

CHAPTER 2017-95

Committee Substitute for Committee Substitute for Senate Bill No. 1018

An act relating to pollution; creating s. 403.076, F.S.; providing a short title; creating s. 403.077, F.S.; defining the term “reportable pollution release”; requiring an owner or operator of an installation at which a reportable pollution release occurred to provide certain information to the department within 24 hours after the discovery of the release; authorizing multiple parties to submit one notification under certain circumstances; authorizing the owner or operator to amend notices; requiring the owner or operator to make additional notice upon discovery of the release migrating outside of installation boundaries; requiring the department to publish such information in a specified manner; requiring the department to establish an electronic mailing list; requiring the department to provide a reporting form and e-mail address for such notice; specifying that providing a notice does not constitute an admission of liability or harm; specifying penalties for violations; requiring the department to adopt rules; creating s. 403.078, F.S.; specifying that the act does not alter certain emergency responsibilities pursuant to ch. 252, F.S.; amending s. 403.161, F.S.; specifying penalties; amending s. 14.2016, F.S.; creating the State Watch Office within the Division of Emergency Management; specifying the purpose of the office; amending s. 376.3071, F.S.; providing an exception to prompt payment requirements to subcontractors and suppliers; amending s. 376.30713, F.S.; revising legislative findings; specifying that applicants for advanced cleanup of certain individual sites are not subject to application period limitations and need not pay a certain cost-sharing commitment; requiring applications by such applicants to be accepted on a first-come, first-served basis; providing that such applications are not subject to certain ranking provisions; specifying application requirements; providing construction; increasing the amount per year that the Department of Environmental Protection may use for advanced cleanup work; specifying expenditure limitations; revising duties of property owners and responsible parties with respect to voluntary cost-share agreements; amending s. 376.3078, F.S.; providing a statement of public interest; authorizing site assessments in advance of site priority ranking under certain circumstances; specifying criteria for sites to be eligible for such assessments; specifying what must be demonstrated through such assessments; specifying criteria for the assignment of assessment tasks; specifying funding limitations; specifying the prioritization of requests; requiring the department to evaluate the potential for using a specified trust fund for a specified purpose; requiring the department to issue a request for information regarding the potential for damage to underground petroleum systems and to compile a report; requiring the report to be submitted to the Legislature and the Governor; providing an appropriation; providing an expiration date; providing an effective date.

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

Section 1. Section 403.076, Florida Statutes, is created to read:

403.076 Short title.—Sections 403.076-403.078 may be cited as the “Public Notice of Pollution Act.”

Section 2. Section 403.077, Florida Statutes, is created to read:

403.077 Public notification of pollution.—

(1) DEFINITION.—As used in this section, the term “reportable pollution release” means the release or discharge of a substance from an installation to the air, land, or waters of the state which is discovered by the owner or operator of the installation, which is not authorized by law, and which is reportable to the State Watch Office within the Division of Emergency Management pursuant to any department rule, permit, order, or variance.

(2) OWNER AND OPERATOR RESPONSIBILITIES.—

(a) In the event of a reportable pollution release, an owner or operator of the installation at which the reportable pollution release occurs must provide to the department information reported to the State Watch Office within the Division of Emergency Management pursuant to any department rule, permit, order, or variance, within 24 hours after the owner’s or operator’s discovery of such reportable pollution release.

(b) If multiple parties are subject to the notification requirements based on a single reportable pollution release, a single notification made by one party in accordance with this section constitutes compliance on behalf of all parties subject to the requirement. However, if the notification is not made in accordance with this section, the department may pursue enforcement against all parties subject to the requirement.

(c) If, after providing notice pursuant to paragraph (a), the owner or operator of the installation determines that a reportable pollution release did not occur or that an amendment to the notice is warranted, the owner or operator may submit a letter to the department documenting such determination.

(d) If, after providing notice pursuant to paragraph (a), the installation owner or operator discovers that a reportable pollution release has migrated outside the property boundaries of the installation, the owner or operator must provide an additional notice to the department that the release has migrated outside the property boundaries within 24 hours after its discovery of the migration outside of the property boundaries.

(3) DEPARTMENT RESPONSIBILITIES.—

(a) The department shall publish on a website accessible to the public all notices submitted by an owner or operator pursuant to subsection (2) within 24 hours after receipt.

(b) The department shall create an electronic mailing list for such notices and allow the public, including local governments, health departments, news media, and other interested persons, to subscribe to and receive periodic direct announcement of any notices submitted pursuant to subsection (2). The department shall establish regional electronic mailing lists, such as by county or district boundaries, to allow subscribers to determine the notices they wish to receive by geographic area.

(c) The department shall establish an e-mail address and an online form as options for owners and operators to provide the notice specified in subsection (2). The online form may not require the submission of information in addition to what is required for submission pursuant to paragraph (2)(a).

(d) The department shall adopt rules necessary to implement the requirements of this subsection.

(4) ADMISSION OF LIABILITY OR HARM.—Providing notice under subsection (2) does not constitute an admission of liability or harm.

(5) VIOLATIONS.—Failure to provide the notification required by subsection (2) shall subject the owner or operator to the civil penalties specified in s. 403.121.

Section 3. Section 403.078, Florida Statutes, is created to read:

403.078 Effect on other law.—The Public Notice of Pollution Act does not alter or affect the emergency management responsibilities of the Governor, the Division of Emergency Management, or the governing body of any political subdivision of the state pursuant to chapter 252.

Section 4. Paragraph (e) is added to subsection (1) of section 403.161, Florida Statutes, to read:

403.161 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this chapter, and it shall be prohibited for any person:

(e) To fail to provide required notice pursuant to s. 403.077.

Section 5. Section 14.2016, Florida Statutes, is amended to read:

14.2016 Division of Emergency Management.—

(1) The Division of Emergency Management is established within the Executive Office of the Governor. The division shall be a separate budget entity, as provided in the General Appropriations Act and shall prepare and

submit a budget request in accordance with chapter 216. The division shall be responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities under part I of chapter 252. The director of the division shall be appointed by and serve at the pleasure of the Governor and shall be the head of the division for all purposes. The division shall administer programs to rapidly apply all available aid to communities stricken by an emergency as defined in s. 252.34 and, for this purpose, shall provide liaison with federal agencies and other public and private agencies.

(2) The State Watch Office is established within the Division of Emergency Management.

(a) The primary purpose of the office is to record, analyze, and share information with federal, state, and county entities for appropriate response to emergencies.

(b) The office is not a dispatch center, but a clearinghouse of information to be shared with other governmental entities that can independently act within their own authority and protocols.

Section 6. Paragraph (h) of subsection (6) of section 376.3071, Florida Statutes, is amended to read:

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

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(h) The contractor, or the person to ~~whom~~ ~~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, except that the contractor, or the person to whom the contractor has assigned its right to payment pursuant to paragraph (e), may remit payments to subcontractors and suppliers within 30 working days after the contractor's receipt of payment by the department before the penalties required by s. 287.0585(1) are applicable.

Section 7. Paragraphs (a) and (c) of subsection (1) and subsections (2) and (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(1) In addition to the legislative findings provided in s. 376.3071, 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 redevelopment, property transactions, or the proper completion of public works projects.

(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 encourage redevelopment and facilitate property transactions or public works projects.

(2) The department may approve an application for advanced cleanup at eligible sites, including applications submitted pursuant to paragraph (c), notwithstanding the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) 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 consist of:

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

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

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

(II) For an aggregate 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.

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

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

(II) For an individual 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 a 25-percent

cost savings to the department for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provided to the department by the proposed agency term contractor.

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.
5. A department site access agreement, or similar agreements approved by the department that do not violate state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action where the applicant is not the property owner for any of the sites contained in the application.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. 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 not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must 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 proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that exceed the funds available to commit to all such proposals during the advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that exceed funding availability must be so notified by the department and offered the opportunity to raise their individual cost-share commitments, in a period specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to this paragraph.

(c) Applications for the advanced cleanup of individual sites scheduled for redevelopment are not subject to the application period limitations or the requirement to pay 25 percent of the total cleanup cost specified in paragraph (a) or to the cost-sharing commitment specified in paragraph (1)(d). Applications must be accepted on a first-come, first-served basis and are not subject to the ranking provisions of paragraph (b). Applications for the advanced cleanup of individual sites scheduled for redevelopment must include:

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

2. A limited contamination assessment report. The report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting and preparing the report are not refundable from the Inland Protection Trust Fund.

3. A proposed course of action for cleanup of the site.

4. If the applicant is not the property owner for any of the sites contained in the application, a department site access agreement, or a similar agreement approved by the department and not in violation of state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action.

5. A certification to the department stating that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The advanced cleanup contract must include redevelopment and site rehabilitation milestones.

6. Documentation, in the form of a letter from the local government having jurisdiction over the area where the site is located, which states that the local government is in agreement with or approves the proposed redevelopment and that the proposed redevelopment complies with applicable law and requirements for such redevelopment.

7. A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

Site eligibility under this section is not an entitlement to advanced cleanup funding or continued restoration funding.

(4) The department may enter into contracts for a total of up to \$30 \$25 million of advanced cleanup work in each fiscal year. Up to \$5 million of these funds may be designated by the department for advanced cleanup of individual sites scheduled for redevelopment under paragraph (2)(c).

(a) ~~However,~~ A facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than \$5 million of cleanup activity in each fiscal year.

(b) A facility or an applicant applying for advanced cleanup of individual sites scheduled for redevelopment pursuant to paragraph (2)(c) may not be approved for more than \$1 million of cleanup activity in any one fiscal year.

(c) A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party

commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department must reserve reserves the right to terminate or amend the voluntary cost-share agreement for any identified site under the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle any site, not already covered by an advance cleanup contract, under such voluntary cost-share agreement within three a subsequent open application periods or 18 months, whichever period is shorter, ~~period~~ during which it is eligible to participate. The property owner or responsible party must agree to conduct limited site assessments on the identified sites within 12 months after the execution of the voluntary cost-share agreement. For the purposes of this section, the term “facility” includes, but is not 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.

Section 8. Subsection (14) is added to section 376.3078, Florida Statutes, to read:

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

(14) ADVANCED SITE ASSESSMENT.—It is in the public interest, and of substantial environmental and economic benefit to the state, to provide an opportunity to conduct site assessment on a limited basis at contaminated sites in advance of the ranking of the sites on the priority list as specified in subsection (8).

(a) A real property owner who is eligible for site rehabilitation at a facility that has been determined eligible for the drycleaning solvent cleanup program under this section may request an advanced site assessment, and the department may authorize the performance of a site assessment in advance of the ranking of the site on the priority list as specified in subsection (8), if the following criteria are met:

1. The site assessment information would provide new information that would be sufficient for the department to better evaluate the actual risk of the contamination, thereby reducing the risk to public health and the environment;

2. The property owner agrees:

a. To implement the appropriate institutional controls allowed by department rules adopted pursuant to subsection (4) at the time the property owner requests the advanced site assessment; and

b. To implement and maintain, upon completion of the cleanup, the required institutional controls, or a combination of institutional and engineering controls, when the site meets the site rehabilitation criteria

for closure with controls in accordance with department rules adopted pursuant to subsection (4);

3. Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;

4. There is sufficient money in the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program to pay for the site assessment; and

5. In accordance with subsection (3), access to the site is provided and the deductible is paid.

(b) A site may be assessed out of priority ranking order when, at the department's discretion, the site assessment will provide a cost savings to the program.

(c) An advanced site assessment must incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with subsection (4). The site assessment must also be sufficient to estimate the cost and determine the proposed course of action toward site cleanup. Advanced site assessment activities performed under this subsection shall be designed to affirmatively demonstrate that the site meets one of the following findings based on the following specified criteria:

1. Recommend remedial action to mitigate risks that, in the judgment of the department, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;

2. Recommend additional groundwater monitoring to support natural attenuation monitoring or long-term groundwater monitoring; or

3. Recommend "no further action," with or without institutional controls or institutional and engineering controls, for those sites that meet the "no further action" criteria department rules adopted pursuant to subsection (4).

If the site does not meet one of the findings specified in subparagraphs 1.-3., the department shall notify the property owner in writing of this decision, and the site shall be returned to its priority ranking order in accordance with its score.

(d) Advanced site assessment program tasks shall be assigned by the drycleaning solvent cleanup program. In addition to the provisions in paragraph (a), the assignment of site assessment tasks shall be based on the department's determination of contractor logistics, geographical considerations, and other criteria that the department determines are necessary to achieve the most cost-effective approach.

(e) Available funding for advanced site assessments may not exceed 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program.

(f) The total funds committed to any one site may not exceed \$70,000.

(g) The department shall prioritize the requests for advanced site assessment, based on the date of receipt and the environmental and economic value to the state, until 10 percent of the annual Water Quality Assurance Trust Fund appropriation, as provided in paragraph (e), has been obligated.

Section 9. (1) The Department of Environmental Protection shall evaluate the potential for using the Inland Protection Trust Fund to respond to the damage or potential damage to underground storage tank systems caused by ethanol or biodiesel. The department shall issue a request for information regarding the potential for damage to underground petroleum systems by ethanol or biodiesel and the potential costs of implementing and maintaining a program to address such damage. The department shall compile this information into a report, which shall be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 15, 2017.

(2) For the 2017-2018 fiscal year, the sum of \$25,000 in nonrecurring funds from the Inland Protection Trust Fund is provided to fund the program provided in subsection (1).

(3) This section expires December 30, 2017.

Section 10. This act shall take effect July 1, 2017.

Approved by the Governor June 14, 2017.

Filed in Office Secretary of State June 14, 2017.