

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

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

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

e. The owner or operator, if required and if it has not already done so, applies for third-party liability coverage for the facility within 30 days after

~~of~~ receipt of an eligibility order issued by the department pursuant to this subparagraph ~~provision~~.

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

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

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

(II) Automatic tank gauging systems; or

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

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

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

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

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

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

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

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

e. Facilities with vapor levels of contamination meeting the requirements of or below the concentrations specified in the performance standards for

release detection methods specified in department rules may continue to use vapor monitoring wells for release detection.

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

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

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

3. Should a reinspection of the facility be necessary to demonstrate compliance, the insured shall pay an inspection fee not to exceed $500 per facility to be deposited in the Inland Protection Trust Fund.

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

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

(c) A lender that has loaned money to a participant in the Florida Petroleum Liability and Restoration Insurance Program and has held a mortgage lien, security interest, or ~~any~~ lien rights on the site primarily to protect the lender's right to convert or liquidate the collateral in satisfaction of the debt secured, or a financial institution which serves as a trustee for an insured in the program for the purpose of site rehabilitation, is ~~shall be~~

eligible for a state-funded cleanup of the site~~,~~ if the lender forecloses the lien or accepts a deed in lieu of foreclosure on that property and acquires title, and as long as the following has occurred, as applicable:

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

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

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

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

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

a. For discharges reported to the department from July 1, 1992, to June 30, 1993, the department shall pay up to $1.2 million of eligible restoration costs, less a $1,000 deductible per incident.

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

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

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

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

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

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

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

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

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

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

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

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

4. Any incidents discovered before ~~prior to~~ January 1, 1989~~, are not eligible to participate in the restoration insurance program~~. However, this exclusion does ~~shall~~ not ~~be construed to~~ prevent a new incident at the same location from participation in the restoration insurance program if the owner or operator is otherwise eligible. This exclusion does ~~shall~~ not affect eligibility for participation in the Early Detection Incentive ~~EDI~~ Program.

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

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

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

(1) The department shall, to the greatest extent possible and cost-effective, contract with local governments to provide for the administration of its departmental responsibilities under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6) ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally administered programs. The department may also contract with state agencies to carry out the restoration activities authorized pursuant to ss. 376.3071, 376.3072, and 376.305~~, and 376.30711~~. However, ~~no~~ such a contract may not ~~shall~~ be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

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

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

376.3075 Inland Protection Financing Corporation.—

(4) The corporation may enter into one or more service contracts with the department to provide services to the department in connection with financing the functions and activities provided in ss. 376.30-376.317. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 376.3071(4)(n) ~~376.3071(4)(o)~~, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments as set forth in subsection (5). Each service contract may have a term of up to 20 years. Amounts annually appropriated and applied to make payments under such service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b) ~~376.3071(6)(b)~~. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state and ~~nor may~~ such obligations are not ~~be construed in any manner as~~ an obligation of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the Inland Protection Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness may not have a financing term that exceeds 15 years. The corporation may select its financing team and issue its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state~~,~~ but is payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(n) ~~376.3071(4)(o)~~.

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

161.053 Coastal construction and excavation; regulation on county basis.

(17) The department may grant areawide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction or responsibility or for the construction of minor structures, if these activities or structures, due to the type, size, or temporary nature of the activity or structure, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. Such activities or structures must comply with this section and may include, but are not limited to: road repairs, not including new construction; utility repairs and replacements, or other minor activities necessary to provide utility services; beach cleaning; dune restoration; on-grade walkovers for enhancing accessibility or use in compliance with the Americans with Disabilities Act; and emergency response. The department shall ~~may~~ adopt rules to establish criteria and guidelines for permit applicants. The department shall consult with the Fish and Wildlife Conservation Commission on each proposed areawide permit and must require notice provisions appropriate to the type and nature of the activities for which the areawide permits are sought.

(18)(a) The department may grant general permits for projects, including dune restoration, dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures, if the projects, due to type, size, or temporary nature, will not cause a measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. Multifamily habitable structures do not qualify for general permits. However, single-family habitable structures and swimming pools associated with such single-family habitable structures that do not advance the line of existing construction and satisfy all siting and design requirements of this section, and minor reconstruction for existing coastal armoring structures, may be eligible for a general permit.

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

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

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

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

258.435 Use of aquatic preserves for the accommodation of visitors.—

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

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

(3) Upon submittal to the department of a proposed concession or privilege, the department shall post a description of the proposed concession or privilege on the department's website, including a description of the

activity to occur under the proposed concession or privilege, the time of year that the activity would take place, and the location of the activity. Once the description of the proposed privilege or concession is posted on the department's website and at least 60 days before execution of a privilege or concession agreement, the department shall provide an opportunity for public comment on the proposed privilege or concession agreement.

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

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

(2) The Department of Environmental Protection, through the Florida Coastal Management Program, shall direct and coordinate the uniform warning and safety flag program. The purpose of the program shall be to encourage the display of uniform warning and safety flags at public beaches along the coast of the state and to encourage the placement of uniform notification signs that provide the meaning of such flags. Unless additional safety and warning devices are authorized pursuant to subsection (7), only warning and safety flags developed by the department shall be displayed. Participation in the program shall be open to any government having jurisdiction over a public beach along the coast, whether or not the beach has lifeguards.

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

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

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

258.007 Powers of division.—

(3)(a) The division may grant privileges, leases, concessions, and permits for the use of land for the accommodation of visitors in the various parks, monuments, and memorials, provided no natural curiosities or objects of

interest shall be granted, leased, or rented on such terms as shall deny or interfere with free access to them by the public; provided further, such grants, leases, and permits may be made and given without advertisement or securing competitive bids; and provided further, that no such grant, lease, or permit shall be assigned or transferred by any grantee without consent of the division.

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

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.