CHAPTER 376

POLLUTANT DISCHARGE PREVENTION AND REMOVAL

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376.011 Pollutant Discharge Prevention and Control Act; short title.--Sections 376.011-376.17, 376.19-376.21 shall be known as the 'Pollutant Discharge Prevention and Control Act.'

History.--s. 1, ch. 70-244; s. 1, ch. 74-336; s. 79, ch. 83-310; s. 4, ch. 92-113.

376.021 Legislative intent with respect to pollution of coastal waters and lands.--

(1) The Legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.

(2) The Legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by
maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) The Legislature further finds and declares that:

(a) The transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities within the jurisdiction of the state and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, to owners and users of shore front property, to public and private recreation, to citizens of the state and other interests deriving livelihood from marine-related activities, and to the beauty of the Florida coast;

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

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(4) The Legislature intends by the enactment of ss. 376.011-376.21 to exercise the police power of the state by conferring upon the Department of Environmental Protection power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of pollution occasioned thereby; and

(c) Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(5) The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state's interest in such preservation outweighs any burdens of liability imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(6) The Legislature further declares that it is the intent of ss. 376.011-376.21 to support and complement applicable provisions of the Federal Water Pollution Control Act, as
amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

History.--s. 2, ch. 70-244; s. 2, ch. 74-336; s. 288, ch. 94-356.

376.031 Definitions.--When used in ss. 376.011-376.21, unless the context clearly requires otherwise, the term:

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Board" means the board of arbitration.

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

(4) "Coastline" means the line of mean low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on Territorial Seas and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.

(5) "Damage" means the documented extent of any destruction to or loss of any real or personal property, or the documented extent, pursuant to s. 376.121, of any destruction of the environment and natural resources, including all living things except human beings, as the direct result of the discharge of a pollutant.

(6) "Department" means the Department of Environmental Protection.

(7) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state or outside the territorial limits of the state and affects lands and waters within the territorial limits of the state.

(8) "Discharge cleanup organization" means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the state, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of pollutants through cooperative efforts and shared equipment and facilities. For the purposes of ss. 376.011-376.21, any third-party cleanup contractor or any local government shall be recognized as a discharge cleanup organization, provided such contractor or local government is properly certified by the department.

(9) "Fund" means the Florida Coastal Protection Trust Fund.

(10) "Marine fueling facility" means a commercial or recreational coastal facility providing fuel to vessels, excluding a bulk product facility.
(11) "Operator" means any person operating a terminal facility or vessel, whether by lease, contract, or other form of agreement.

(12) "Other measurements" means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(13) "Owner" means any person owning a terminal facility or vessel.

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

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

(16) "Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(17) "Pollution" means the presence in the outdoor atmosphere or waters of the state of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(18) "Remove" or "removal" means containment, cleanup, and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, and wildlife, and public and private property, shorelines, and beaches.

(19) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(20) "Responsible party" means:

(a) Vessels.--In the case of a vessel, any person owning, operating, or demise-chartering the vessel.

(b) Onshore facilities.--In the case of an onshore facility, other than a pipeline, any person owning or operating the facility, except a federal agency, the state or a political subdivision of the state, a municipality, a commission, or any interstate body, that, as the owner of the facility, transfers possession and right to use the property to another person by lease, assignment, or permit.
(c) Offshore facilities.--In the case of an offshore facility, other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974, 33 U.S.C. ss. 1501 et seq., the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act, 43 U.S.C. ss. 1301-1356, for the area in which the facility is located, if the holder is a different person than the lessee or permittee, except a federal agency, the state, a municipality, a commission, a political subdivision of any state, or any interstate body, that, as the owner of the facility, transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) Deepwater ports.--In the case of a deepwater port licensed under the Deepwater Port Act of 1974, 33 U.S.C. ss. 1501-1524, the licensee.

(e) Pipelines.--In the case of a pipeline, any person owning or operating the pipeline.

(f) Abandonment.--In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(21) "Secretary" means the Secretary of Environmental Protection.

(22) "Technical feasibility" or "technically feasible" means that given available technology, a restoration project can be successfully completed.

(23) "Terminal facility" means any structure, group of structures, motor vehicle, rolling stock, pipeline, equipment, or related appurtenances which are used or capable of being used for one or more of the following purposes: pumping, refining, drilling for, producing, storing, handling, transferring, or processing pollutants, provided such pollutants are transferred over, under, or across any water, estuaries, tidal flats, beaches, or waterfront lands, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. In the event of a ship-to-ship transfer of pollutants, the vessel going to or coming from the place of transfer and a terminal facility shall also be considered a terminal facility. For the purposes of ss. 376.011-376.21, the term "terminal facility" shall not be construed to include spill response vessels engaged in response activities related to removal of pollutants, or temporary storage facilities created to temporarily store recovered pollutants and matter, or waterfront facilities owned and operated by governmental entities acting as agents of public convenience for persons engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants; however, each person engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such a governmental entity shall be construed as a terminal facility.
(24) "Transfer" or "transferred" means onloading, offloading, fueling, bunkering, lightering, removal of waste pollutants, or other similar transfers, between terminal facility and vessel or vessel and vessel.

(25) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

History.--s. 3, ch. 70-244; s. 1, ch. 71-243; s. 3, ch. 74-336; s. 1, ch. 80-382; s. 80, ch. 83-310; s. 37, ch. 85-81; s. 10, ch. 90-54; s. 1, ch. 92-30; s. 1, ch. 92-113; s. 289, ch. 94-356; s. 1, ch. 96-263.

376.041 Pollution of waters and lands of the state prohibited.--The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.

History.--s. 4, ch. 70-244; s. 4, ch. 74-336.

376.051 Powers and duties of the Department of Environmental Protection.--

(1) The powers and duties conferred by ss. 376.011-376.21 shall be exercised by the department and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate in said request.

(2) The powers and duties of the department under ss. 376.011-376.21 shall extend to the boundaries of the state described in s. 1, Art. II of the State Constitution.

(3) Registration certificates and discharge prevention and response certificates required under ss. 376.011-376.21 shall be issued from the department subject to such terms and conditions as are set forth in ss. 376.011-376.21 and as set forth in rules adopted by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under ss. 376.011-376.21, it shall be the duty of the department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(5) The department may bring an action on behalf of the state to enforce the liabilities imposed by s. 376.12. The Department of Legal Affairs shall represent the department in any such proceeding.
376.065 Operation of terminal facility without discharge prevention and response certificate prohibited; penalty.--

(1) Every owner or operator of a terminal facility shall obtain a discharge prevention and response certificate issued by the department. Terminal facilities which are vessels, motor vehicles, rolling stock, pipelines, equipment, or other related appurtenances may, at the discretion of the owner or operator, be covered under the discharge prevention and response certificate of the terminal facility from which they are located or dispatched. A certificate shall be valid for 12 months after the date of issuance, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of ss. 376.011-376.21.

(2) Each applicant for a discharge prevention and response certificate shall submit information, in a form satisfactory to the department, describing the following:

(a) The barrel or other measurement capacity of the terminal facility and the length of the largest vessel docking at or providing service from the terminal facility.

(b) All prevention, containment, and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the facility has access, whether through direct ownership or by contract or membership in an approved discharge cleanup organization.

(c) The terms of agreement and the operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(3) No person shall operate or cause to be operated a terminal facility without access to minimum containment equipment measuring five times the length of the largest vessel docking at or the largest vessel providing service from the terminal facility, whichever is larger. The containment equipment and adequate numbers of trained personnel, as identified in the federal Oil Pollution Act of 1990 and related guidelines adopted thereunder, to operate the containment equipment shall be available to begin deployment on the water within 1 hour after discovery of the discharge. Within a reasonable time period, additional cleanup equipment and trained personnel shall be available, either through direct ownership or by contract or membership in an approved cleanup organization, to reasonably clean up 10,000 gallons of pollutants, unless the terminal facility does not have the capacity to store that quantity as fuel or cargo and does not service vessels having the capacity to carry that quantity as fuel or cargo. The department may impose less stringent requirements for marine fueling facilities. Cleanup or containment equipment purchased with state funds shall not count as required equipment under this section. The requirements of this section shall not apply to terminal facilities which store only motor fuel, ammonia, or chlorine, or service only motor fuel to vessels. For purposes of this subsection, "motor fuel" means gasoline, gasohol, and other mixtures.
of gasoline. The exemptions provided by this subsection do not eliminate any responsibilities arising from the discharge of a pollutant and for conducting remedial action as required by this chapter or chapter 403.

(4) Upon a showing of satisfactory containment and cleanup capability required by the department under this section, the applicant shall be issued a discharge prevention and response certificate covering the terminal facility and related appurtenances, including vessels as defined in s. 376.031.

(5)(a) Any person who violates this section or the terms and requirements of such certification commits a noncriminal infraction. The civil penalty for any such infraction shall be $500, except as otherwise provided in this section.

(b) Any person cited for an infraction under this section may:

1. Pay the civil penalty;

2. Post a bond equal to the amount of the applicable civil penalty; or

3. Sign and accept a citation indicating a promise to appear before the county court.

The officer authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After compliance with the provisions of subparagraph (b)2. or subparagraph (b)3., any person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) Any person who elects to appear before the county court or who is required to so appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $500.
(f) At a hearing under this subsection, the commission of a charged infraction must be proved by the greater weight of the evidence.

(g) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(h) Any person who has not posted bond and who fails either to pay the fine specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 13, ch. 90-54; s. 6, ch. 92-113; s. 2, ch. 96-263.

376.07 Regulatory powers of department; penalties for inadequate booming by terminal facilities.--

(1) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ss. 376.011-376.21.

(2) The department shall adopt rules including, but not limited to, the following matters:

(a) Operation and inspection requirements for discharge prevention, abatement, and cleanup capabilities of terminal facilities and vessels, and other matters relating to certification under ss. 376.011-376.21.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by ss. 376.011-376.21.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by ss. 376.011-376.21 in the removal of pollutants.

(d) Development and implementation of criteria and plans to meet pollution occurrences of various degrees and kinds.

(e) Creation by contract or administrative action of a state response team which shall be responsible for creating and maintaining a contingency plan of response, organization, and equipment for handling emergency cleanup operations and wildlife rescue and rehabilitation operations. The state plans shall include detailed emergency operating procedures for the state as a whole, and the team shall from time to time conduct practice alerts. These plans shall be filed with the Governor and all Coast Guard stations in the state and Coast Guard captains of the port having responsibility for enforcement of federal pollution laws within the state. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including, but not limited to, an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every
phase of the plan, including a plan for wildlife rescue and rehabilitation operations, a list of available sources of supplies necessary for cleanup, and a designation of priority zones to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the Federal Government but is directed to cooperate with any federal cleanup operation.

(f) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries, and requirements that containment gear approved by the department be on hand and maintained by terminal facilities and refineries with adequate personnel trained in its use.

(g) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

1. Any discharges of pollutants the vessel has had since leaving the last port.
2. Any mechanical problem on the vessel which creates the possibility of a discharge.
3. Any denial of entry into any port during the current cruise of the vessel.

(h) Requirements that any terminal facility be subject to a complete and thorough inspection whenever the terminal facility causes or permits the discharge of a pollutant in violation of the provisions of ss. 376.011-376.21, and at other reasonable times. If the department determines there are unsatisfactory preventive measures or containment and cleanup capabilities, it shall, within a reasonable time after notice and hearing in compliance with chapter 120, suspend the registration until such time as there is compliance with the department requirements.

(3) The department shall not require vessels to maintain discharge prevention gear, holding tanks, and containment gear which exceed federal requirements. However, a terminal facility transferring heavy oil to or from a vessel with a heavy oil storage capacity greater than 10,000 gallons shall be required, considering existing weather and tidal conditions, to adequately boom or seal off the transfer area during a transfer, including, but not limited to, a bunkering operation, to minimize the escape of such pollutants from the containment area. As used in this subsection, the term "adequate booming" means booming with proper containment equipment which is employed and located for the purpose of preventing, for the most likely discharge, as much of the pollutant as possible from escaping out of the containment area.

(a) The owner or operator of a terminal facility involved in the transfer of such pollutant to or from a vessel which is not adequately boomed commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $2,500, except as otherwise provided in this section.
(b) Any person cited for an infraction under this section may:

1. Pay the civil penalty;

2. Post bond equal to the amount of the applicable civil penalty; or

3. Sign and accept a citation indicating a promise to appear before the county court.

The officer authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After compliance with subparagraph (b)2. or subparagraph (b)3., any person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The issue of whether an infraction has been committed and the severity of the infraction shall be determined by a hearing official at a hearing. If the commission of the infraction is proved by the greater weight of the evidence, the court shall impose a civil penalty of $2,500. If the court determines that the owner or operator of the terminal facility failed to deploy any boom equipment during such a transfer, including, but not limited to, a bunkering operation, the civil penalty shall be $5,000.

(f) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(g) Any person who has not posted bond and who fails either to pay the civil penalty specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
Development of training programs and educational materials.--The department shall encourage the development of training programs for personnel needed for pollutant discharge prevention and cleanup activities. The department shall work with accredited community colleges, vocational-technical centers, state universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained for pollutant discharge prevention and cleanup activities.

Discharge contingency plan for vessels.--

(1) Any vessel operating in state waters with a storage capacity to carry 10,000 gallons or more of pollutants as fuel or cargo shall maintain an adequate written ship-specific discharge prevention and control contingency plan. Any such vessel shall have on board a "discharge officer," designated by the contingency plan, who is responsible for training crew members to carry out discharge response efforts required in the contingency plan and coordinating all on-board response efforts in case of a discharge. An adequate plan shall include provisions for on-board response, including notification, verification, pollutant incident assessment, vessel stabilization, discharge mitigation, and on-board discharge containment, in accordance with this chapter, department rules, and the Florida Coastal Pollutant Discharge Contingency Plan. A plan in compliance with the federal requirement for a ship-specific discharge contingency plan shall satisfy the requirements for an adequate ship-specific discharge contingency plan required by this section.

(2)(a) Any master of a vessel which violates subsection (1) commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $5,000, except as otherwise provided in this subsection.

(b) Any person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty;
2. Post bond equal to the amount of the applicable civil penalty; or
3. Sign and accept a citation indicating a promise to appear before the county court for the county in which the violation occurred or the county closest to the location at which the violation occurred.

The officer authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.
(c) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After complying with the provisions of subparagraph (b)2. or subparagraph (b)3., any person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $5,000.

(f) At a hearing under this subsection, the commission of a charged infraction must be proved by the greater weight of the evidence.

(g) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(h) Any person who has not posted bond and who fails either to pay the civil penalty specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 15, ch. 90-54; s. 9, ch. 92-113; s. 4, ch. 96-263.

376.09 Removal of prohibited discharges.--

(1) Any person discharging pollutants as prohibited by s. 376.041 shall immediately undertake to contain, remove, and abate the discharge to the department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing a discharge, or the person in charge of facilities at which a discharge has taken place, fails to act, the department may arrange for the removal of the
pollutant, except that if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, or other federal law, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of federal law. Federal funds shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) In the event of discharge the source of which is unknown, any local discharge cleanup organization shall, upon the request of the department or its designee, immediately contain and remove the discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Notwithstanding the provisions in subsection (4), any person who is authorized by the department or the Federal Government or the person alleged to be responsible for the discharge, or by a designee thereof, to render assistance in containing or removing pollutants shall not be liable for costs, expenses, and damages, unless such costs, expenses, and damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of such authorized person.

(6) Nothing in ss. 376.011-376.21 shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

(7)(a) Any person, other than the responsible party, who renders assistance in containing or removing any pollutant may assert a claim against the fund, under s. 376.12, for reimbursement of the reasonable costs expended for containment, abatement, or removal, provided prior approval for such reimbursement is granted by the department. The department may, upon petition and for good cause shown, waive the prior-approval prerequisite.

(b) A responsible party may assert a claim against the fund only under the following circumstances:

1. A responsible party who complies with the requests of the state and federal on-scene coordinators and later pleads and proves a valid defense under s. 376.12 may assert a
claim against the fund, pursuant to s. 376.123, for reimbursement of the reasonable costs expended for containment, abatement, or removal.

2. A responsible party who complies with the requests of the state and federal on-scene coordinators and later pleads and proves a valid limitation of liability under s. 376.12 may assert a claim against the fund, pursuant to s. 376.123, for reimbursement of the reasonable costs expended in excess of the applicable limitation of liability.

3. If the department has determined, pursuant to s. 376.12(3)(b)2., that a particular request by a state or federal on-scene coordinator for the responsible party's cooperation or assistance was unreasonable, the responsible party may assert a claim against the fund, pursuant to s. 376.123, for reimbursement of the costs expended in complying with the particular request.

(8) Notwithstanding any other provision of law, including provisions relating to discharge prohibitions or permit requirements, the federal on-scene coordinator or the department may authorize discharges in connection with activities related to removal of pollutants that have entered the waters of the state.

History.--s. 8, ch. 70-244; s. 1, ch. 70-439; s. 9, ch. 74-336; s. 2, ch. 80-382; s. 16, ch. 90-54; s. 5, ch. 96-263.

376.10 Personnel and equipment.--The department shall establish and maintain at such ports within the state and other places as it shall determine such employees and equipment as in its judgment may be necessary to carry out the provisions of ss. 376.011-376.21. The department may employ and prescribe the duties of such employees, subject to the rules and regulations of the Department of Management Services. The salaries of the employees and the cost of the equipment shall be paid from the Florida Coastal Protection Trust Fund established by ss. 376.011-376.21. The department shall periodically consult with other departments of the state relative to procedures for the prevention of discharges of pollutants into or affecting the coastal waters of the state from operations regulated by ss. 376.011-376.21.

History.--s. 9, ch. 70-244; s. 2, ch. 71-137; s. 1, ch. 73-326; s. 10, ch. 74-336; s. 63, ch. 79-65; s. 10, ch. 85-68; s. 38, ch. 85-81; s. 124, ch. 92-279; s. 55, ch. 92-326; s. 292, ch. 94-356; s. 6, ch. 96-263; s. 98, ch. 98-279.

1376.11 Florida Coastal Protection Trust Fund.--

(1) The purpose of this section is to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages. It is the legislative intent that this section be liberally construed to effect the purposes set forth, such interpretation being especially imperative in light of the danger to the environment and resources.
(2) The Florida Coastal Protection Trust Fund is established, to be used by the department as a nonlapsing revolving fund for carrying out the purposes of ss. 376.011-376.21. To this fund shall be credited all registration fees, penalties, judgments, damages recovered pursuant to s. 376.121, other fees and charges related to ss. 376.011-376.21, and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(1) and 206.9945(1)(a). Charges against the fund shall be in accordance with this section.

(3) Moneys in the fund that are not needed currently to meet the obligations of the department in the exercise of its responsibilities under ss. 376.011-376.21 shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the fund, except as otherwise specified herein.

(4) Moneys in the Florida Coastal Protection Trust Fund shall be disbursed for the following purposes and no others:

(a) Administrative expenses, personnel expenses, and equipment costs of the department related to the enforcement of ss. 376.011-376.21 subject to s. 376.185.

(b) All costs involved in the prevention and abatement of pollution related to the discharge of pollutants covered by ss. 376.011-376.21 and the abatement of other potential pollution hazards as authorized herein.

(c) All costs and expenses of the cleanup, restoration, and rehabilitation of waterfowl, wildlife, and all other natural resources damaged by the discharge of pollutants, including the costs of assessing and recovering damages to natural resources, whether performed or authorized by the department or any other state or local agency.

(d) All provable costs and damages which are the proximate results of the discharge of pollutants covered by ss. 376.011-376.21.

(e) Loans to the Inland Protection Trust Fund created in s. 376.3071.

(f) The interest earned from investments of the balance in the Florida Coastal Protection Trust Fund shall be used for funding the administrative expenses, personnel expenses, and equipment costs of the department relating to the enforcement of ss. 376.011-376.21.

(g) The funding of a grant program to coastal local governments, pursuant to s. 376.15(2)(b) and (c), for the removal of derelict vessels from the public waters of the state.

(h) The department may spend up to $1 million per year from the principal of the fund to acquire, design, train, and maintain emergency cleanup response teams and equipment located at appropriate ports throughout the state for the purpose of cleaning oil and other toxic materials from coastal waters. When the teams and equipment are not needed for these purposes they may be used for any other valid purpose of the department.
(i) To provide a temporary transfer of funds in an amount not to exceed $10 million to the Minerals Trust Fund as set forth in s. 376.40.

(j) Funding for marine law enforcement.

(5) Any interest in lands acquired using moneys in the Florida Coastal Protection Trust Fund shall be held by the Trustees of the Internal Improvement Trust Fund, and such lands shall be acquired pursuant to the procedures set forth in s. 253.025.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.123(10), except that recoveries resulting from damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the Florida Coastal Protection Trust 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. Requests for reimbursement to the fund for the above costs, if not paid within 30 days of demand, shall be turned over to the Department of Legal Affairs for collection.

2(7) Notwithstanding subsection (4), for the 1998-1999 fiscal year only, up to $12.5 million may be appropriated from the fund for the purpose of funding statewide beach renourishment, restoration, and inlet management plans. This subsection is repealed on July 1, 1999.

History.--s. 11, ch. 70-244; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 11, ch. 74-336; s. 3, ch. 80-382; s. 4, ch. 81-228; s. 82, ch. 83-310; s. 14, ch. 83-339; s. 1, ch. 83-353; s. 4, ch. 84-338; s. 6, ch. 85-252; ss. 3, 8, 34, ch. 86-159; s. 81, ch. 86-163; s. 30, ch. 87-225; s. 3, ch. 89-175; s. 5, ch. 89-358; s. 17, ch. 90-54; s. 16, ch. 90-243; s. 1, ch. 91-194; s. 7, ch. 96-263; s. 45, ch. 96-321; s. 28, ch. 97-153; s. 2, ch. 97-259; ss. 19, 38, ch. 98-46.

1Note.--Section 6, ch. 98-201, provides that "[n]otwithstanding the provisions of section 376.11, Florida Statutes, there is hereby appropriated from the Coastal Protection Trust Fund to the Department of Environmental Protection for fiscal year 1998-1999 the additional sum of $1 million. These funds shall be used by the department to provide grants to increase the knowledge of factors that control harmful algal blooms, including red tide, and to gain knowledge to be used for the early detection of factors precipitating harmful algal blooms; for accurate prediction of the extent and seriousness of harmful algal blooms; and for undertaking successful efforts to control and mitigate the effects of harmful algal blooms. The program shall foster partnerships through contracts between the state and universities, nonprofit organizations, and citizens groups."

(1) LIABILITY FOR CLEANUP COSTS.--Because it is the intent of ss. 376.011-376.21 to provide the means for rapid and effective cleanup and to minimize cleanup costs and damages, any responsible party who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of removal, containment, and abatement of a prohibited discharge, unless the responsible party is entitled to a limitation or defense under this section.

(2) LIMITATION OF LIABILITY FOR CLEANUP COSTS.--Except as provided in subsection (3), a responsible party's liability to the fund for costs of removal, containment, and abatement shall be as follows:

(a) For a vessel transporting pollutants as cargo:

1. For any such vessel of 3,000 gross tons or more, $10 million or $1,200 per gross ton, whichever is greater.

2. For any such vessel of less than 3,000 gross tons, $2 million or $1,200 per gross ton, whichever is greater.

(b) For any other vessel: $500,000 or $600 per gross ton, whichever is greater.

(c) For a terminal facility: $150 million.

(3) EXCEPTIONS TO LIMITATION OF LIABILITY.--The provisions of subsection (2) shall not apply when:

(a) The department demonstrates that such discharge was the result of willful or gross negligence or willful misconduct of, or the violation of an applicable federal or state safety, construction, or operating regulation or rule by, the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party, except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail; or

(b) The responsible party fails or refuses:

1. To report the incident as required by law and the responsible party knows or has reason to know of the incident; or

2. To provide reasonable cooperation and assistance requested by a state or federal on-scene coordinator in connection with cleanup activities. The responsible party must file an objection with the department if such party deems that cooperation or assistance requested by a state or federal on-scene coordinator is unreasonable. Such an objection must be filed with the department within 2 working days after the request. If such request...
is determined by the department to be unreasonable, the responsible party may assert a claim against the fund, pursuant to s. 376.123, for reimbursement of expenses incurred in carrying out such request. The responsible party may not file an objection to a request based solely on the premise that the requested activity did not have satisfactory results, that the responsible party has exceeded the applicable limitation of liability, or that the responsible party has a defense to liability.

(4) LIABILITY FOR NATURAL RESOURCE DAMAGES.--Each responsible party is liable to the fund, pursuant to s. 376.121, for all natural resource damages that result from the discharge.

(5) LIABILITY FOR PROPERTY DAMAGES.--Each responsible party is liable to any affected person for all damages as defined in s. 376.031, excluding natural resource damages, suffered by that person as a result of the discharge.

1(6) ADMINISTRATIVE REMEDIES OF RESPONSIBLE PARTIES.--A responsible party that disputes any claim by the department may request a hearing pursuant to s. 120.57.

(7) DEFENSES TO LIABILITY.--In any proceeding determining claims of the fund or any other claims by the state pursuant to ss. 376.011-376.21, it shall not be necessary for the department to plead or prove negligence in any form or manner. The department need only plead and prove that the prohibited discharge or other polluting condition occurred. The only defenses of a person alleged to be responsible for the discharge to an action or proceeding for damages or cleanup costs shall be to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(a) An act of war.

(b) An act of government, either federal, state, county, or municipal.

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party, except where the sole contractual arrangement arises in connection with carriage by rail,

provided that, to establish entitlement to any of the foregoing defenses, the responsible party shall plead and prove that the responsible party exercised due care with respect to the pollutant concerned, taking into consideration the characteristics of the pollutant and in light of all relevant facts and circumstances, and took precautions against foreseeable acts or omissions of others and the foreseeable consequences of those acts or omissions.
(8) EXCEPTIONS TO DEFENSES.--The defenses provided in subsection (7) shall not apply with respect to a responsible party who fails or refuses:

(a) To report the discharge as required by law, when the responsible party knows or has reason to know of the discharge; or

(b) To provide reasonable cooperation and assistance requested by a state or federal on-scene coordinator in connection with cleanup activities. The responsible party must file an objection with the department, pursuant to subsection (3), if such party deems that cooperation or assistance requested by a state or federal on-scene coordinator is unreasonable.

(9) LIABILITY OF THIRD PARTIES.--In any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting cleanup costs and damages were caused solely by an act or omission of one or more third parties as described in paragraph (7)(d), or solely by such an act or omission in combination with an act of war, an act of government, or an act of God, the third party or parties shall be treated as the responsible party or parties for all purposes of determining liability under ss. 376.011-376.21.

(10) LIABILITY OF CARGO OWNERS.--The owner of a pollutant transported as cargo on any vessel suffering a discharge within state waters is liable for all cleanup costs within the applicable vessel liability limits established under this section, not paid for by the owner or operator of the vessel. However, the cargo owner is not liable under this subsection if the vessel owner, operator, or master is found in compliance with the financial security requirements of this section at the time of the discharge or fails to provide certified notification of the cancellation or withdrawal of financial security to the department and the cargo owner at least 3 working days before the vessel entered state waters.

(11) NOTIFICATION REQUIREMENTS FOR VESSELS AND TERMINAL FACILITIES.--In addition to any civil penalties which may apply, any person responsible who fails to give immediate notification of a discharge to the department or the nearest Coast Guard Marine Safety Office or National Response Center commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a discharge of 5 gallons or less of gasoline or diesel from a vessel shall not give rise to felony penalties for failure to comply with the state notification requirements in this subsection. After reporting a discharge, a vessel shall remain in the jurisdiction of the department until such time as the department is able to prove financial responsibility for the damages resulting from the discharge. The master of a vessel that fails to remain in the jurisdiction of the department for a reasonable time after notice of a discharge commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The department shall not detain the vessel longer than 12 hours after receiving proof of financial responsibility. The department shall, by rule, require that the terminal facility designate a person at the terminal facility as the person in charge of that facility for the purposes specified by this section.
376.121 Liability for damage to natural resources.--The Legislature finds that extensive damage to the state's natural resources is the likely result of a pollutant discharge and that it is essential that the state adequately assess and recover the cost of such damage from responsible parties. It is the state's goal to recover the costs of restoration from the responsible parties and to restore damaged natural resources to their predischarge condition. In many instances, however, restoration is not technically feasible. In such instances, the state has the responsibility to its citizens to recover the cost of all damage to natural resources. To ensure that the public does not bear a substantial loss as a result of the destruction of natural resources, the procedures set out in this section shall be used to assess the cost of damage to such resources. Natural resources include coastal waters, wetlands, estuaries, tidal flats, beaches, lands adjoining the seacoasts of the state, and all living things except human beings. The Legislature recognizes the difficulty historically encountered in calculating the value of damaged natural resources. The value of certain qualities of the state's natural resources is not readily quantifiable, yet the resources and their qualities have an intrinsic value to the residents of the state, and any damage to natural resources and their qualities should not be dismissed as nonrecoverable merely because of the difficulty in quantifying their value. In order to avoid unnecessary speculation and expenditure of limited resources to determine these values, the Legislature hereby establishes a schedule for compensation for damage to the state's natural resources and the quality of said resources.

(1) The department shall assess and recover from responsible parties the compensation for the injury or destruction of natural resources, including, but not limited to, the death or injury of living things and damage to or destruction of habitat, resulting from pollutant discharges prohibited by s. 376.041. The amount of compensation and any costs of assessing damage and recovering compensation received by the department shall be deposited into the Florida Coastal Protection Trust Fund pursuant to s. 376.12 and disbursed according to subsection (11). Whoever violates, or causes to be violated, s. 376.041 shall be liable to the state for damage to natural resources.

(2) The compensation schedule for damage to natural resources is based upon the cost of restoration and the loss of ecological, consumptive, intrinsic, recreational, scientific,
economic, aesthetic, and educational values of such injured or destroyed resources. The compensation schedule takes into account:

(a) The volume of the discharge.

(b) The characteristics of the pollutant discharged. The toxicity, dispersibility, solubility, and persistence characteristics of a pollutant as affects the severity of the effects on the receiving environment, living things, and recreational and aesthetic resources. Pollutants have varying propensities to injure natural resources based upon their potential exposure and effects. Exposure to natural resources is determined by the dispersibility and degradability of the pollutant. Effects to natural resources result from mechanical injury and toxicity and include physical contamination, smothering, feeding prevention, immobilization, respiratory distress, direct mortality, lost recruitment of larvae and juveniles killed, changes in the food web, and chronic effects of sublethal levels of contaminants in tissues or the environment. For purposes of the compensation schedule, pollutants have been ranked for their propensity to cause injury to natural resources based upon a combination of their acute toxicity, mechanical injury, degradability, and dispersibility characteristics on a 1-to-3 relative scale with Category 1 containing the pollutants with the greatest propensity to cause injury to natural resources. The following pollutants are categorized:

1. Category 1: bunker and residual fuel.

2. Category 2: waste oils, crude oil, lubricating oil, asphalt, and tars.

3. Category 3: hydraulic fluids, numbers 1 and 2 diesel fuels, heating oil, jet aviation fuels, motor gasoline, including aviation gasoline, kerosene, stationary turbine fuels, ammonia and its derivatives, and chlorine and its derivatives.

The department shall adopt rules establishing the pollutant category of pesticides and other pollutants as defined in s. 376.031 and not listed in this paragraph.

(c) The type and sensitivity of natural resources affected by a discharge, determined by the following factors:

1. The location of a discharge. Inshore discharges are discharges that occur within waters under the jurisdiction of the department and within an area extending seaward from the coastline of the state to a point 1 statute mile seaward of the coastline. Nearshore discharges are discharges that occur more than 1 statute mile, but within 3 statute miles, seaward of the coastline. Offshore discharges are discharges that occur more than 3 statute miles seaward of the coastline.

2. The location of the discharge with respect to special management areas designated because of their unique habitats; living resources; recreational use; aesthetic importance; and other ecological, educational, consumptive, intrinsic, scientific, and economic values of the natural resources located therein. Special management areas are state parks;
recreation areas; national parks, seashores, estuarine research reserves, marine sanctuaries, wildlife refuges, and national estuary program water bodies; state aquatic preserves and reserves; classified shellfish harvesting areas; areas of critical state concern; federally designated critical habitat for endangered or threatened species; and outstanding Florida waters.

3. The areal or linear extent of the natural resources impacted.

(3) Compensation for damage to natural resources for any discharge of less than 25 gallons of gasoline or diesel fuel shall be $50.

(4) Compensation schedule:

(a) The amount of compensation assessed under this schedule is calculated by: multiplying $1 per gallon or its equivalent measurement of pollutant discharged, by the number of gallons or its equivalent measurement, times the location of the discharge factor, times the special management area factor.

(b) Added to the amount obtained in paragraph (a) is the value of the observable natural resources damaged, which is calculated by multiplying the areal or linear coverage of impacted habitat by the corresponding habitat factor, times the special management area factor.

(c) The sum of paragraphs (a) and (b) is then multiplied by the pollutant category factor.

(d) The final damage assessment figure is the sum of the amount calculated in paragraph (c) plus the compensation for death of endangered or threatened species, plus the cost of conducting the damage assessment as determined by the department.

(5)(a) The factors used in calculating the damage assessment are:

1. Location of discharge factor:

   a. Discharges that originate inshore have a factor of eight. Discharges that originate nearshore have a factor of five. Discharges that originate offshore have a factor of one.

   b. Compensation for damage to natural resources resulting from discharges that originate outside of state waters but that traverse the state's boundaries and therefore have an impact upon the state's natural resources shall be calculated using a location factor of one.

   c. Compensation for damage to natural resources resulting from discharges of less than 10,000 gallons of pollutants which originate within 100 yards of an established terminal facility or point of routine pollutant transfer in a designated port authority as defined in s. 315.02 shall be assessed a location factor of one.
2. Special management area factor: Discharges that originate in special management areas described in subparagraph (2)(c)2. have a factor of two. Discharges that originate outside a special management area described in subparagraph (2)(c)2. have a location factor of one. For discharges that originate outside of a special management area but impact the natural resources within a special management area, the value of the natural resources damaged within the area shall be multiplied by the special management area factor of two.

3. Pollutant category factor: Discharges of category 1 pollutants have a factor of eight. Discharges of category 2 pollutants have a factor of four. Discharges of category 3 pollutants have a factor of one.

4. Habitat factor: The amount of compensation for damage to the natural resources of the state is established as follows:
   a. $10 per square foot of coral reef impacted.
   b. $1 per square foot of mangrove or seagrass impacted.
   c. $1 per linear foot of sandy beach impacted.
   d. $0.50 per square foot of live bottom, oyster reefs, worm rock, perennial algae, saltmarsh, or freshwater tidal marsh impacted.
   e. $0.05 per square foot of sand bottom or mud flats, or combination thereof, impacted.

(b) The areal and linear coverage of habitat impacted shall be determined by the department using a combination of field measurements, aerial photogrammetry, and satellite imagery. An area is impacted when the pollutant comes in contact with the habitat.

6) It is understood that a pollutant will, by its very nature, result in damage to the flora and fauna of the waters of the state and the adjoining land. Therefore, compensation for such resources, which is difficult to calculate, is included in the compensation schedule. Not included, however, in this base figure is compensation for the death of endangered or threatened species directly attributable to the pollutant discharged. Compensation for the death of any animal designated by rule as endangered by the Florida Game and Fresh Water Fish Commission is $10,000. Compensation for the death of any animal designated by rule as threatened by the Florida Game and Fresh Water Fish Commission is $5,000. These amounts are not intended to reflect the actual value of said endangered or threatened species, but are included for the purposes of this section.

7) The owner or operator of the vessel or facility responsible for a discharge may designate a representative or agent to work with the department in assessing the amount of damage to natural resources resulting from the discharge.
(8) When assessing the amount of damages to natural resources, the department shall be assisted, if requested by the department, by representatives of other state agencies and local governments that would enhance the department's damage assessment. The Game and Fresh Water Fish Commission shall assist the department in the assessment of damages to wildlife impacted by a pollutant discharge and shall assist the department in recovering the costs of such damages.

(9) Compensation for damage resulting from the discharge of two or more pollutants shall be calculated for the volume of each pollutant discharged. If the separate volume for each pollutant discharged cannot be determined, the highest multiplier for the pollutants discharged shall be applied to the entire volume of the spill. Compensation for commingled discharges that contact habitat shall be calculated on a proportional basis of discharged volumes. The highest multiplier for such commingled pollutants may only be applied if a reasonable proportionality of the commingled pollutants cannot be determined at the point of any contact with natural resources.

(10) For discharges of more than 30,000 gallons, the department shall, in consultation with the Game and Fresh Water Fish Commission, adopt rules by July 1, 1994, to assess compensation for the damage to natural resources based upon the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources; the diminution in the value of those resources pending restoration; and the reasonable cost of assessing those damages. The person responsible for a discharge shall be given an opportunity to consult with the department on the assessment design and restoration program.

(a) For discharges greater than 30,000 gallons, the person responsible has the option to pay the amount of compensation calculated pursuant to the compensation schedule established in subsection (4) or pay the amount determined by a damage assessment performed by the department. If the person responsible for the discharge elects to have a damage assessment performed, then such person shall notify the department in writing of such decision within 15 days after the discovery of the discharge. The decision to have a damage assessment performed to determine compensation for a discharge shall be final; the person responsible for a discharge may not later elect to use the compensation schedule for computing compensation. Failure to make such notice shall result in the amount of compensation for the total damage to natural resources being calculated based on the compensation schedule. The compensation shall be paid within 90 days after receipt of a written request from the department.

(b) In the event the person responsible for a discharge greater than 30,000 gallons elects to have a damage assessment performed, said person shall pay to the department an amount equal to the compensation calculated pursuant to subsection (4) for the discharge using a volume of 30,000 gallons. The payment shall be made within 90 days after receipt of a written request from the department.

(c) After completion of the damage assessment, the department shall advise the person responsible for the discharge of the amount of compensation due to the state. A credit
shall be given for the amount paid pursuant to paragraph (b). Payment shall be made within 90 days after receipt of a written request from the department. In no event shall the total compensation paid pursuant to this section be less than the dollar amount calculated pursuant to paragraph (b).

(11)(a) Moneys recovered by the department as compensation for damage to natural resources shall be expended only for the following purposes:

1. To the maximum extent practicable, the restoration of natural resources damaged by the discharge for which compensation is paid.

2. Restoration of damaged resources.

3. Developing restoration and enhancement techniques for natural resources.

4. Investigating methods for improving and refining techniques for containment, abatement, and removal of pollutants from the environment, especially from mangrove forests, corals, seagrasses, benthic communities, rookeries, nurseries, and other habitats which are unique to Florida's coastal environment.

5. Developing and updating the "Sensitivity of Coastal Environments and Wildlife to Spilled Oil in Florida" atlas.

6. Investigating the long-term effects of pollutant discharges on natural resources, including pelagic organisms, critical habitats, and marine ecosystems.

7. Developing an adequate wildlife rescue and rehabilitation program.

8. Expanding and enhancing the state's pollution prevention and control education program.

9. Restoring natural resources previously impacted by pollutant discharges, but never completely restored.

10. Funding alternative projects selected by the Board of Trustees of the Internal Improvement Trust Fund. Any such project shall be selected on the basis of its anticipated benefits to the marine natural resources available to the residents of this state who previously benefited from the injured or destroyed nonrestorable natural resources.

(b) All interest earned from investment of moneys recovered by the department for damage to natural resources shall be expended only for the activities described in paragraph (a).

(c) The person or parties responsible for a discharge for which the department has requested compensation for damage pursuant to this section shall pay the department, within 90 days after receipt of the request, the entire amount due to the state. In the event
that payment is not made within the 90 days, the person or parties are liable for interest on the outstanding balance, which interest shall be calculated at the rate prescribed under s. 55.03.

(12) Any determination or assessment of damage to natural resources for the purposes of this section by the department in accordance with the compensation sections or in accordance with the rules adopted under subsection (10) shall have the force and effect of rebuttable presumption on behalf of the department in any administrative or judicial proceeding.

(13) There shall be no double recovery under this law for natural resource damage resulting from a discharge, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource. The department shall meet with and develop memoranda of understanding with appropriate federal trustees as defined in Pub. L. No. 101-380 (Oil Pollution Act of 1990) to provide further assurances of no double recovery.

(14) The department must review the amount of compensation assessed pursuant to the damage assessment formula established in this section and report its findings to the 1995 Legislature. Thereafter, the department must conduct such a review and report its findings to the Legislature biennially.

(15) The department shall adopt rules necessary or convenient for carrying out the duties, obligations, powers, and responsibilities set forth in this section.

History.--s. 19, ch. 90-54; s. 2, ch. 92-113; s. 294, ch. 94-356; s. 9, ch. 96-263.

376.123 Claims against the Florida Coastal Protection Trust Fund.--

(1) A person making a claim against the fund may not have such claim approved during the pendency of a judicial or other proceeding by the person to recover costs or damages which are the subject of the claim.

(2)(a) Whenever the department has designated a vessel or terminal facility as a source of a moderate or major discharge, all claims for cleanup costs or damages under ss. 376.011-376.21 shall be presented first to the responsible party for the designated source, pursuant to paragraph (b), before they may be presented to the fund.

(b) If a responsible party fails to inform the department, within 5 days after receiving notification of a designation under paragraph (a), of the party's denial of the designation, such party shall advertise the designation and the procedures by which claims may be presented, in accordance with department rules. Advertisement shall begin no later than 15 days after the date the department has made the designation. If advertisement is not otherwise made in accordance with this paragraph, the department shall promptly and at the expense of the responsible party advertise the designation and the procedures by which claims may be presented to the responsible party.
If a claim is presented in accordance with paragraph (b) and:

1. Each party who has been alleged to be the responsible party and to whom the claim has been presented denies all liability for the claim; or

2. Full and adequate payment of the claim for cleanup costs and damages is not made by the responsible party within 90 days after the claim is presented or the advertisement is begun, whichever is later,

the claimant may present the claim to the fund.

(3) Any person who is eligible under s. 376.09 may assert a claim against the Florida Coastal Protection Trust Fund for reimbursement of cleanup costs, provided that:

(a) Such claim is presented within 180 days of completion of the person's assistance with cleanup. The secretary may, upon petition and for good cause shown, waive the prescribed time period for filing cleanup claims. The prescribed time period shall be tolled during pendency of the claimant's claim against a responsible party pursuant to subsection (2), until the time specified in paragraph (2)(c).

(b) The claimant shall provide the department with the required documentation concerning amounts expended for cleanup costs. The department shall prescribe appropriate forms and requirements for such claims.

(4) Any person claiming to have suffered damages, as defined in s. 376.031, excluding natural resource damages, as a result of a discharge of pollutants prohibited by s. 376.041 may, within 180 days after the date of such discharge, apply to the department for reimbursement from the Florida Coastal Protection Trust Fund. It shall be the responsibility of the claimant to provide the department with the required documentation concerning the damages suffered as a direct result of the discharge. The department shall prescribe appropriate forms and requirements for such application, which application shall include a provision requiring the applicant to make a sworn verification of the damage claimed to the best of the applicant's knowledge. The secretary of the department may, upon petition and for good cause shown, waive the 180-day limitation for filing damage claims. The prescribed time period shall be tolled during pendency of the claimant's claim against a responsible party pursuant to subsection (2), until the time specified in paragraph (2)(c).

(5) The secretary shall establish the amount to be awarded and shall certify the amount of the award and the name of the claimant to the State Treasurer, who shall pay the award from the fund, subject to the provisions of subsection (12). If the claimant agrees with the established amount of award, the settlement shall be binding upon both parties as to all issues and cannot be further attacked, collaterally or by separate action, in the future.
(6) If either the claimant or the responsible party disagrees with the amount of the damage award, such person may request a hearing pursuant to s. 120.57.

(7) Each person's damage claims arising from a single occurrence shall be stated in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

(8) If a person chooses to make a claim against the fund and accepts payment from, or a judgment against, the fund, then the department shall be subrogated to any cause of action that the claimant may have had, to the extent of such payment or judgment, and shall diligently pursue recovery on that cause of action pursuant to subsection (10) and s. 376.11(6). In any such action, the amount of damages shall be proved by the department by submitting to the court a written report of the amounts paid or owed from the fund to claimants. Such written report shall be admissible as evidence, and the amounts paid from or owed by the fund to the claimants stated therein shall be irrebuttably presumed to be the amount of damages.

(9) The department shall be a necessary party to all administrative hearings and court proceedings under this section.

(10) It shall be the duty of the department in administering the fund to pursue diligently the reimbursement to the fund of any sum expended from the fund for, and any other state moneys not budgeted for but expended for, cleanup, abatement, and damages in accordance with the provisions of ss. 376.011-376.21.

(11) In the event the total awards against the fund exceed the present balance of the fund, the claimants shall be paid from the future income of the fund.

(12) In the event the total awards for a specific occurrence exceed the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid on a prorated basis shall be paid a pro rata share of all funds received by the fund, until the total amount of the proven damages is paid to the claimant or claimants. However, amounts collected by the fund from the prosecution of causes of action pursuant to subsections (8) and (10) shall be utilized to satisfy the claims as to which such prosecutions relate to the extent theretofore unsatisfied.

(13) Nothing contained in this section shall be construed to limit the liability of vessels, terminal facilities, or the fund for damages.

History.--s. 10, ch. 96-263.

376.13 Emergency proclamation; Governor's powers.--

(1) Whenever any emergency exists or appears imminent, arising from the discharge of oil, petroleum products or their byproducts, or any other pollutants, the Governor shall by proclamation declare the fact and that a state of emergency exists in any or all sections of
the state. If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and that a state of emergency exists in any or all sections of the state. A copy of such proclamation shall be filed with the Department of State.

(2) In performing his or her duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency as described herein.

(3) In performing his or her duties under this section, the Governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out this section within the limits of the authority conferred upon the Governor and not inconsistent with the rules, regulations, and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

(b) To delegate any authority vested in the Governor under this section and to provide for the subdelegation of any such authority.

(4) Whenever the Governor is satisfied that an emergency no longer exists, he or she may terminate the proclamation by another proclamation affecting the sections of the state covered by the original proclamation, or any part thereof. The proclamation shall be published in such newspapers of the state and posted in such places as the Governor, or any person acting in that capacity, deems appropriate.

History.--s. 13, ch. 70-244; s. 1, ch. 70-439; s. 39, ch. 83-334; s. 614, ch. 95-148.

376.14 Vessels; financial responsibility; claims against providers of financial responsibility; service of process against responsible parties.--

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall be required to establish and maintain evidence of financial responsibility pursuant to federal laws and regulations. Such evidence of financial responsibility shall be the only evidence required by the department that such registrant or vessel has the ability to meet the liabilities which may be incurred under ss. 376.011-376.21.

(2) Any claim brought pursuant to ss. 376.011-376.21 by the fund or any damaged party against a responsible party may be brought directly against the bond, the insurer, or any other person providing the responsible party with evidence of financial responsibility.

(3) Each owner or operator of a terminal facility or vessel subject to the provisions of ss. 376.011-376.21 shall designate a person in the state as the owner's or operator's legal
agent for service of process under ss. 376.011-376.21, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under ss. 376.011-376.21.

History.--s. 14, ch. 70-244; s. 1, ch. 70-439; s. 13, ch. 74-336; s. 615, ch. 95-148; s. 11, ch. 96-263.

376.15 Derelict vessels; removal from public waters.--

(1) It is unlawful for any person, firm, or corporation to store or leave any vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon any public waters or at any port in this state without the consent of the agency having jurisdiction thereof or docked at any private property without the consent of the owner of the private property.

(2)(a) The department is hereby designated as the agency of the state authorized and empowered to remove any derelict vessel as described in subsection (1) from public waters.

(b) The department may establish a program to provide grants to coastal local governments for the removal of derelict vessels from the public waters of the state. The program shall be funded from the Florida Coastal Protection Trust Fund. Notwithstanding the provisions in s. 216.181(10), funds available for grants may only be authorized by appropriations acts of the Legislature.

(c) The department shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the waters of the state.

(d) This section shall constitute the authority of the department for such removal, but is not intended to be in contravention of any applicable federal act.

(e) The Department of Legal Affairs shall represent the Department of Environmental Protection in such actions.

History.--s. 15, ch. 70-244; s. 1, ch. 70-439; s. 6, ch. 80-382; s. 7, ch. 85-252; s. 64, ch. 95-143; s. 5, ch. 95-150.
376.16 Enforcement and penalties.--

(1) It is unlawful for any person to violate any provision of ss. 376.011-376.21 or any rule or order of the department made pursuant to this act. Violation shall be punishable by a civil penalty of up to $50,000 per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense. The penalty provisions of this subsection shall not apply to any discharge promptly reported and removed by a person responsible, in accordance with the rules and orders of the department, or to any discharge of pollutants equal to or less than 5 gallons.

(2) In addition to the penalty provisions which may apply under subsection (1), a person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel over 5 gallons, the civil penalty for the second discharge shall be $500 and the civil penalty for each subsequent discharge within a 12-month period shall be $1,000, except as otherwise provided in this section.

(b) For discharges of any pollutant other than gasoline or diesel, the civil penalty for a second discharge shall be $2,500 and the civil penalty for each subsequent discharge within a 12-month period shall be $5,000, except as otherwise provided in this section.

(3) A person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $50 for each discharge subsequent to the first.

(b) For discharges of pollutants other than gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $100 for each discharge subsequent to the first.

(4) Any person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The officer authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.
(5) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) After compliance with paragraph (4)(b) or paragraph (4)(c), any person charged with a noncriminal infraction under subsection (2) or subsection (3) may:

(a) Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

(b) If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceeding.

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $500 for the second discharge of gasoline or diesel and a civil penalty up to, but not exceeding, $1,000 for each subsequent discharge of gasoline or diesel within a 12-month period.

(8) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2) or subsection (3). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $5,000 for the second discharge of pollutants other than gasoline or diesel and a civil penalty up to, but not exceeding, $10,000 for each subsequent discharge of pollutants other than gasoline or diesel within a 12-month period.

(9) At a hearing under this section, the commission of a charged offense must be proved by the greater weight of the evidence.

(10) A person who is found by a hearing official to have committed an infraction may appeal that finding to the circuit court.

(11) Any person who has not posted bond and who neither pays the applicable civil penalty, as specified in subsection (2) or subsection (3) within 30 days of receipt of the citation nor appears before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
(12) Any person who makes or causes to be made a false statement which the person does not believe to be true in response to requirements of the provisions of ss. 376.011-376.21 commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--ss. 10, 16, ch. 70-244; ss. 7, 14, ch. 74-336; s. 20, ch. 90-54; s. 12, ch. 96-263.

376.165 "Hold-harmless" agreements prohibited.--Any agreement entered into after July 1, 1974, to "hold-harmless" a vessel or terminal facility from liability for the occurrence of a discharge prohibited by ss. 376.011-376.21, agreed to by a governmental agency or political subdivision, is deemed contrary to public policy and is hereby prohibited.

History.--s. 14, ch. 74-336.

376.17 Reports to the Legislature.--The department shall include in its recommendations to each regular session of the Legislature specific recommendations relating to the operation of ss. 376.011-376.21.

History.--s. 17, ch. 70-244; s. 15, ch. 74-336.

376.185 Budget approval.--The department shall submit to each regular session of the Legislature its budget recommendations for disbursements from the fund pursuant only to s. 376.11(4)(a). Upon appropriation thereof by the Legislature, the Comptroller shall authorize expenditures therefrom as approved by the department.

History.--s. 2, ch. 83-353; s. 50, ch. 91-221.

376.19 County and municipal ordinances; powers limited.--Nothing in ss. 376.011-376.21 shall be construed to deny any county or municipality authority to exercise police powers by ordinance or law under any general or special act, and laws and ordinances promulgated in furtherance of the intent of ss. 376.011-376.21 to promote the general welfare, public health, and public safety shall be valid unless in direct conflict with the provisions of ss. 376.011-376.21 or any rule, regulation, or order of the department adopted under authority of ss. 376.011-376.21. However, in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of ss. 376.011-376.21.

History.--s. 19, ch. 70-244.

376.20 Limitation on application.--Nothing in ss. 376.011-376.21 shall be deemed to apply to the storage or transportation of liquefied petroleum gas or to industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit.

History.--s. 20, ch. 70-244; s. 2, ch. 71-137; s. 17, ch. 74-336.
376.205 Individual cause of action for damages under ss. 376.011-376.21.--The remedies in this act shall be deemed to be cumulative and not exclusive. Nothing in this act shall require pursuit of any claim against the fund as a condition precedent to any remedy against a responsible party. Notwithstanding any other provision of law, any person may bring a cause of action against a responsible party in a court of competent jurisdiction for damages, as defined in s. 376.031, resulting from a discharge or other condition of pollution covered by ss. 376.011-376.21. In any such suit, it shall not be necessary for the person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it occurred. The only defenses to such cause of action shall be those specified in s. 376.12(7). The court, in issuing any final judgment in such action, may award costs of litigation, including reasonable attorney's and expert witness fees, to any party, whenever the court determines such an award is in the public interest.

History.--s. 18, ch. 74-336; s. 51, ch. 91-221; s. 13, ch. 96-263.

376.207 Traps impregnated with pollutants prohibited.--No person shall, within the territorial limits of the state, impregnate with a pollutant any lobster trap or other trap used to take saltwater products. After July 31, 1996, no person shall deposit into the waters of the state any trap that has been impregnated with a pollutant.

History.--s. 14, ch. 96-263.

376.21 Construction of ss. 376.011-376.21.--Sections 376.011-376.21, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.011-376.21 and the Federal Water Pollution Control Act, as amended.

History.--s. 21, ch. 70-244; s. 19, ch. 74-336.

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

(1) The Legislature finds and declares:

(a) That certain lands and waters of Florida constitute unique and delicately balanced resources and that the protection of these resources is vital to the economy of this state;

(b) That the preservation of surface and ground waters is a matter of the highest urgency and priority, as these waters provide the primary source for potable water in this state; and

(c) That such use can only be served effectively by maintaining the quality of state waters in as close to a pristine condition as possible, taking into account multiple-use accommodations necessary to provide the broadest possible promotion of public and private interests.
(2) The Legislature further finds and declares that:

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

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

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

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

(3) The Legislature intends by the enactment of ss. 376.30-376.319 to exercise the police power of the state by conferring upon the Department of Environmental Protection the power to:

(a) Deal with the environmental and health hazards and threats of danger and damage posed by such storage, transportation, disposal, and related activities;

(b) Require the prompt containment and removal of products occasioned thereby; and

(c) Establish a program which will enable the department to:

1. Provide for expeditious restoration or replacement of potable water systems or potable private wells of affected persons where health hazards exist due to contamination from pollutants (which may include provision of bottled water on a temporary basis, after which a more stable and convenient source of potable water shall be provided) and hazardous substances, subject to the following conditions:

a. For the purposes of this subparagraph, the term "restoration" means restoration of a contaminated potable water supply to a level which meets applicable water quality standards or applicable water quality criteria, as adopted by rule, for the contaminant or contaminants present in the water supply, or, where no such standards or criteria have been adopted, to a level that is determined to be a safe, potable level by the State Health Officer in the Department of Health and Rehabilitative Services, through the installation of a filtration system and provision of replacement filters as necessary or through employment of repairs or another treatment method or methods designed to remove or
filter out contamination from the water supply; and the term "replacement" means replacement of a well or well field or connection to an alternative source of safe, potable water.

b. For the purposes of the Inland Protection Trust Fund and the drycleaning facility restoration funds in the Water Quality Assurance Trust Fund as provided in s. 376.3078, such restoration or replacement shall take precedence over other uses of the unobligated moneys within the fund after payment of amounts appropriated annually from the Inland Protection Trust Fund for payments under any service contract entered into by the department pursuant to s. 376.3075.

c. Funding for activities described in this subparagraph shall not exceed $10 million for any one county for any one year, other than for the provision of bottled water.

d. Funding for activities described in this subparagraph shall not be available to fund any increase in the capacity of a potable water system or potable private well over the capacity which existed prior to such restoration or replacement, unless such increase is the result of the use of a more cost-effective alternative than other alternatives available.

2. Provide for the inspection and supervision of activities described in this subsection.

3. Guarantee the prompt payment of reasonable costs resulting therefrom, including those administrative costs incurred by the Department of Health and Rehabilitative Services in providing field and laboratory services, toxicological risk assessment, and other services to the department in the investigation of drinking water contamination complaints.

(4) The Legislature further finds and declares that the preservation of the quality of surface and ground waters is of prime public interest and concern to the state in promoting its general welfare, preventing disease, promoting health, and providing for the public safety and that the interest of the state in such preservation outweighs any burdens of liability imposed by the Legislature upon those persons engaged in storing pollutants and hazardous substances and related activities.

(5) The Legislature further declares that it is the intent of ss. 376.30-376.319 to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

History.--s. 84, ch. 83-310; s. 5, ch. 84-338; s. 10, ch. 86-159; s. 1, ch. 89-188; s. 2, ch. 92-30; s. 2, ch. 94-355; s. 296, ch. 94-356; s. 1, ch. 96-277; s. 46, ch. 96-321; s. 7, ch. 98-189.

1Note.--The Department of Health and Rehabilitative Services was redesignated as the Department of Children and Family Services by s. 5, ch. 96-403, and the Department of Health was created by s. 8, ch. 96-403.
376.301 Definitions of terms used in ss. 376.30-376.319, 376.70, and 376.75.--When used in ss. 376.30-376.319, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

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

(2) "Additive effects" means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed.

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

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

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

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

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

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

(9) "Contaminant" means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.
(10) "Contaminated site" means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.

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

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

(13) "Drycleaning facility" means a commercial establishment that operates or has at some time in the past operated for the primary purpose of drycleaning clothing and other fabrics utilizing a process that involves any use of drycleaning solvents. The term "drycleaning facility" includes laundry facilities that use drycleaning solvents as part of their cleaning process. The term does not include a facility that operates or has at some time in the past operated as a uniform rental company or a linen supply company regardless of whether the facility operates as or was previously operated as a drycleaning facility.

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

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

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

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

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

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


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

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

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

(24) "Natural attenuation" means an approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.

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

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

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

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

"Petroleum" includes:

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

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

"Petroleum product" means any liquid fuel commodity made from petroleum, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products, excluding liquefied petroleum gas and American Society for Testing and Materials (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual oils, intermediate fuel oils (IFO) used for marine bunkering with a viscosity of 30 and higher, asphalt oils, and petrochemical feedstocks.

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

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

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

"Pollution" means the presence on the land or in the waters of the state of pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
(36) "Real property owner" means the individual or entity that is vested with ownership, dominion, or legal or rightful title to the real property, or which has a ground lease interest in the real property, on which a drycleaning facility or wholesale supply facility is or has ever been located.

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

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

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

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

(41) "Source removal" means the removal of free product, or the removal of contaminants from soil or sediment that has been contaminated to the extent that leaching to groundwater or surface water has occurred or is occurring.

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

(43) "Synergistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed.

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

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

History.--s. 84, ch. 83-310; s. 6, ch. 84-338; s. 11, ch. 86-159; s. 2, ch. 89-188; s. 22, ch. 90-54; s. 9, ch. 90-98; s. 12, ch. 91-305; s. 3, ch. 92-30; s. 3, ch. 94-355; s. 297, ch. 94-356; s. 1, ch. 95-239; s. 1, ch. 95-349; s. 15, ch. 96-263; s. 2, ch. 96-277; s. 8, ch. 98-189.

376.302 Prohibited acts; penalties.--

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

(a) To discharge pollutants or hazardous substances into or upon the surface or ground waters of the state or lands, which discharge violates any departmental "standard" as defined in s. 403.803(13).

(b) To fail to obtain any permit or registration required by this chapter or by rule, or to violate or fail to comply with any statute, rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, registration, rule, or order issued under this chapter.

(2) Except as provided in s. 376.311, any person who commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) Any person who willfully commits a violation specified in paragraph (1)(a) or paragraph (1)(b) shall be guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not less than $2,500 or more than $25,000, or punishable by 1 year in jail, or by both for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.
(4) Any person who commits a violation specified in paragraph (1)(c) shall be guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000, or by 6 months in jail, or by both for each offense.

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

(6) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this act.

History.--s. 84, ch. 83-310; s. 8, ch. 84-338; s. 4, ch. 92-30; s. 1, ch. 94-311; s. 4, ch. 94-355.

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

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

(a) Establish rules, including, but not limited to, construction standards, permitting or registration of tanks, maintenance and installation standards, and removal or disposal standards, to implement the intent of ss. 376.30-376.319 and to regulate underground and aboveground facilities and their onsite integral piping systems. Such rules may establish standards for underground facilities which store hazardous substances or pollutants, and marine fueling facilities and aboveground facilities, not covered by chapter 377, which store pollutants. The department shall register bulk product facilities and shall issue annual renewals of such registrations. Requirements for facilities with underground storage tanks having storage capacities over 110 gallons that store hazardous substances became effective on January 1, 1991. The department shall maintain a compliance verification program for this section, which may include investigations or inspections to locate improperly abandoned tanks. The department may contract with other governmental agencies or private consultants to perform compliance verification activities. The contracts may provide for an advance of working capital to local governments to expedite the implementation of the compliance verification program. Counties with permit or registration fees for storage tanks or storage tank systems are not eligible for advance funding for the compliance verification program.

(b) Establish by rule a registration fee schedule for all storage systems regulated under this act sufficient to cover all costs associated with registration.

1. Revenues derived from fees imposed upon petroleum storage systems shall be deposited in the Inland Protection Trust Fund. All other revenues derived from such fees shall be deposited into the Water Quality Assurance Trust Fund.

2. The fee schedule shall provide as follows:
a. For new facilities, an initial registration fee of $50 per tank is due and payable within 30 days after receipt of notification by the department.

b. For facilities at which tanks are replaced, a tank replacement fee of $25 per tank is due and payable within 30 days after receipt of notification by the department.

c. An annual renewal fee of $25 per tank is due and payable by July 1 of each year, except that stationary tanks of 110 gallons or less at nonresidential locations and agricultural tanks of 550 gallons or less shall not be assessed the fee.

d. Any payment made more than 30 days after the date it is due is delinquent and the registrant must pay an additional fee of $20 for each tank with respect to which any payment is delinquent.

e. Bulk product facilities shall be assessed a registration fee and an annual renewal fee not to exceed $1,000 per tank.

3. The department may also assess fees retroactively against late registrants for tanks for which a registration fee should have been paid beginning on or after July 1, 1986. Annual registration fees for all regulated tanks shall continue to accrue forward from the date of registration until tank removal or closure. Payment is due within 30 days of receipt of notification by the department.

4. The department shall notify each registrant of the annual fee requirement no later than June 1 of each year. Fees are due and payable by July 1. For each regulated facility registered with the department under this section, a registration placard shall be issued to the tank's owner listing the number of tanks registered and the amount of registration fees paid, to be displayed in plain view at the office, kiosk, or other suitable location at the facility where the tanks are located.

(c) Establish a registration program for aboveground hazardous substance tanks and compression vessels.

1. Owners or operators shall register their tanks and vessels with the department by December 31, 1992, pay initial registration fees by July 1, 1993, and pay annual renewal registration fees by July 1, 1994, in accordance with the requirements of this subsection. Flow-through process tanks, liquefied petroleum gas tanks, hydraulic lift tanks, electrical equipment tanks, storage tanks containing sodium hypochlorite, storage tanks containing hazardous wastes as defined under Subtitle C of the Resource Recovery and Conservation Act, stormwater tanks, wastewater collection or discharge systems, or storage tanks located entirely within a building or portion of a building with an impervious floor that contains no valves or drains that would allow a discharge from the system are not required to register. Pollutant tanks required to be registered under paragraph (b) or s. 376.323 shall not be required to be registered under this paragraph. The department shall, whenever possible, accept electronically transmitted registration data.
2. Registration fees.--

a. Owners of tanks or vessels shall submit to the department an initial registration fee of $50 per tank or vessel. The fee shall be paid within 30 days after receipt of billing by the department.

b. Owners of tanks or vessels shall submit an annual renewal registration fee of $25 per tank or vessel within 30 days after receipt of billing from the department.

c. Total annual registration fees for initial fees or renewals shall not exceed $2,500 per facility.

d. Revenues derived from such fees shall be deposited into the Water Quality Assurance Trust Fund.

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

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

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

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

(e) Establish a technical advisory committee composed of knowledgeable participants from the department, local governments, regulated industries, and environmental interests
for the purpose of recommending legislation for the regulation of aboveground storage tank systems and compression vessels containing hazardous substances and pollutants.

(f) Provide for the development and implementation of criteria and plans to prevent and meet occurrences of pollution of various kinds and degrees.

(g) Establish a requirement that any facility or terminal facility covered by this act be subject to complete and thorough inspections at reasonable times. Any facility or terminal facility which has discharged a pollutant in violation of the provisions of ss. 376.30-376.319 shall be fully and carefully monitored by the department to ensure that such discharge does not continue to occur.

(h) Require terminal facilities to have discharge prevention and response certificates pursuant to s. 376.065.

(i) Establish discharge prevention and response requirements for bulk product facilities in addition to the requirements in s. 376.065.

(j) Keep an accurate record of the costs and expenses incurred for the removal of prohibited discharges and, except as otherwise provided by law, thereafter diligently pursue the recovery of any sums so incurred from the person responsible or from the United States Government under any applicable federal act, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

(k) Bring an action on behalf of the state to enforce the liabilities imposed by ss. 376.30-376.319. The provisions of ss. 403.121, 403.131, 403.141, and 403.161 apply to enforcement under ss. 376.30-376.319.

(2) The powers and duties of the department under ss. 376.30-376.319 shall extend to the boundaries of the state described in s. 1, Art. II of the State Constitution.

(3)(a) The department may inspect the installation of any pollutant storage tank. Any person installing a pollutant storage tank, as defined in s. 489.105(17), shall certify that such installation is in accordance with the standards adopted pursuant to this section. The department shall promulgate a form for such certification which shall at a minimum include:

1. A signed statement by the certified pollutant storage systems contractor, as defined in s. 489.105(3)(p), that such installation is in accordance with standards adopted pursuant to this section; and

2. Signed statements by the onsite persons performing or supervising the installation of a pollutant storage tank, which statements shall be required of tasks that are necessary for the proper installation of such tank.
(b) 1. The department shall, to the greatest extent possible, contract with local governments to provide for the administration of its responsibilities under this subsection. Such contracts may allow for administration outside the jurisdictional boundaries of a local government. However, no such contract shall be entered into unless the local government is deemed capable of carrying out such responsibilities to the satisfaction of the department.

2. To this end, the department shall inform local governments as to the provisions of this section and as to their options hereunder. At its option, any local government may apply to the department for such purpose on forms to be provided by the department and shall supply such information as the department may require.

(c)  The department may enjoin the installation or use of any pollutant storage tank that has been or is being installed in violation of this section or chapter 489.

(d)  No new or replaced tanks at bulk product facilities may be put into service or filled with pollutants until the facility has been inspected by the department and determined to be in compliance with department rules adopted pursuant to this chapter.

(4)  The department may require a property owner to provide site access for activities associated with contamination assessment or remedial action. Nothing herein shall be construed to prohibit an action by the property owner to compel restoration of his or her property or to recover damages from the person responsible for the polluting condition requiring assessment or remedial action activities.

History.--s. 84, ch. 83-310; s. 9, ch. 84-338; s. 12, ch. 86-159; s. 2, ch. 87-374; s. 17, ch. 88-156; s. 1, ch. 88-331; s. 6, ch. 89-143; s. 3, ch. 89-188; s. 23, ch. 90-54; s. 5, ch. 92-30; s. 27, ch. 93-166; s. 5, ch. 94-355; s. 298, ch. 94-356; s. 1015, ch. 95-148; s. 2, ch. 95-239; s. 16, ch. 96-263; s. 3, ch. 96-277; s. 47, ch. 96-321; s. 9, ch. 98-189.

376.304  Review and analysis of disposal materials or byproducts; disposal at designated local government solid waste disposal facilities.--

(1)  The Legislature finds and declares that it is in the public interest to facilitate the activities necessary and essential to clean up the release of pollutants which threaten Florida's unique and fragile environment. The Legislature finds that it is in the public interest to authorize appropriate actions to manage and control the costs associated with activities integrally involved with cleanup of sites contaminated with pollutants.

(2)  The department is authorized to review and analyze the disposal materials or byproducts used or resulting from the cleanup of the release of pollutants in the waters of the state. Such materials that are determined by the department not to require extraordinary handling or disposal requirements may be designated for disposal in nearby existing local government solid waste disposal facilities where such facilities are determined to be designed and operated in a manner where disposal of such materials would not constitute an unreasonable risk to public health and the environment. Such
designation by the department shall not be disallowed by actions of the local government responsible for operating the solid waste disposal facility. The designation by the department of a local government's solid waste facility as the location for disposing of materials and byproducts resulting from the activities essential to the cleanup of pollutants in the waters of the state shall constitute final agency action subject to review pursuant to chapter 120.

History.--s. 27, ch. 90-54; s. 299, ch. 94-356.

376.305 Removal of prohibited discharges.--

(1) Any person discharging a pollutant as prohibited by ss. 376.30-376.319 shall immediately undertake to contain, remove, and abate the discharge to the satisfaction of the department. However, such an undertaking to contain, remove, or abate a discharge shall not be deemed an admission of responsibility for the discharge by the person taking such action. Notwithstanding this requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing the discharge, or the person in charge of facilities at which the discharge has taken place, fails to act immediately, the department may arrange for the removal of the pollutant; except that, if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of that law. Federal funds provided under that act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing any pollutant shall be liable for any civil damages to third parties resulting solely from the acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in ss. 376.30-376.319 shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

(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" 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 in accordance with department rules prior to an eligibility determination. However, if the department determines that the owner of the facility 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 are financially unable to comply.

(c) Sites accepted in the program will be eligible for site rehabilitation funding as provided in s. 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 any person who had knowledge of the polluting condition when title was acquired unless 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 do not relieve any person who has acquired title subsequent to July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(c).

History.--s. 84, ch. 83-310; s. 13, ch. 86-159; s. 12, ch. 90-98; s. 13, ch. 91-305; s. 6, ch. 92-30; s. 2, ch. 94-311; s. 1016, ch. 95-148; s. 4, ch. 96-277.

1376.306 Cattle-dipping vats; legislative findings; liability.--

(1) The Legislature finds that:

(a) In excess of 3,200 cattle-dipping vats were constructed in the state as a result of local, state, and federal programs, conducted from 1906 through 1961, for the prevention, suppression, control, or eradication of the disease commonly known as tick fever by eradicating the cattle fever tick, the arthropod vector organism responsible for transmission of the disease.

(b) Most cattle-dipping vats were constructed with public funds and operated under local, state, and Federal Government supervision and control.

(c) Most vats were used to dip cattle and other livestock owned by several different persons, irrespective of ownership of the property on which the vat was located.

(d) Throughout most of the tick eradication program, the state established criteria for chemical solutions to be used in the vats; annually bid, purchased, and distributed materials to be used in said chemical solutions; and expressly authorized use of chemicals, including, but not limited to, various arsenicals, DDT, and Toxaphene.

(e) Cattle-dipping vats are located on lands presently both privately and publicly owned.

(f) Participation in the cattle fever tick eradication program was mandated by state law. Livestock owners who failed to participate were subjected to criminal penalties, including fines and imprisonment, and civil penalties, including, but not limited to, condemnation and killing of their livestock, payment of costs for the killing and disposal of carcasses by the sheriff or her or his deputies, and payment of fees for dipping performed by the state.

(g) Private owners of property upon which cattle-dipping vats are located should not be held liable for any costs, damages, or penalties arising or resulting from participation in the cattle fever tick eradication program.

(2) Any private owner of property in this state upon which cattle-dipping vats are located shall not be liable to the state under any state law, or to any other person seeking to enforce state law, for any costs, damages, or penalties associated with the discharge,
evaluation, contamination, assessment, or remediation of any substances or derivatives thereof that were used in the vat for the eradication of the cattle fever tick. This provision shall be broadly construed to the benefit of said private owner.

History.--s. 1, ch. 96-351; s. 48, ch. 97-96.

1Note.--Section 2, ch. 96-351, provides that "[t]his act shall take effect upon becoming a law and shall apply retroactively to the effective date of chapter 5933, Laws of Florida, 1909." Section 14, ch. 5933, 1909, provides for the law to "take effect immediately." It was approved June 8, 1909.

376.307 Water Quality Assurance Trust Fund.--

(1) The Water Quality Assurance Trust Fund is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. Moneys in this fund may be used:

(a) To carry out the provisions of ss. 376.30-376.319, relating to assessment, cleanup, restoration, monitoring, and maintenance of any site involving spills, discharges, or escapes of pollutants or hazardous substances which occur as a result of procedures taken by private and governmental entities involving the storage, transportation, and disposal of such products.

(b) To carry out the provisions of s. 376.3078, relating to assessment, cleanup, restoration, monitoring, and maintenance of sites involving drycleaning products.

(c) For activities to expeditiously restore or replace potable water supplies as provided in s. 376.30(3)(c)1.

(d) For response actions under the Comprehensive Environmental Response, Compensation, and Liability Act.

(e) To restore or replace contaminated private potable water wells or water systems. However, funds used as provided in this paragraph must be expended for water supply systems or filters for contaminated potable water wells only as follows:

1. Persons who have contaminated potable water wells that were permitted and constructed after January 1, 1989, in accordance with standards adopted under s. 373.309 are eligible for:

a. Subsidies to connect to existing water supply systems or extensions thereof. However, the subsidy may not exceed the present worth of the 10-year cost of providing and maintaining filters for residents served by the connections; or
b. Filters and filter maintenance to provide treatment for water from contaminated wells sufficient to ensure its potability. However, a filter may not be provided for a potable water well designed to provide water to a household that is part of a subdivision or development of a size that would, according to the department, be more effectively served by a water supply system, if the subdivision or development received its development order after January 1, 1989.

2. Subsidies to develop new water supply systems to be permitted and constructed after January 1, 1989, in accordance with standards adopted pursuant to s. 373.309 because of actual or potential contamination of potable water wells. However, a subsidy may not exceed one-half of the present worth of the 10-year cost of providing and maintaining filters for the residents to be served by the system.

3. The most cost-effective remedy, as determined by the department, for wells drilled before January 1, 1989.

4. Persons permitting and constructing potable water wells on or after July 1, 1997, in accordance with standards adopted pursuant to s. 373.309 because of actual or potential contamination, may be eligible for:

a. Subsidies or filters as identified in sub-subparagraphs 1.a. and b.; or

b. Subsidies for any increased costs associated with potable water well construction pursuant to s. 373.309(1)(e)4., provided that no such subsidy shall exceed one-half the cost of the well including testing, or one-half the present worth of the 10-year cost of providing and maintaining filters for the residents to be served by said well, whichever is less, provided that the household is not part of a subdivision or development of a size that would, according to the department, be more effectively served by a water supply system, if such subdivision or development received its development order on or after July 1, 1997.

(2) Moneys in the fund may not be expended for sites eligible for funding under ss. 376.3071 and 376.3073, relating to the Inland Protection Trust Fund.

(3) Moneys in the fund may not be expended to clean up hazardous waste that a federal agency is removing from navigable waters in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, established pursuant to the Federal Water Pollution Control Act, Pub. L. No. 92-500, as amended, or that the department is removing from any coastal waters, estuaries, tidal flats, beaches, or lands adjoining the coastline of the state pursuant to this chapter.

(4) The trust fund shall be funded as follows:

(a) An annual transfer of interest funds from the Florida Coastal Protection Trust Fund pursuant to s. 376.11(4)(f).
(b) All excise taxes levied, collected, and credited to the Water Quality Assurance Trust Fund in accordance with the provisions of ss. 206.9935(2) and 206.9945(1)(b).

(c) All penalties, judgments, recoveries, reimbursements, and other fees and charges related to the enforcement of ss. 376.30-376.319, other than penalties, judgments, and other fees and charges related to the enforcement of ss. 376.3071 and 376.3073.

(d) The fee on the retail sale of lead-acid batteries credited to the Water Quality Assurance Trust Fund under s. 403.7185.

(e) All penalties, judgments, recoveries, reimbursements, loans, and other fees and charges collected under s. 376.3078; tax revenues levied, collected, and credited under ss. 376.70 and 376.75; and registration fees collected under s. 376.303(1)(d).

(5) Except 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 discharge of a pollutant 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. Any request for reimbursement to the fund for such costs, if not paid within 30 days of demand, shall be turned over to the department for collection.

(6) 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 shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided for by 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 this trust fund and the Inland Protection Trust Fund, in the discretion of the department.

(7) Except as otherwise provided by law, the department, in administering the fund, shall diligently pursue the reimbursement to the fund of any sum expended from the fund in accordance with this section for cleanup and abatement, 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 commences on the last date on which any such sums were expended, and not the date that the discharge occurred.

History.--s. 84, ch. 83-310; s. 3, ch. 83-353; s. 10, ch. 84-338; ss. 3, 14, 34, ch. 86-159; s. 82, ch. 86-163; s. 4, ch. 88-393; s. 9, ch. 89-171; s. 72, ch. 90-331; s. 14, ch. 91-305; s. 5, ch. 92-75; s. 300, ch. 94-356; s. 48, ch. 96-321; s. 31, ch. 97-160.

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 underground storage systems in this state, which storage 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 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. 376.30-376.319, 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. 376.30-376.319 and to authorize the department to enter into one or more service contracts with such corporation for the 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.

(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) 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.

(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 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, 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 minimizes environmental damage, in accordance with the site selection and cleanup criteria established by the department under subsection (5), except that 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 and Rehabilitative Services in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

(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. 2376.305(7) 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 preapproved as a component of site rehabilitation and requires removal of the tank where remediation is conducted under 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).

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

(m) Repayment of loans to the fund.
(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 in accordance with the same procedures as are established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(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.

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.319 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 (o) under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature prior to making or providing for other disbursements from the fund. Nothing in this subsection 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 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 for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

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

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

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

4. The effect of the contamination on the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4)(a)-(e) at individual sites in accordance with such established criteria. However, nothing in this paragraph 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.
(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 may be deemed completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner as provided in this subsection. 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 is authorized to temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this 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, provided human health, public safety, and the environment are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, 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 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, provided human health, public safety, 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 be preapproved by the department and institutional controls shall not be acquired with 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 shall also be considered when the scientific data becomes available.

6. Individual site characteristics which 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 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; provided human health, public safety, 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 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 human health and safety or the environment.

However, nothing in this paragraph 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 in the order established by the priority ranking system pursuant to paragraph (a). Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach no further action status, the department is encouraged to utilize natural attenuation and monitoring where site conditions warrant.

(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 in accordance with the provisions of subsection (3).

(c) A loan of $5 million from the Florida Coastal Protection Trust Fund pursuant to s. 376.11(4)(e). This loan shall not be subject to the General Revenue Fund deduction authorized in s. 215.20.
(7) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.--

(a) Except as provided in subsection (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. Any request for reimbursement to the fund for such costs, if not paid within 30 days of demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (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 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 commence on the last date on which any such sums were expended, and not the date that the discharge occurred.

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party 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 net worth and the economic impact on the party.

(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 Treasurer to the credit of the fund and may be invested in such manner as is provided for by 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 this trust fund and the Water Quality Assurance Trust Fund, in the discretion of the department.

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

2. The provisions of this subsection shall not be construed to authorize or require reimbursement from the fund for costs expended 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, 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 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 subsection (5) and 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 in accordance with the same procedures as are established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) No report of a discharge made to the department by any person in accordance with this subsection, or any rules promulgated pursuant 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 shall not apply to petroleum storage systems owned
or operated by the Federal Government.

(10) VIOLATIONS; PENALTY.--It is unlawful for any person 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.

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

(11)(a) Voluntary cleanup.--Nothing in this section shall be deemed to 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) Nonreimbursable voluntary cleanup.--For sites with releases reported prior to January
1, 1995, the department shall issue a determination of "No Further Action" at sites ranked
with a total priority score of 10 or less, which meet the following conditions:

1. No free product exists in wells, boreholes, subsurface utility conduits, or vaults or
buildings and no other fire or explosion hazard exists as a result of a release of petroleum
products.

2. No excessively contaminated soil, as defined by department rule, exists onsite as a
result of a release of petroleum products.

3. Public supply wells for consumptive use of water expected to be affected by the site
shall not be located within a 1/2-mile radius of the site; private supply wells for
consumptive use of water expected to be affected by the site shall not be located within a
1/4-mile radius of the site; and there must be no current or projected consumptive use of
the water affected by the site for at least the following 3 years. Where appropriate,
institutional controls meeting the requirements of subparagraph (5)(b)4. may be required
by the department to meet these criteria.

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

5. The area of groundwater containing the petroleum products' chemicals of concern in
concentrations greater than the boundary values defined in subparagraph 7. is less than
one-quarter acre.
6. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface shall meet the criteria established pursuant to sub-subparagraph (5)(b)9.a. Where appropriate, institutional or engineering controls meeting the requirements of subparagraph (5)(b)4. may be required by the department to meet these criteria.

7. Concentrations of the petroleum products’ chemicals of concern in groundwater at the property boundary of the real property on which the petroleum contamination originates shall not exceed the criteria established pursuant to sub-subparagraph (5)(b)7.a. Where appropriate, institutional or engineering controls meeting the requirements of subparagraph (5)(b)4. may be required by the department to meet these criteria.

8. The department is authorized to establish alternate cleanup target levels for onsite nonboundary wells pursuant to the criteria in subparagraph (5)(b)8.

9. A scientific evaluation that demonstrates that the boundary criteria in subparagraph 7. will not be exceeded and a 1-year site-specific groundwater monitoring plan approved in advance by the department validates the scientific evaluation. If the boundary criteria in subparagraph 7. are exceeded at any time, the department may order an extension of the monitoring period for up to 12 additional months from the time of the excess reading. The department shall determine the adequacy of the groundwater monitoring system at a site. All wells required by the department pursuant to this paragraph shall be installed before the monitoring period begins.

10. Costs associated with activities performed pursuant to this paragraph for sites which qualify for a determination of "No Further Action" under this paragraph shall not be reimbursable from the Inland Protection Trust Fund.

(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; however, the department may process requests prior to the adoption of those model rules.

6. The Comptroller 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 Comptroller may contract with entities or persons to perform audits pursuant to this subparagraph. The Comptroller 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 Comptroller 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 preapproved site rehabilitation agreement. Eligibility shall be subject to an annual appropriation from the Inland Protection Trust Fund. Additionally, funding for eligible sites shall be contingent upon annual appropriation in subsequent years. Such continued state funding shall not be deemed an entitlement or a vested right under this subsection. Eligibility in the program shall be notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.
(a)1. The department shall accept any discharge reporting form received 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 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 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, shall not be eligible for 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 $300,000 of site rehabilitation funding assistance in priority order pursuant to subsection (5) and s. 376.30711.

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

(d) No report of a discharge made to the department by any person in accordance with this subsection, or any rules adopted pursuant 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 shall be construed to preclude the department from pursuing penalties 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 nor any local government shall pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph 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 in accordance with subsection (5) and s. 376.30711.

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

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

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

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

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

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

History.--ss. 15, 16, ch. 86-159; s. 3, ch. 87-374; s. 2, ch. 88-331; s. 4, ch. 89-188; s. 10, ch. 90-98; s. 81, ch. 90-132; s. 15, ch. 91-305; s. 5, ch. 91-429; s. 7, ch. 92-30; s. 67, ch. 93-207; s. 301, ch. 94-356; s. 1017, ch. 95-148; s. 15, ch. 95-396; s. 134, ch. 95-417; s. 5, ch. 96-277; s. 105, ch. 96-410; s. 14, ch. 97-277.

1Note.--The Department of Health and Rehabilitative Services was redesignated as the Department of Children and Family Services by s. 5, ch. 96-403, and the Department of Health was created by s. 8, ch. 96-403.

2Note.--Redesignated as s. 376.305(6) by s. 4, ch. 96-277.

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

(1)(a) The Legislature finds and declares that the petroleum contamination site rehabilitation program, as previously structured, has resulted in site rehabilitation proceeding at a higher rate than revenues can support and at sites that are not of the
highest priority as established in s. 376.3071(5). This has resulted in a large backlog of reimbursement applications and excessive costs to the Inland Protection Trust Fund. It is the intent of the Legislature that contamination site cleanups be conducted on a preapproved basis with emphasis on addressing first the sites which pose the greatest threat to human health 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 and will significantly reduce the contamination or eliminate the spread of contamination, shall be considered to protect public health and safety, water resources, and the environment.

(b) Site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund and pursuant to ss. 376.305(6), 376.3071, 376.3072, and 376.3073, shall only be eligible for site rehabilitation funding under this section. After March 29, 1995, only persons who have received prior written approval from the department of the scope of work and costs may continue site rehabilitation work. In the event of a new release, the facility operator shall be required to abate the source of the discharge. If free product is present, the operator shall notify the department, which may direct the removal of the free product as a preapproved expense pursuant to this section. The department shall grant approval to continue site rehabilitation based on this section and s. 376.3071(5).

1(2)(a) Competitive bidding pursuant to this section shall not be subject to the requirements of s. 287.055. The department is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and rehabilitation procedures for site-specific rehabilitation projects through performance-based contracts. Site rehabilitation shall be conducted according to the priority ranking order established pursuant to s. 376.3071(5).

(b) Any contractor performing site rehabilitation program tasks must demonstrate to the department that:

1. The contractor meets all certification and license requirements imposed by law.

2. The contractor has obtained approval of its Comprehensive Quality Assurance Plan prepared under department rules.

(c) The contractor shall certify to the department that such contractor:

1. Complies with applicable OSHA regulations.

2. Maintains workers' compensation insurance for all 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, as shall protect it from claims for damage for personal injury, including
accidental death, as well as claims for property damage which may arise from performance of work under the program, designating 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 completed and submitted a sworn statement under s. 287.133(3)(a), on public entity crimes.

6. Has the capacity to perform or directly supervise the majority of the work at a site in accordance with s. 489.113(9).

(3) Any person responsible for site rehabilitation who received prior approval to conduct site rehabilitation and to thereafter submit an application for reimbursement, pursuant to s. 2(3), chapter 95-2, Laws of Florida, may request approval to conduct site rehabilitation pursuant to this section regardless of the site score.

(4) Any person responsible for site rehabilitation at a site with a priority ranking score of 50 points or more who was performing remedial action activities pursuant to s. 2(2), chapter 95-2, Laws of Florida, may request approval to complete site rehabilitation pursuant to this section in order to avoid disruption in cleanup activities.

(5)(a) Any person who performs the conditions of a preapproved site rehabilitation agreement, pursuant to the provisions of this section and s. 376.3071(5), may file invoices with the department for payment within the schedule and for the services described in the preapproved site rehabilitation agreement. Such invoices for payment must be submitted to the department on forms provided by the department, together with evidence documenting that preapproved activities were conducted or completed in accordance with the preapproved authorization. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund which have been appropriated for expenditure by the Legislature and provided all of the terms of the preapproved site rehabilitation agreement have been met, invoices for payment shall be paid consistent with the provisions of s. 215.422. After an applicant has submitted its invoices to the department and before payment is made, the contractor may assign its right to payment to any other person, without recourse of the assignee or assignor to the state, and in such cases the assignee shall be paid consistent with the provisions of s. 215.422. Prior notice of the assignment and assignment information shall be made to the department, which notice shall be signed and notarized by the assigning party. The department shall not have the authority to regulate private financial transactions by which an applicant seeks to account for working capital or the time value of money, unless charges associated with such transactions are added as a separate charge in an invoice.

(b) Payments shall be made by the department based on the terms of a 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 assure performance. The amount of retainage or performance bond or bonds, as well as the terms and conditions, shall be a part of the site-specific performance-based contract.

(c) The department shall provide certification within 30 days after notification from a contractor that the terms of the contract for site rehabilitation work have been completed. Failure of the department to do so shall not constitute a default certification of completion. The department also may withhold payment if the validity or accuracy of the contractor's invoices or supporting documents is in question.

(d) Nothing in this section shall be construed to authorize payment 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.

(e) If any contractor fails to perform, as determined by the department, contractual duties for site rehabilitation program tasks, the department shall terminate the contractor's eligibility for participation in the program.

(f) The contractor responsible for conducting site rehabilitation shall keep and preserve suitable records in accordance with the provisions of s. 376.3071(12)(e).

(6) 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 a rehabilitation contractor performing site cleanup activities pursuant to this section.

(7) The department shall conduct a pilot project to determine the effectiveness and feasibility of utilizing competitive bid procedures for procuring the services necessary to perform site rehabilitation. During fiscal year 1997-1998, the department is directed to use competitive bid procedures to procure site rehabilitation services on a minimum of 25 priority sites within availability of funding, where the department has requested that the property owner designate a qualified contractor and a qualified contractor has not been designated or assigned to a state cleanup site prior to July 1, 1997. The provisions of this subsection do not apply to those sites managed by a contracted local program pursuant to s. 376.3073. The department shall submit a report, by March 1, 1998, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such report shall contain, at a minimum: the cost-effectiveness of utilizing competitive bid procedures; a feasibility review on the department's experience with competitive bidding; a cost comparison of competitive bidding and negotiated contracts for site rehabilitation tasks; and recommendations concerning the use of competitive bidding.

History.--s. 2, ch. 95-2; s. 6, ch. 96-277; s. 61, ch. 97-100; s. 15, ch. 97-277.

Note.--Section 15, ch. 97-277, purported to amend subsection (2), but did not set out in full the amended subsection to include paragraphs (b) and (c). Absent affirmative
evidence that the Legislature intended to repeal the omitted material, it is set out in full here, pending clarification by the Legislature.

376.30713 Preapproved advanced cleanup.--

(1) In addition to the legislative findings provided in s. 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 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 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 shall only be available for sites eligible for restoration funding under EDI, ATRP, or PLIRP.

(2) Beginning January 1, 1997, the department is authorized to approve an application for preapproved advanced cleanup at eligible sites, prior to funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), in accordance with the provisions of this section. 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. Initial applications shall be submitted between November 1 and December 31, 1996. An application shall consist of:

1. A commitment to pay no less than 25 percent of the total cleanup cost deemed recoverable under the provisions of this section along with proof of the ability to pay the cost share.
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 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, 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 a preapproved advanced cleanup contract with the department. This certification 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 that proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and 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 which exceed funding availability 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 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 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 is authorized to negotiate the terms and conditions of the contract.

(b) Preapproved advanced cleanup shall be conducted 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 a preapproved advanced cleanup contract with the applicant shall not be subject to the provisions of chapter 120. If the department is not able to complete negotiation of the course of action and the terms of the contract within 60 days after commencing negotiations, the department shall terminate negotiations with that applicant.
(4) The department is authorized to enter into contract for a total of up to $10 million of preapproved advanced cleanup work in each fiscal year. However, no facility shall be preapproved for more than $500,000 of cleanup activity in each fiscal year. For the purposes of this section the term "facility" shall include, but 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) By December 31, 1998, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the progress and level of activity under the provisions of this section. The report shall include the following information:

(a) A list of sites under a preapproved advanced cleanup contract, to be identified by the facility number.

(b) The total number of preapproved advanced cleanup applications submitted to the department.

(c) The priority ranking scores of each participating site.

(d) The total amount of contract work authorized and conducted for each site and the percentage and amount of cost share.

(e) The total revenues received under the provisions of this section.

(f) The annual costs of administering the provisions of this section.

(g) The recommended annual budget for the provisions of this section.

(6) 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.

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

History.--s. 7, ch. 96-277.

376.3072 Florida Petroleum Liability and Restoration Insurance Program.--

(1) There is hereby created the Florida Petroleum Liability and Restoration Insurance Program to be administered by the department. The program shall provide restoration funding assistance to facilities regulated by the department's petroleum storage tank rules. To implement the program, the department may contract with an insurance company, a reinsurance company, or other insurance consultant to issue third-party liability policies that meet the federal financial responsibility requirements of 40 C.F.R. s. 280.97, subpart H.
(2)(a) Any owner or operator of a petroleum storage system may become an insured in the restoration insurance program at a facility provided:

1. A site at which an incident has occurred 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 (e).

2. A site which had a discharge reported prior to January 1, 1989, for which notice was given pursuant to s. 376.3071(9) or (12), and which is ineligible for the third-party liability insurance program solely due to that discharge shall be eligible for participation in the restoration program for any incident occurring on or after January 1, 1989, 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 prior to January 1, 1995, where the owner is a small business under s. 288.703(1), a state community college with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(o)2.a., a charitable institution as defined by s. 212.08(7)(o)2.b., or a county or municipality with a population of less than 50,000, shall be eligible for up to $300,000 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, 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 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 of receipt of an eligibility order issued by the department pursuant to this 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 shall be an eligible restoration cost pursuant to this provision.

4.a. By January 1, 1997, facilities at sites with existing contamination 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, 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 in accordance with sub-subparagraph a. shall permanently close their external groundwater and vapor monitoring wells in accordance with department rules by December 31, 1998. Upon installation of the internal release detection system, these wells 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 shall file an affidavit upon enrollment in the
program. The affidavit 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.

Nothing contained herein shall prevent the department from assessing civil penalties for
noncompliance 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, 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. 376.30711, as appropriate.

3. The financial institution or lender did not engage in management activities at the site 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 prior to July 1, 1992, the restoration insurance program shall provide up to $1 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 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 million of eligible restoration costs, less a $5,000 deductible per incident. However, if, 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 subparagraph c., the deductible will be $500. The $500 deductible shall apply for a period of one 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 $300,000 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 $150,000 of eligible restoration costs, less a deductible of $10,000.

e. Beginning January 1, 1999, no restoration coverage 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 prior to January 1, 1989.

4. Any incidents discovered prior to January 1, 1989, are not eligible to participate in the restoration insurance program. However, this exclusion 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 shall not affect eligibility for participation in the EDI program.

(3) Sites that were certified as insured facilities and that were denied coverage for a discharge under the Petroleum Liability and Restoration Insurance Program may request a reevaluation under the criteria in subsection (2). Such request shall be made by December 31, 1996. If the contamination is redetermined to be eligible, the deductible and coverage limit in effect at the time the discharge was reported shall be applicable. The redetermination shall not affect the department's authority for assessing supplemental deductibles or civil penalties. The department shall not assess a supplemental deductible or civil penalty for alleged failure to report or abate a discharge when the owner or operator can establish no discharge occurred. Notwithstanding any department order to the contrary, the supplemental deductibles in sub-subparagraph (2)(d)2.f. shall not be applied cumulatively but, rather, the highest applicable supplemental deductible shall be applied.

(4) For purposes of this section, the term:
(a) "Restoration" means rehabilitation of contaminated sites both on and off the property
of the owner or operator of the petroleum storage system and shall consist of
investigation and assessment, cleanup of affected soil, groundwater, and surface water in
accordance with the site selection and cleanup criteria established by the department
pursuant to s. 376.3071(5), and maintenance and monitoring of the contaminated sites.
The term "restoration" also means the department's expeditious rehabilitation or
replacement of potable water supplies as provided in s. 376.30(3)(c)1. In the event the
department does not provide bottled water, or a replacement water supply within 3 days,
the owner, operator, or their designee may provide bottled water to an affected third
party, and that cost shall be reimbursable. The term "restoration" does not mean costs
which may be associated with compliance with rules relating to stationary tanks adopted
pursuant to s. 376.303.

(b) "Third-party liability" means the insured's liability, other than for restoration costs,
for bodily injury or property damage caused by an incident of inland contamination
related to the storage of petroleum product.

(c) "Incident" means the reporting of any sudden or gradual discharge of petroleum
product arising from operating a storage system containing petroleum product that results
in a need for restoration or results in bodily injury or property damage neither expected
nor intended by the petroleum storage system owner or operator.

(d) "Petroleum products" means petroleum products as defined by s. 376.301.

(5)(a) The department shall adopt rules for the proper management and maintenance of
the Florida Petroleum Liability and Restoration Insurance Program. The department may
contract with an insurance company, reinsurance company, or other entity for the
implementation of the program or any portion of the program. The purchase of insurance
services by the department is not subject to the provisions of chapter 287.

(b) The Department of Insurance shall offer assistance as requested by the department to
implement the program.

(c) Any insurance company, reinsurance company, or other entity contracted with by the
department shall be subject to the same rules and regulations of the Department of
Insurance applicable to other insurers, reinsurers, and other entities.

History.--ss. 3, 13, ch. 88-331; s. 5, ch. 89-188; s. 24, ch. 90-54; ss. 16, 19, ch. 91-305; s.
8, ch. 92-30; s. 3, ch. 94-311; s. 302, ch. 94-356; s. 1018, ch. 95-148; s. 8, ch. 96-277; s.
16, ch. 97-277.

1Note.--Redesignated as paragraph (d) by s. 8, ch. 96-277.

376.3073 Local programs and state agency programs for control of contamination.--
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), (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, 376.305, and 376.30711. However, no such contract shall be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

To this end, the department shall inform local governments as to the provisions of chapters 86-159, 88-331, and 90-98, Laws of Florida, and as to their options hereunder. At its own option, any local government may apply to the department for such purpose, on forms to be provided by the department, and shall supply such information as the department may require.

Upon approval of its application, an eligible local government shall be entitled, through written contract with the department, to receive sufficient funds to administer the local program. This contract shall provide that reasonable costs, as determined by the department and the local government, of administration, investigation, rehabilitation, other related activities, including the restoration or replacement of potable water supplies of affected persons, and implementation of a compliance verification program, shall be paid to the eligible local government from the Inland Protection Trust Fund created under s. 376.3071 and shall stipulate the method of payment. The contract may provide for an advance of working capital to the local government or state agency in order to expedite the cleanup program and in order for local government to contract for cleanup.

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 s. 376.30711.

Whenever the department makes a clear determination that a local government or state agency has breached a contract to the extent that the local program or state agency program is, in the department's estimation, inadequate to prevent or control inland petroleum contamination in such jurisdiction or that such program is being carried out in a manner inconsistent with the requirements of the contract, the department shall require that necessary corrective measures be taken by the local government or state agency within a reasonable period of time, not to exceed 45 days.

If the local government or state agency fails to take such necessary corrective action within the time required, the department may reassume any or all responsibilities undertaken by the local government or state agency pursuant to this section.

History.--s. 17, ch. 86-159; s. 4, ch. 87-374; s. 4, ch. 88-331; s. 6, ch. 89-188; s. 17, ch. 91-305; s. 9, ch. 96-277.

376.3075 Inland Protection Financing Corporation.--
(1) There is hereby created a nonprofit public benefit corporation to be known as the "Inland Protection Financing Corporation" for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.319 and the payment, purchase, and settlement of reimbursement obligations of the department pursuant to s. 376.3071(12), existing as of December 31, 1996. Such reimbursement obligations are referred to in this section as existing reimbursement obligations. The corporation shall terminate on July 1, 2011.

(2) The corporation shall be governed by a board of directors consisting of the Governor or the Governor's designee, the Comptroller or the Comptroller's designee, the Treasurer or the Treasurer's designee, the chair of the Florida Black Business Investment Board, and the secretary of the Department of Environmental Protection. The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and supervise the administrative affairs of the corporation and shall control, direct, and supervise the operation of the corporation. The corporation shall also have such other officers as may be determined by the board of directors.

(3) The corporation shall have all the powers of a corporate body under the laws of the state to the extent not inconsistent with or restricted by the provisions of this section, including, but not limited to, the power to:

(a) Adopt, amend, and repeal bylaws not inconsistent with this section.

(b) Sue and be sued.

(c) Adopt and use a common seal.

(d) Acquire, purchase, hold, lease, and convey such real and personal property as may be proper or expedient to carry out the purposes of the corporation and this section, and to sell, lease, or otherwise dispose of such property.

(e) Elect or appoint and employ such officers, agents, and employees as the corporation deems advisable to operate and manage the affairs of the corporation, which officers, agents, and employees may be officers or employees of the department and the state agencies represented on the board of directors of the corporation.

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness necessary to pay the backlog or to reimburse moneys from the Inland Protection Trust Fund used pursuant to subsection (6).

(g) Make and execute any and all contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and this section.
(h) Select, retain, and employ professionals, contractors, or agents, which may include the Florida State Board of Administration's Division of Bond Finance, as shall be necessary or convenient to enable or assist the corporation in carrying out the purposes of the corporation and this section.

(i) Do any act or thing necessary or convenient to carry out the purposes of the corporation and this section and the powers provided in this section.

(4) The corporation is authorized to enter into one or more service contracts with the department pursuant to which the corporation shall provide services to the department in connection with financing the functions and activities provided for in ss. 376.30-376.319. The department may enter into one or more such service contracts with the corporation and to provide for payments under such contracts pursuant to s. 376.3071(4)(o), subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the costs and expenses of administration of the corporation after payments as set forth in subsection (5). Each service contract shall have a term not to exceed 10 years and shall terminate no later than July 1, 2011. The aggregate amount payable from the Inland Protection Trust Fund under all such service contracts shall not exceed $65 million in any state fiscal year. Amounts annually appropriated and applied to make payments under such service contracts shall not include any funds derived from penalties or other payments received from any property owner or private party, including payments received from s. 376.3071(6)(b). In compliance with provisions of s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts shall not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state nor shall such obligations 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 shall be 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 shall 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 paying, purchasing, or settling existing reimbursement obligations. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness shall not have a financing term that exceeds 6 years, nor shall the total payments for principal and interest on any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness exceed the original amount of approved reimbursement claims to be paid, purchased, or settled by the corporation by more than $50 million. The corporation may select its financing team and issue its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. Any such indebtedness of the corporation shall not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing
power of the state, but shall be payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(o).

(6) Upon the issuance of debt obligations by the corporation pursuant to subsection (5) for the payment, purchase, or settlement of existing reimbursement obligations, amounts on deposit in the Inland Protection Trust Fund shall not be available for the payment, purchase, or settlement of existing reimbursement obligations to the extent proceeds of such debt obligations are available for the payment of such existing reimbursement obligations. If, after the initial issuance of debt obligations pursuant to subsection (5), amounts on deposit in the Inland Protection Trust Fund are used to pay existing reimbursement obligations, the corporation shall reimburse the Inland Protection Trust Fund for such payments from available proceeds of debt obligations issued pursuant to subsection (5). Payment, purchase, or settlement by the corporation of existing reimbursement obligations otherwise payable pursuant to s. 376.3071(12) shall satisfy the obligation of the department to make such payments. Any such existing reimbursement obligations purchased by the corporation shall be satisfied and extinguished upon purchase by the corporation.

(7) The corporation shall pay, purchase, or settle existing reimbursement obligations as determined by the department. The department shall implement the repayment priorities and method and amount of payments pursuant to s. 376.3071(12). However, any claims for reimbursement pursuant to s. 376.3071(12) that the corporation is unable to pay because of the limitations contained in subsection (5) shall be paid by the department from the receipts of the Inland Protection Trust Fund.

(8) The fulfillment of the purposes of the corporation promotes the health, safety, and general welfare of the people of the state and serves as essential governmental functions and a paramount public purpose.

(9) The corporation is exempt from taxation and assessments of any nature whatsoever upon its income and any property, assets, or revenues acquired, received, or used in the furtherance of the purposes provided in this chapter. The obligations of the corporation incurred pursuant to subsection (5) and the interest and income thereon and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection therewith, or given to secure payment thereof are exempt from all taxation, provided such exemption does not apply to any tax imposed by chapter 220 on the interest, income, or profits on debt obligations owned by corporations.

(10) The corporation shall validate obligations to be incurred pursuant to subsection (5) and the validity and enforceability of any service contracts providing for payments pledged to the payment thereof by proceedings under chapter 75. The validation complaint shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published in Leon County and the complaint and order of the circuit court shall be served only on the State Attorney for the Second Judicial Circuit. Sections 75.04(2) and 75.06(2) shall not apply to a complaint for validation filed as authorized in this subsection. The validation of at least the first obligations incurred
pursuant to subsection (5) shall be appealed to the Supreme Court, to be handled on an expedited basis.

(11) The corporation shall not be deemed to be a special district for purposes of chapter 189 or a unit of local government for purposes of part III of chapter 218. The provisions of chapters 120 and 215, except the limitation on interest rates provided by s. 215.84 which applies to obligations of the corporation issued pursuant to this section, and part I of chapter 287, except ss. 287.0582 and 287.0641, shall not apply to this section, the corporation created hereby, the service contracts entered into pursuant to this section, or to debt obligations issued by the corporation as contemplated in this section.

(12) In no event shall any of the benefits or earnings of the corporation inure to the benefit of any private person.

(13) Upon dissolution of the corporation, title to all property owned by the corporation shall revert to the state.

(14) The corporation may contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation as contemplated by this section and to hold, administer, and invest proceeds of such debt obligations and other funds of the corporation and to perform other services required by the corporation. The State Board of Administration may perform such services and may contract with others to provide all or a part of such services and to recover its and such other costs and expenses thereof.

History.--s. 10, ch. 96-277.

376.3077 Unlawful to deposit motor fuel in tank required to be registered, without proof of registration display.--It is unlawful for any owner, operator, or supplier to pump or otherwise deposit any motor fuel into a tank required to be registered under s. 376.303 unless proof of valid registration is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. The department shall enforce the provisions of this section pursuant to this chapter. The department may enter into an interagency agreement with the Department of Agriculture and Consumer Services to enforce the provisions of this section.

History.--s. 8, ch. 87-374; s. 5, ch. 88-331; s. 18, ch. 91-305; s. 303, ch. 94-356.

Note.--Former s. 526.3055.

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

(1) FINDINGS.--In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares that:
(a) Significant quantities of drycleaning solvents have been discharged in the past at drycleaning facilities as part of the normal operation of these facilities.

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

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

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

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

(2) FUNDS; USES.--

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

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

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

2. Expeditious treatment, restoration, or replacement of potable water supplies as provided in s. 376.30(3)(c)1.
3. Rehabilitation of contaminated drycleaning facility or wholesale supply facility sites, which shall consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage, in accordance with the site selection and rehabilitation criteria established by the department under subsection (4), except that nothing in this subsection shall be construed to authorize the department to obligate drycleaning facility restoration funds for payment of costs that may be associated with, but are not integral to, drycleaning facility or wholesale supply facility site rehabilitation.

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

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

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

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

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

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

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

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

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

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

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

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

(3) REHABILITATION LIABILITY.--In accordance with the eligibility provisions of this section, no real property owner or no person who owns or operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility shall be subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility.

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

1. Has been registered with the department;

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

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

4. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended;
5. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended (42 U.S.C.A. s. 6928(h)), or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

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

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

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

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

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

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

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.
(c) For purposes of determining eligibility, a drycleaning facility or wholesale supply facility was operated in a grossly negligent manner if the department determines that the owner or operator of the drycleaning facility or the wholesale supply facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The department has not been denied access.

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

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

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

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

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

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

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

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of risk-based corrective action assessment.
(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this section, to temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the voluntary cleanup agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

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

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

(e) Consider the additive effects of contaminants. The synergistic and antagonistic effects shall also be considered when the scientific data become available.
(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

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

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

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

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

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

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

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

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

(5) DISPOSAL OR REUSE.--The cleanup criteria established pursuant to subsection (4) do not constitute disposal or reuse criteria. Offsite disposal or relocation must be in accordance with all applicable federal, state, and local regulations.

(6) INTENT; APPLICATION.--

(a) It is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where the use of available technology is not anticipated to achieve water quality standards, the department, at its discretion, may use innovative technology that has been field-tested and that has engineering and cost data available.
(b) Nothing in this subsection shall be construed to restrict the department from temporarily postponing completion of any site rehabilitation program for which drycleaning facility restoration funds are being expended whenever such postponement is deemed necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility contamination site with a higher priority status.

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

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

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

(b) Threat to drinking water supply wells.

1. Capacity:

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

   For uncontaminated wells (only one shall apply):

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

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

For contaminated wells (only one shall apply):

<table>
<thead>
<tr>
<th>Capacity (gallons per day)</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>greater than 1,000,000</td>
<td>25</td>
</tr>
<tr>
<td>100,000 to 1,000,000</td>
<td>15</td>
</tr>
<tr>
<td>less than 100,000</td>
<td>5</td>
</tr>
</tbody>
</table>

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

a. For uncontaminated wells:

<table>
<thead>
<tr>
<th>Distance</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>within 500 feet</td>
<td>40</td>
</tr>
<tr>
<td>within 1/4 mile</td>
<td>30</td>
</tr>
<tr>
<td>within 1/2 mile</td>
<td>20</td>
</tr>
<tr>
<td>within 1 mile</td>
<td>10</td>
</tr>
</tbody>
</table>

b. For contaminated wells:

<table>
<thead>
<tr>
<th>Distance</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>within 500 feet</td>
<td>15</td>
</tr>
<tr>
<td>within 1/4 mile</td>
<td>10</td>
</tr>
<tr>
<td>within 1/2 mile</td>
<td>8</td>
</tr>
<tr>
<td>within 1 mile</td>
<td>5</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>DRASTIC Index</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>79 and below</td>
<td>3</td>
</tr>
<tr>
<td>80 to 99</td>
<td>6</td>
</tr>
<tr>
<td>100 to 119</td>
<td>9</td>
</tr>
<tr>
<td>120 to 139</td>
<td>12</td>
</tr>
</tbody>
</table>
(d) Aquifer Classification (select all that apply):

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

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

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

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

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

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

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

1. A site located within 1/2 mile of an uncontaminated surface water body used as a permitted public water system shall be awarded 10 points.

2. A site located within 1/2 mile of an Outstanding Florida Water body shall be awarded 2 points.

3. A site located within 1/4 mile of a surface water body shall be awarded 1 point.

4. A site located within 1/4 mile of an area of critical state concern as defined in chapter 380 shall be awarded 2 points.

(8) SCORING SYSTEM APPLICATION.--

(a) If the department determines that a site is eligible for the program, pursuant to this section, then the department shall develop a score for the site in accordance with provisions of 1subsection (5).
(b) A priority list of eligible sites shall be developed, by the department, based on an ordering of scored sites such that the highest-scored sites shall be of highest priority for rehabilitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Conducts contamination assessment and site rehabilitation consistent with state and federal laws and rules;
(b) Conducts such site rehabilitation in a timely manner according to a rehabilitation schedule approved by the department; and

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

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

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

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

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

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

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

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

(13) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.--

(a) Except as provided in subsection (3) and as otherwise provided by law, the department shall recover from any person causing or having caused the discharge of drycleaning solvents in relation to the operation of a drycleaning facility or wholesale supply facility, jointly and severally, all sums owed or expended from drycleaning facility restoration funds, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved to be too small or the likelihood of recovery too uncertain.
(b) Except as provided in subsection (3) and as otherwise provided by law, it is the duty of the department in administering the drycleaning facility restoration funds to diligently pursue the reimbursement to the Water Quality Assurance Trust Fund of any sum expended from the fund for rehabilitation in accordance with the provisions of this section, unless the department finds the amount involved to be too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall commence on the last date on which any such sums were expended, and not the date that the discharge occurred.

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

History.--s. 6, ch. 94-355; s. 3, ch. 95-239; s. 49, ch. 96-321; s. 107, ch. 96-410; s. 10, ch. 98-189.

1Note.--Redesignated as subsection (7) by s. 10, ch. 98-189.

2Note.--Section 376.3078(10) relates to insurance requirements; subsection (11) relates to voluntary cleanup.

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

(1) The Legislature finds that:

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

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

(2)(a) A credit in the amount of 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed pursuant to ss. 199.1055 and 220.1845:
1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to 1s. 376.3078(10), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

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

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

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

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

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

(a) Have entered into a voluntary cleanup agreement with the Department of Environmental Protection for a drycleaning-solvent-contaminated site or a Brownfield Site Rehabilitation Agreement, as applicable; and
(b) Have paid all deductibles pursuant to s. 376.3078(3)(d) for eligible drycleaning-solvent-cleanup program sites.

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

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

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

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

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

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

(7) The Department of Environmental Protection shall review the tax credit application and any supplemental documentation submitted by each applicant, for the purpose of verifying that the applicant has met the qualifying criteria in subsections (2) and (4) and
has submitted all required documentation listed in subsection (5). Upon verification that
the applicant has met these requirements, the department shall issue a written decision
granting eligibility for partial tax credits (a tax credit certificate) in the amount of 35
percent of the total costs claimed, subject to the $250,000 limitation, for the tax year in
which the tax credit application is submitted based on the report of the certified public
accountant and the certifications from the appropriate registered technical professionals.

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

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

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

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

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

History.--s. 4, ch. 98-189.

1Note.--Section 376.3078(10) relates to insurance requirements; subsection (11) relates
to voluntary cleanup.

376.3079  Third-party liability insurance.--
(1) It is the intent of the Legislature that, if necessary, the department assist owners of
drycleaning facilities and wholesale supply facilities in obtaining third-party liability
insurance coverage if such facilities or suppliers are regulated by and in compliance with
the department's rules relating to drycleaning facilities and wholesale supply facilities. In
order to assist drycleaning facilities and wholesale supply facilities in obtaining such
insurance coverage, the department may contract with an insurance company, a
reinsurance company, or other insurance consultant to issue third-party liability policies.
If such third-party insurance is not available, the department shall not provide such
insurance from state funds.

(2)(a) Any owner or operator of a drycleaning facility or wholesale supply facility may
be eligible for third-party liability insurance coverage if the facility is registered with the
department pursuant to s. 376.303(1)(d) and is otherwise in compliance with the
department's rules relating to drycleaning facilities or wholesale supply facilities.

(b) The following drycleaning facilities or wholesale supply facilities are not eligible for
state-assisted third-party liability insurance:

1. Sites owned or operated by the state or Federal Government.

2. Sites where the owner or operator has denied the department site access or where the
   facility has been determined not to be in compliance with the department's rules relating
to drycleaning facilities or wholesale supply facilities.

(c) Third-party liability insurance coverage may not be provided by the state-contracted
   insurance carrier to cover third-party claims relating to damages caused by contamination
   that was discovered prior to the effective date of the insured's policy.

(3) For purposes of this section and s. 376.3078, the term:

(a) "Third-party liability" means the insured's liability, other than for site rehabilitation
costs, for bodily injury or property damage caused by an incident of contamination
related to the operation of a drycleaning facility or wholesale supply facility.

(b) "Incident" means any sudden or gradual discharge of drycleaning solvents arising
from the operation of a drycleaning facility or wholesale supply facility that results in a
need for site rehabilitation or results in bodily injury or property damage neither expected
nor intended by the drycleaning facility owner or operator or wholesale supply facility.

(4)(a) The purchase of insurance services by the department is not subject to the
provisions of chapter 287.

(b) The Department of Insurance shall offer assistance as requested by the department to
implement the program.
(c) Any insurance company, reinsurance company, or other entity contracted with by the department shall be subject to the same rules of the Department of Insurance applicable to other insurers, reinsurers, and other entities.

(5) It is the express intent of the Legislature that the provisions of this section shall not provide the basis for any claim against the department or the Water Quality Assurance Trust Fund for bodily injury or property damages caused by an incident of contamination related to the operation of a drycleaning facility or wholesale supply facility.

History.--s. 7, ch. 94-355; s. 4, ch. 95-239; s. 50, ch. 96-321.

376.308 Liabilities and defenses of facilities.--

(1) In any suit instituted by the department under ss. 376.30-376.319, it is not necessary to plead or prove negligence in any form or matter. The department need only plead and prove that the prohibited discharge or other polluting condition has occurred. The following persons shall be liable to the department for any discharges or polluting condition:

(a) Any person who caused a discharge or other polluting condition or who owned or operated the facility, or the stationary tanks or the nonresidential location which constituted the facility, at the time the discharge occurred.

(b) In the case of a discharge of hazardous substances, all persons specified in s. 403.727(4).

(c) In the case of a discharge of petroleum, petroleum products, or drycleaning solvents, the owner of the facility, the drycleaning facility, or the wholesale supply facility, unless the owner can establish that he or she acquired title to property contaminated by the activities of a previous owner or operator or other third party, that he or she did not cause or contribute to the discharge, and that he or she did not know of the polluting condition at the time the owner acquired title. If the owner acquired title subsequent to July 1, 1992, or, in the case of a drycleaning facility or wholesale supply facility, subsequent to July 1, 1994, he or she must also 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. The court or hearing officer shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection. In an action relating to a discharge of petroleum, petroleum products, or drycleaning solvents under chapter 403, the defenses and definitions set forth herein shall apply.
(2) In addition to the defense described in paragraph (1)(c), the only other defenses of a person specified in subsection (1) are to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(a) An act of war;

(b) An act of government, either state, federal, or local, unless the person claiming the defense is a governmental body, in which case the defense is available only by acts of other governmental bodies;

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency; or

(d) An act or omission of a third party, other than an employee or agent of the defendant or other than one whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the defendant, except when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or by rail, and the defendant establishes by a preponderance of the evidence that:

1. The defendant exercised due care with respect to the pollutant concerned, taking into consideration the characteristics of such pollutant, in light of all relevant facts and circumstances.

2. The defendant took precautions against any foreseeable acts or omissions of any such third party and against the consequences that could foreseeably result from such acts or omissions.

(3) For purposes of this section, the following additional defenses shall apply to sites contaminated with petroleum or petroleum products:

(a) The defendant is a lender serving as a trustee, personal representative, or other type of fiduciary, provided the defendant did not otherwise cause or contribute to the discharge;

(b) The defendant is a lender which holds indicia of ownership in the site primarily to protect a security interest, and which has not divested the borrower of, or otherwise engaged in, decisionmaking control over site operations, particularly with respect to the storage, use, or disposal of petroleum or petroleum products, or which otherwise caused or contributed to the discharge; provided, that the financial institution may direct or compel the borrower to maintain compliance with environmental statutes and rules and may act to prevent or abate a discharge; or

(c) The defendant is a lender which held a security interest in the site and has foreclosed or otherwise acted to acquire title primarily to protect its security interest, and seeks to sell, transfer, or otherwise divest the assets for subsequent sale at the earliest possible
time, taking all relevant facts and circumstances into account, and has not undertaken
management activities beyond those necessary to protect its financial interest, to
effectuate compliance with environmental statutes and rules, or to prevent or abate a
discharge; however, if the facility is not eligible for cleanup pursuant to s. 376.305(7), s.
376.3071, or s. 376.3072, any funds expended by the department for cleanup of the
property shall constitute a lien on the property against any subsequent sale after the
amount of the former security interest (including the cost of collection, management, and
sale) is satisfied.

(4) Liability pursuant to this chapter shall be joint and several. However, if more than
one discharge occurred and the damage is divisible and may be attributed to a particular
defendant or defendants, each defendant is liable only for the costs associated with his or
her damages. The burden shall be on the defendant to demonstrate the divisibility of
damages.

(5) Effective July 1, 1996, and operating retroactively to March 29, 1995,
notwithstanding any other provision of law, judgment, consent order, order, or ordinance,
no person who owns or operates a facility or who otherwise could be responsible for
costs as a result of contamination eligible for restoration funding from the Inland
Protection Trust Fund shall be subject to administrative or judicial action, brought by or
on behalf of the state or any local government or any other person, to compel
rehabilitation in advance of commitment of restoration funding in accordance with a site's
priority ranking pursuant to s. 376.3071(5)(a) or to pay for the costs of rehabilitation of
environmental contamination resulting from a discharge of petroleum products that is
eligible for restoration funding from the Inland Protection Trust Fund. For purposes of
chapter 95, a cause of action to compel rehabilitation of environmental contamination at a
facility resulting from a discharge of petroleum products that is eligible for restoration
funding, or to compel payment of costs for environmental contamination resulting from a
discharge of petroleum products that is eligible for restoration funding, shall not accrue
until restoration funding can be committed to the facility or environmental contamination
in accordance with the priority ranking. In the event of a new release, the facility operator
shall be required to abate the source of the discharge. If free product is present, the
operator shall notify the department, which may direct the removal of free product where
prior approval of the scope of work and costs has been granted by the department.
Nothing herein shall preclude any person from bringing civil action for damages or
personal injury, not to include the cost of restoration or the compelling of restoration in
advance of the state's commitment of restoration funding in accordance with a site's
priority ranking pursuant to s. 376.3071(5)(a). The Legislature's intent in establishing the
limitations in this subsection is to recognize that on March 29, 1995, the Legislature
enacted chapter 95-2, Laws of Florida.

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

(1) Each owner of a facility is required to establish and maintain evidence of financial responsibility. Such evidence of financial responsibility shall be the only evidence required by the department that such owner has the ability to meet the liabilities which may be incurred under ss. 376.30-376.319.

(2) Any claim brought pursuant to ss. 376.30-376.319 may be brought directly against the bond, the insurer, or any other person providing a facility with evidence of financial responsibility.

(3) Each owner of a facility subject to the provisions of ss. 376.30-376.319 shall designate a person in the state as his or her legal agent for service of process under ss. 376.30-376.319, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under ss. 376.30-376.319.

History.--s. 84, ch. 83-310; s. 11, ch. 84-338; s. 18, ch. 86-159; s. 10, ch. 92-30; s. 4, ch. 94-311; s. 8, ch. 94-355; s. 1019, ch. 95-148; s. 5, ch. 95-239; s. 11, ch. 96-277; s. 11, ch. 98-189.

376.311 Penalties for a discharge.--

(1) The penalty provisions of this section do not apply to any discharge promptly reported and, where applicable, removed by an operator in accordance with the rules and orders of the department when the site has been determined eligible for participation in a program described in s. 376.3078 or s. 376.3079.

(2) Penalties assessed herein for a discharge shall be in accordance with the provisions administered by the department in chapter 403.

History.--s. 84, ch. 83-310; s. 19, ch. 86-159; s. 617, ch. 95-148.

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

(1) The remedies in ss. 376.30-376.319 shall be deemed to be cumulative and not exclusive.

(2) Nothing in ss. 376.30-376.319 requires the pursuit of any claim against the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund as a condition precedent to any other remedy.
(3) Notwithstanding any other provision of law, nothing contained in ss. 376.30-376.319 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.319. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

(4) In any civil action brought after July 1, 1986, against the owner or operator of a petroleum storage system for damages arising from a petroleum storage system discharge, the provisions of subsection (3) shall not apply if it can be proven that, at the time of the discharge:

(a) The alleged damages resulted solely from a discharge from a petroleum storage system which was installed, replaced, or retrofitted, and maintained, in a manner consistent with the construction, operation, repair, and maintenance standards established for such systems under chapter 62-761, Florida Administrative Code, as that chapter may hereafter be amended. The requirement of consistency with such standards may be satisfied only by being in compliance with the standards at the time of the discharge, regardless of the time specified for compliance under the schedule provided in said chapter.

(b) A leak detection system or systems or a monitoring well or wells were installed and operating in a manner consistent with technical requirements of chapter 62-761, Florida Administrative Code, as that chapter may hereafter be amended; and

(c) All inventory, recordkeeping, and reporting requirements of chapter 62-761, Florida Administrative Code, as that chapter may hereafter be amended, have been and are being complied with.

Any person bringing such an action must prove negligence to recover damages under this subsection. For the purposes of this subsection, noncompliance with this act, or any of the rules promulgated pursuant hereto, as the same may hereafter be amended, shall be prima facie evidence of negligence.

(5)(a) In any civil action against the owner or operator of a drycleaning facility or a wholesale supply facility, or the owner of the real property on which such facility is located, if such facility is not eligible under s. 376.3078(3), for damages arising from the discharge of drycleaning solvents from a drycleaning facility or wholesale supply facility, the provisions of subsection (3) shall not apply if it can be proven that, at the time of the discharge the alleged damages resulted solely from a discharge from a drycleaning facility or wholesale supply facility that was in compliance with department rules regulating drycleaning facilities or wholesale supply facilities.
(b) Any person bringing such an action must prove negligence in order to recover damages under this subsection. For the purposes of this subsection, noncompliance with s. 376.303 or s. 376.3078, or any of the rules promulgated pursuant thereto, or any applicable state or federal law or regulation, as the same may hereafter be amended, shall be prima facie evidence of negligence.

(6) The court, in issuing any final judgment in any such action, may award costs of litigation (including reasonable attorney's and expert witness fees) to any party, whenever the court determines such an award is in the public interest.

History.--s. 84, ch. 83-310; s. 12, ch. 84-338; ss. 20, 21, ch. 86-159; s. 12, ch. 92-30; s. 10, ch. 94-355; s. 6, ch. 95-239; ss. 17, 18, ch. 98-75; s. 12, ch. 98-189.

376.315 Construction of ss. 376.30-376.319.--Sections 376.30-376.319, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.30-376.319 and the Federal Water Pollution Control Act, as amended.

History.--s. 84, ch. 83-310; s. 22, ch. 86-159.

376.317 Superseded laws; state preemption.--

(1) If any provision of ss. 376.30-376.319 or of the rules developed pursuant to such sections, which provision pertains to a facility maintained for the purpose of the underground storage of petroleum products for use as fuel in vehicles, including, but not limited to, those vehicles used on and off roads, aircraft, watercraft, and rail, is in conflict with any other provision, limitation, or restriction which is now in effect under any law of this state or any ordinance of a local government, political subdivision, or municipality, or any rule or regulation adopted thereunder, the provision of ss. 376.30-376.319 shall control, except as provided in subsection (3).

(2) Except as provided in subsection (3), the state preempts the regulation of the prevention and removal of pollutant discharges from a facility described in subsection (1) which has no single tank having a capacity exceeding 40,000 gallons at any time.

(3) A county government is authorized to adopt countywide ordinances that regulate underground storage tanks, as described herein, which ordinances are the same as or more stringent or extensive than any state law or rule regulating such tanks, provided:

(a) The original ordinance was legally adopted and in force before September 1, 1984; or

(b) The ordinance establishing a more stringent or extensive local program is approved by the department pursuant to subsection (5) after the county demonstrates to the department that it has effectively administered the state law or rules for a period of 2 years prior to filing a petition for approval. However, any county which has sought
approval of a local tank program from the department prior to January 1, 1988, shall not be required to demonstrate that it has effectively administered the state program for any minimum period.

(4) The department shall either approve or disapprove a request to contract for a compliance verification program authorized pursuant to s. 376.3073 within 90 days after receipt of the complete application. If approved, the department shall provide full funding to the local government to carry out the contracted compliance and enforcement responsibilities pursuant to s. 376.3073. The department may not disapprove an application due to the population size of a county and may delegate compliance verification and enforcement to those local governments who agree to enforce the state's program jointly.

(5) The department is authorized to adopt rules that permit any county government to establish, in accordance with s. 403.182, a program regulating underground storage tanks, which program is more stringent or extensive than that established by any state law or rule regulating underground storage tanks. The department shall approve or deny a request by a county for approval of an ordinance establishing such a program according to the procedures and time limits of s. 120.60. When adopting the rules, the department shall consider local conditions that warrant such more stringent or extensive regulation of underground storage tanks, including, but not limited to, the proximity of the county to a sole or single-source aquifer, the potential threat to the public water supply because of the proximity of underground storage tanks to public wells or groundwater, or the detection of petroleum products in public or private water supplies.

(6) A county government may adopt an ordinance regulating underground storage tanks that is the same as any state law or rule regulating such tanks upon approval by the department of a completed application.

History.--s. 13, ch. 84-338; s. 23, ch. 86-159; s. 5, ch. 87-374; s. 18, ch. 88-156; s. 6, ch. 88-331; s. 7, ch. 89-188; s. 13, ch. 92-30.

376.319 Response action contractors; indemnification.--

(1) The department may agree to hold harmless and indemnify a response action contractor who has a written contract with the department or who has a written contract with a local government which has contracted with the department to administer a program pursuant to chapter 86-159, Laws of Florida, for any civil damages to third parties:

(a) That result from the acts or omissions of the response action contractor in carrying out a response action; and

(b) That are caused by a discharge or release of a hazardous substance, pollutant, or other contaminant from a site upon which the response action is being carried out.
(2) The department, in determining whether or not to enter into hold-harmless and indemnification agreements, shall consider:

(a) The availability of cost-effective insurance;

(b) The immediate need for the response action;

(c) The availability of qualified response action contractors; and

(d) Restricting the applicability of such agreements to exclude gross negligence or intentional conduct.

(3) Any payment or cost, including the cost of defending such actions, which is incurred as a result of an agreement by the department to hold harmless or indemnify shall be payable from the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund, whichever is appropriate, based upon the nature of the discharge or release.

(4) No state employee or employee of a political subdivision who provides services relating to a response action while acting within the scope of his or her authority as a governmental employee shall be personally liable for any actions undertaken by the department, the political subdivision, or a response action contractor pursuant to this act. However, nothing in this section shall affect the liability of any other person.

(5) This section is repealed effective October 1, 1997, and shall be reviewed by the Legislature during the 1997 regular legislative session.

History.--s. 24, ch. 86-159; s. 7, ch. 88-331; s. 618, ch. 95-148.

376.3195 Prohibitions on employment of or contractual arrangements with certain department employees.--No employee of the department holding a position in the Senior Management Service as defined in s. 110.402 or holding a position in the Select Exempt Service as defined in s. 110.602 shall have or hold any employment or contractual relationship, including consulting contracts, with any entity other than an agency which bids, negotiates, or contracts for any task or activity related to petroleum storage tanks regulation for 2 years following vacation of the employee's position. In addition, no employee of the Bureau of Waste Cleanup shall personally represent another person or entity for compensation before the department, regarding petroleum storage tanks regulation or petroleum contamination site rehabilitation, for a period of 2 years following vacation of the employee's position; however, this prohibition does not apply to persons employed by the bureau in maintenance, clerical, secretarial, or similar positions. The provisions of this section shall not be construed to conflict with part III of chapter 112.

History.--s. 13, ch. 96-277.
376.320 Applicability.--The provisions of ss. 376.320-376.326 apply only to specified mineral acids when stored in aboveground tanks. The purpose of ss. 376.320-376.326 is to prevent the release of specified mineral acids from aboveground tanks and to register the aboveground tanks in which specified mineral acids are stored.

History.--s. 1, ch. 90-98; s. 16, ch. 92-30.

376.321 Definitions.--As used in ss. 376.320-376.326, the term:

(1) "Aboveground" means that more than 90 percent of a tank volume is not buried below the ground surface. An aboveground tank may either be in contact with the ground or elevated above it.

(2) "Containment and integrity plan" or "CIP" means a document designed, created, and maintained at a facility, which shall be considered a public record and made available pursuant to the provisions of chapter 119, and which sets forth the procedures for the inspection and maintenance program for aboveground tanks at that facility which store specified mineral acids. That program shall be designed for the chemical and physical characteristics of the specific mineral acid stored and for the specific materials of construction of the aboveground tank. The CIP shall be designed to ensure control of the specific mineral acid stored in an aboveground tank for the expected lifetime, as determined by standard engineering practices, of the materials of construction of the specific aboveground tank in which that mineral acid is stored.

(3) "Department" means the Department of Environmental Protection.

(4) "Facility" means any nonresidential location or part thereof containing an aboveground tank or aboveground tanks which contain specified mineral acids, which have an individual storage capacity greater than 110 gallons.

(5) "Flow-through process tank" means a flow-through process tank as defined in s. 376.301.

(6) "Liner" means an artificially constructed material of sufficient thickness, density, and composition that will contain the discharge of any specified mineral acid from an aboveground tank until such time as the mineral acid can be neutralized and/or removed. The liner shall prevent any escape of specified mineral acids or accumulated liquid to the soil or to the surface water or groundwater except through secondary containment.

(7) "Mineral acids" means hydrobromic acid (HBr), hydrochloric acid (HCl), hydrofluoric acid (HF), phosphoric acid (H3PO4), and sulfuric acid (H2SO4), including those five acids in solution, if at least 20 percent by weight of the solution is one of the five listed acids.

(8) "Nonresidential" means that the tank is not used at a private dwelling.
(9) "Operator" means any person operating a facility whether by lease, contract, or other form of agreement.

(10) "Owner" means any person owning an aboveground tank subject to ss. 376.320-376.326.

(11) "Permitted wastewater treatment system" means a facility to which the department has issued a permit to treat wastewater and release the treated product into the environment.

(12) "Secondary containment" means a system that is used for release prevention, and may include one or more of the following devices:

(a) A double-walled tank;

(b) An external liner; or

(c) A system or structure constructed such that accidental releases from an aboveground tank would be collected by a drainage system within the system or structure and routed to a permitted wastewater treatment system, plant recirculating process system, or approved alternate containment system.

(13) "Stationary" means a tank or tanks not meant for multiple site use or a tank or tanks which remain in one location at the facility site for a period of 180 days or longer.

(14) "Tank" means a stationary device which is constructed primarily of nonearthen materials (e.g., concrete, metal, plastic, glass) that provides structural support and is designed primarily to contain mineral acids. Connected piping from the tank to and including the nearest cutoff valve shall be considered part of the tank for purposes of this definition. "Tank" does not include flow-through process tanks.

History.--s. 2, ch. 90-98; s. 17, ch. 92-30; s. 304, ch. 94-356.

376.322 Powers and duties of the department.--The department shall have the power and duty to:

(1) Contract with local governments as needed to perform any of its duties under ss. 376.320-376.326.

(2) Establish a program to register tanks subject to the provisions of ss. 376.320-376.326.

(3) Adopt rules to implement ss. 376.320-376.326.

(4) Enforce the provisions of ss. 376.320-376.326 pursuant to the provisions of ss. 403.121 and 403.161.
(5) Require that facilities covered by ss. 376.320-376.326 be subject to thorough and complete inspections at reasonable times. The provisions of s. 403.091 shall apply to such inspections.

History.--s. 3, ch. 90-98; s. 18, ch. 92-30.

376.323 Registration.--All tanks shall be registered no later than July 1, 1992. Registrations shall be renewed annually. Registration fees shall not exceed $2,500 per facility. The department shall issue to the tank owner or operator one registration placard per facility, covering all tanks at that facility which have been properly registered, as evidence of the completion of the registration requirement. The department shall develop by rule a fee schedule sufficient to cover the costs associated with registration, inspection, surveillance, and other activities associated with ss. 376.320-376.326. Revenues from such fees collected shall be deposited into the Water Quality Assurance Trust Fund, and shall be used to implement the provisions of ss. 376.320-376.326.

History.--s. 4, ch. 90-98; s. 19, ch. 92-30.

376.324 Containment and integrity plan.--

(1) The owner or operator of each mineral acid storage tank shall prepare and have in place a containment and integrity plan (CIP) for the facility. The plan shall detail the facility's inspection and maintenance program for each mineral acid tank at the facility. The CIP shall include procedures and requirements designed to minimize the risk of spills, releases, and discharges from tanks. The CIP shall be reviewed and updated every 2 years.

(2) A professional engineer registered in the state shall certify that the tanks covered by the CIP for that facility have been inspected and maintained in accordance with the CIP and that the integrity and containment of the tanks has not been compromised.

(3) The CIP shall be maintained and made available for audit by the department at the facility at any reasonable time and shall be made available to the public upon request.

(4) Each facility shall implement the inspection and maintenance program set forth in the CIP no later than December 1, 1992.

History.--s. 5, ch. 90-98; s. 20, ch. 92-30.

376.325 Alternative to containment and integrity plan requirements.--

(1) As an alternative to the requirements of s. 376.324, an owner or operator may choose to provide the department with certification by a professional engineer that no aboveground tank at the facility is in direct contact with the ground, and under and around each tank has been placed and sealed to its supports a secondary containment system which is either:
(a) Designed and built to contain in excess of 110 percent of the capacity of the largest tank within the containment; or

(b) Equipped with a drainage system routed to a permitted wastewater treatment system that is designed and built to contain accidental releases.

(2) All new and replacement tanks installed after July 1, 1992, shall have secondary containment.

History.--s. 6, ch. 90-98; s. 21, ch. 92-30.

376.326 Application of s. 376.317.--Nothing in ss. 376.320-376.326 shall be construed to exclude aboveground storage tanks from the application of s. 376.317.

History.--s. 7, ch. 90-98; s. 22, ch. 92-30.

376.40 Petroleum exploration and production; purposes; funding.--

(1) FINDINGS.--The Legislature declares that the financial resources of the state in the form of a bond trust fund, the limits of which are in excess of limits available to most operators, should be available to provide the Department of Environmental Protection the surety for any cleanup and remedial action for operations which are not conducted in a safe and environmentally compatible manner.

(2) INTENT AND PURPOSE.--It is the intent of the Legislature that the Minerals Trust Fund serve as a repository for funds which will enable the Department of Environmental Protection to respond without delay to incidents which affect safety or threaten to cause environmental damage or contamination as a result of incidents involving petroleum exploration and production activities and which are not otherwise handled in a timely manner by the operator or permittee. The useful life of facilities used to produce oil and natural gas in the state can be from 15 to 40 years and it is the Legislature's intent that safe and environmentally compatible operations be conducted for the economic life of any well, field, or production facility. It is the further intent of the Legislature that this trust fund make available immediately to the department funds sufficient to correct violations such as an operator's failure to adequately plug, abandon, or restore production sites or other test sites and facilities after operations cease, if the permittee or operator cannot or will not correct the violations within a reasonable time. Furthermore, it is the Legislature's intent that if an amount in excess of the funds on deposit in the trust fund is needed for remedial action, money from the Florida Coastal Protection Trust Fund be made available in the form of a temporary transfer of funds. The temporary transfer shall be repaid as soon as possible after the department obtains penalties, judgments, recoveries, or reimbursements.

(3) USES.--
(a) When the department has reason to believe that incidents of contamination related to the conduct of operations, including, but not limited to, drilling of exploratory or production wells, operation and maintenance of producing wells, pressure maintenance wells, or disposal wells, and related gathering lines, may pose a threat to the environment or the public health, safety, or welfare, or if the permittee, owner, or operator of such facility does not take immediate remedial or other approved corrective action, the department shall obligate moneys available from fees collected and deposited pursuant to subsection (4) in the trust fund to provide for:

1. Prompt investigation and assessment of surface or underground contamination or other permit violations;

2. Prompt remedial action to repair, replace, or restore to a safe condition test sites, wells, and facilities at the affected site or location;

3. Rehabilitation of contamination at sites, which rehabilitation shall include cleanup of contaminated soils, groundwater, and surface waters to minimize environmental damage;

4. Maintenance and monitoring of sites or facilities that have been repaired, replaced, or restored;

5. Inspection and supervision of activities described in this section;

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

7. Payment of any other reasonable costs of administration.

(b) The department may also use moneys from the trust fund to conduct routine inspections of exploratory or production wells, pressure maintenance wells, disposal wells, and related gathering lines.

(4) FUNDING.--There shall be deposited in the Minerals Trust Fund:

(a) All fees charged permittees under ss. 377.24(1), 377.2408(1), and 377.2425(1)(b).

(b) All penalties, judgments, recoveries, reimbursements, and other fees and charges related to the implementation of this section.

(c) Any other funds required to be deposited in the trust fund under provisions of law.

If moneys on deposit in the trust fund are not sufficient to satisfy the needed remedial or corrective action, and if the responsible party does not take remedial and corrective action in a timely manner or if a catastrophic event occurs, a temporary transfer of the required amount, or a maximum of $10 million, from the Florida Coastal Protection Trust Fund
pursuant to s. 376.11(4)(i) is authorized. The Florida Coastal Protection Trust Fund shall be reimbursed immediately upon deposit into the Minerals Trust Fund of moneys referred to in paragraph (b).

(5) RECOVERY.--The department shall recover to the use of the trust fund from the permittee for any facilities for petroleum exploration or production, petroleum gathering, or other exploration or production activities all sums expended from the trust fund pursuant to this section. Requests for reimbursement to the trust fund for such costs, if not paid within 120 days after demand, shall be turned over to the Department of Legal Affairs for collection.

(6) INVESTMENTS; INTEREST.--Moneys in the trust fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section shall be deposited with the Treasurer to the credit of the trust fund and may be invested as provided by law.

History.--s. 4, ch. 89-358; s. 5, ch. 94-193; s. 305, ch. 94-356; s. 51, ch. 96-321.

376.60 Asbestos removal program inspection and notification fee.--The Department of Environmental Protection shall charge an inspection and notification fee, not to exceed $300 for a small business as defined in s. 288.703(1), or $1,000 for any other project, for any asbestos removal project. The department may establish a fee schedule by rule. Schools, colleges, universities, residential dwellings, and those persons otherwise exempted from licensure under s. 469.002(4) are exempt from the fees. Any fee collected must be deposited in the asbestos program account in the Air Pollution Control Trust Fund to be used by the department to administer its asbestos removal program.

(1) In those counties with approved local air pollution control programs, the department shall return 80 percent of the asbestos removal program inspection and notification fees collected in that county to the local government quarterly, if the county requests it.

(2) The fees returned to a county under subsection (1) must be used only for asbestos-related program activities.

(3) A county may not levy any additional fees for asbestos removal activity while it receives fees under subsection (1).

(4) If a county has requested reimbursement under subsection (1), the department shall reimburse the approved local air pollution control program with 80 percent of the fees collected in the county retroactive to July 1, 1994, for asbestos-related program activities.

(5) If an approved local air pollution control program that is providing asbestos notification and inspection services according to 40 C.F.R. part 61, subpart M, and is collecting fees sufficient to support the requirements of 40 C.F.R. part 61, subpart M, opts not to receive the state-generated asbestos notification fees, the state may discontinue collection of the state asbestos notification fees in that county.
376.70  Tax on gross receipts of drycleaning facilities.--

(1) There is levied a gross receipts tax on each drycleaning facility and dry drop-off facility, as defined in s. 376.301, for the privilege of engaging in the business of laundering and drycleaning clothing and other fabrics in this state. The tax shall be at a rate of 2 percent of all charges imposed by the drycleaning facility or the dry drop-off facility for the drycleaning or laundering of clothing or other fabrics. Gross receipts from coin-operated laundry machines and from laundry done on a wash, dry, and fold basis shall not be subject to tax.

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

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

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

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

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

(b) The Department of Revenue is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The Department of Revenue is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

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

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

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

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

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

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

History.--s. 11, ch. 94-355; s. 7, ch. 95-239; s. 52, ch. 96-321; s. 108, ch. 96-410; s. 13, ch. 98-189.
376.71 Registration fee and gross receipts tax.--The registration fee and the gross receipts tax imposed under ss. 376.303(1)(d) and 376.70 do not apply to uniform rental companies or linen supply companies. Any such fee or tax that was imposed on and remitted, collected, or held in escrow by a uniform rental company or linen supply company from October 1, 1994, and before October 1, 1995, is not payable to the State of Florida, and, if remitted, shall be refunded by the Department of Revenue.

History.--s. 8, ch. 95-239.

376.75 Tax on production or importation of perchloroethylene.--

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

(2) Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene must register with the Department of Revenue and become licensed for the purposes of remitting the tax pursuant to, or providing information required by, this section. Such person must register as a seller of perchloroethylene, a user of perchloroethylene in drycleaning facilities, or a user of perchloroethylene for purposes other than drycleaning. Persons operating at more than one location are only required to have a single registration. The fee for registration is $30. Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The tax imposed by this section is due on the 1st day of the month succeeding the month of the sale and must be paid on or before the 20th day of each month. Tax shall be reported on forms and in the manner prescribed by the Department of Revenue by rule.

(4) Any person subject to taxation under this section or any person who sells tax-paid perchloroethylene, other than a retail dealer, must separately state the amount of such tax paid on any charge ticket, sales slip, invoice, or other tangible evidence of the sale or must certify on the sales document that the tax required pursuant to this section has been paid.

(5) All perchloroethylene imported, produced, or sold in this state is presumed to be subject to the tax imposed by this section. Any person who has purchased perchloroethylene for use in such person's drycleaning facility in this state must document that the tax imposed by this section has been paid or must pay such tax directly to the Department of Revenue in accordance with subsection (3).

(6) For purposes of this section, to demonstrate that perchloroethylene is not sold or transferred to a drycleaning facility for eventual use in a drycleaning facility in this state, a person may rely on a certificate signed under penalty of perjury by a transferee of the
perchloroethylene stating that the transferee does not own or operate a drycleaning facility or the transferee will not use the perchloroethylene in a drycleaning facility in this state. Any producer, importer, seller, or other transferor of perchloroethylene who is required to register in accordance with subsection (2) but who does not make any taxable sales or taxable transfers during a year shall file with the Department of Revenue a form containing the quantity of perchloroethylene sold or transferred, a statement indicating that all sales were exempt from tax, and such other information as the Department of Revenue may prescribe.

(7) The Department of Revenue may authorize a quarterly return and payment when the tax remitted by the licensee for the preceding quarter did not exceed $100; may authorize a semiannual return and payment when the tax remitted by the licensee for the preceding 6 months did not exceed $200; and may authorize an annual return and payment when the tax remitted by the licensee for the preceding 12 months did not exceed $400.

(8) The tax imposed by this section shall be reported to the Department of Revenue. The payment shall be accompanied by such forms as the Department of Revenue prescribes. The proceeds of the tax, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the tax, shall be transferred by the Department of Revenue into the Water Quality Assurance Trust Fund and shall be used as provided in s. 376.3078. For the purposes of this section, the proceeds of the tax include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent taxes.

(9)(a) The Department of Revenue shall administer, collect, and enforce the tax authorized under this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of chapter 212 regarding the authority to audit and make assessments, the keeping of books and records, and interest and penalties on delinquent taxes shall apply. The tax shall not be included in the computation of estimated taxes pursuant to s. 212.11, nor shall the dealer's credit for collecting taxes or fees in s. 212.12 apply to the tax. The provisions of s. 212.07(4) shall not apply to the tax imposed by this section.

(b) The Department of Revenue, under the applicable rules of the Public Employees Relations Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The Department of Revenue is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

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

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

(11) If perchloroethylene on which tax has been paid is exported from this state or acquired for purposes other than use in a drycleaning facility in this state or for sale, resale, or other transfer for such use, the person who paid the tax to the Department of Revenue may apply for a refund or take a credit of such tax paid. The person applying for the refund or credit must refund such tax to the person who incurred the burden of the tax before the claim to the state for refund or credit will be approved.

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

History.--s. 12, ch. 94-355; s. 9, ch. 95-239; s. 53, ch. 96-321; s. 109, ch. 96-410; s. 34, ch. 97-99; s. 14, ch. 98-189.

376.77 Short title.--Sections 376.77-376.85 may be cited as the "Brownfields Redevelopment Act."

History.--s. 1, ch. 97-277; s. 1, ch. 98-75.

376.78 Legislative intent.--The Legislature finds and declares the following:

(1) The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open space areas. The reuse of industrial land is an important component of sound land use policy for productive urban purposes which will help prevent the premature development of farmland, open space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure.

(2) The abandonment or underuse of brownfield sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.
(3) Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments.

(4) Environmental and public health hazards cannot be eliminated without clear, predictable remediation standards that provide for the protection of the environment and public health.

(5) Site rehabilitation should be based on the actual risk that contamination may pose to the environment and public health, taking into account current and future land and water use and the degree to which contamination may spread and place the public or the environment at risk.

(6) According to the statistical proximity study contained in the final report of the Environmental Equity and Justice Commission, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites. The results indicate the need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state. Redevelopment of hazardous sites should address questions relating to environmental and health consequences.

(7) Environmental justice considerations should be inherent in meaningful public participation elements of a brownfields redevelopment program.

(8) The existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human disease and illness, crime, educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity, educational achievement, access to health care, housing quality and availability, provision of governmental services, and other socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization.

(9) Cooperation among federal, state, and local agencies, local community development organizations, and current owners and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

History.--s. 2, ch. 97-277.

376.79 Definitions.--As used in ss. 376.77-376.85, the term:

(1) "Additive effects" means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed.
(2) "Antagonistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.

(3) "Brownfield sites" means sites that are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Brownfield area" means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.

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

(6) "Department" means the Department of Environmental Protection.

(7) "Engineering controls" means modifications to a site to reduce or eliminate the potential for exposure to contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.

(8) "Environmental justice" means the fair treatment of all people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

(9) "Institutional controls" means the restriction on use of or access to a site to eliminate or minimize exposure to contaminants. Such restrictions may include, but are not limited to, deed restrictions, use restrictions, or restrictive zoning.

(10) "Local pollution control program" means a local pollution control program that has received delegated authority from the Department of Environmental Protection under ss. 376.80(11) and 403.182.

(11) "Natural attenuation" means the verifiable reduction of contaminants through natural processes, which may include diffusion, dispersion, adsorption, and biodegradation.

(12) "Person responsible for brownfield site rehabilitation" means the individual or entity that is designated by the local government to enter into the brownfield site rehabilitation agreement with the department or an approved local pollution control program and enters into an agreement with the local government for redevelopment of the site.
(13) "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(14) "Secretary" means the secretary of the Department of Environmental Protection.

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

(16) "Source removal" means the removal of free product or contaminants from soil that has been contaminated to the extent that leaching to groundwater has or is occurring.

(17) "Synergistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed.

History.--s. 3, ch. 97-277; s. 2, ch. 98-75.

376.80 Brownfield program administration process.--

(1) A local government with jurisdiction over the brownfield area must notify the department of its decision to designate a brownfield area for rehabilitation for the purposes of ss. 376.77-376.85. The notification must include a resolution, by the local government body, to which is attached a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 166.041, except that the notice for the public hearings on the proposed resolution must be in the form established in s. 166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 125.66, except that the notice for the public hearings on the proposed resolution shall be in the form established in s. 125.66(4)(b)2.

(2)(a) If a local government proposes to designate a brownfield area that is outside community redevelopment areas, enterprise zones, empowerment zones, closed military bases, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body.
before the actual public hearing. In determining the areas to be designated, the local government must consider:

1. Whether the brownfield area warrants economic development and has a reasonable potential for such activities;

2. Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;

3. Whether the area has potential to interest the private sector in participating in rehabilitation; and

4. Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

(b) A local government shall designate a brownfield area under the provisions of this act provided that:

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;

2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 10 new permanent jobs, whether full-time or part-time, which are not associated with the implementation of the rehabilitation agreement or an agreement, between the person responsible for site rehabilitation and the local government with jurisdiction, which contains terms for the redevelopment of the brownfield site or brownfield area;

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;

4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area; and

5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

(c) The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a
brownfield site rehabilitation agreement with the department or approved local pollution control program.

(3) When there is a person responsible for brownfield site rehabilitation, the local government must notify the department of the identity of that person. If the agency or person who will be responsible for the coordination changes during the approval process specified in subsections (4), (5), and (6), the department or the affected approved local pollution control program must notify the affected local government when the change occurs.

(4) Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. Such advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. The advisory committee must review and provide recommendations to the board of the local government with jurisdiction on the proposed site rehabilitation agreement provided in subsection (5).

(5) The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the department or an approved local pollution control program. The brownfield site rehabilitation agreement must include:

(a) A brownfield site rehabilitation schedule, including milestones for completion of site rehabilitation tasks and submittal of technical reports and rehabilitation plans as agreed upon by the parties to the agreement;

(b) A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with the requirements of chapter 471 or chapter 492, respectively. Submittals provided by the person responsible for brownfield site rehabilitation must be signed and sealed by a professional engineer registered under chapter 471, or a professional geologist registered under chapter 492, certifying that the submittal and associated work comply with the law and rules of the department and those governing the profession. In addition, upon completion of the approved remedial action, the department shall require a professional engineer registered under chapter 471 or a professional geologist registered under chapter 492 to certify that the corrective action was, to the best of his or her knowledge, completed in substantial conformance with the plans and specifications approved by the department;

(c) A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under department rules;
(d) A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria in s. 376.81, including any applicable requirements for risk-based corrective action;

(e) Timeframes for the department's review of technical reports and plans submitted in accordance with the agreement. The department shall make every effort to adhere to established agency goals for reasonable timeframes for review of such documents;

(f) A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation;

(g) Other provisions that the person responsible for brownfield site rehabilitation and the department agree upon, that are consistent with ss. 376.77-376.85, and that will improve or enhance the brownfield site rehabilitation process;

(h) A commitment to consider appropriate pollution prevention measures and to implement those that the person responsible for brownfield site rehabilitation determines are reasonable and cost-effective, taking into account the ultimate use or uses of the brownfield site. Such measures may include improved inventory or production controls and procedures for preventing loss, spills, and leaks of hazardous waste and materials, and include goals for the reduction of releases of toxic materials; and

(i) Certification that an agreement exists between the person responsible for brownfield site rehabilitation and the local government with jurisdiction over the brownfield area. Such agreement shall contain terms for the redevelopment of the brownfield area.

(6) Any contractor performing site rehabilitation program tasks must demonstrate to the department that the contractor:

(a) Meets all certification and license requirements imposed by law; and

(b) Has obtained approval for the comprehensive quality-assurance plan prepared under department rules.

(7) The contractor must certify to the department that the contractor:

(a) Complies with applicable OSHA regulations.

(b) Maintains workers' compensation insurance for all employees as required by the Florida Workers' Compensation Law.

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

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

(e) Has the capacity to perform or directly supervise the majority of the work at a site in accordance with s. 489.113(9).

(8) Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least $1 million.

(9) During the cleanup process, if the department or local program fails to complete review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task. However, the person responsible for brownfield site rehabilitation does so at its own risk and may be required by the department or local program to complete additional work on a previous task. Exceptions to this subsection include requests for "no further action," "monitoring only proposals," and feasibility studies, which must be approved prior to implementation.

(10) If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82 are revoked.

(11) The department is specifically authorized and encouraged to enter into delegation agreements with local pollution control programs approved under s. 403.182 to administer the brownfield program within their jurisdictions, thereby maximizing the integration of this process with the other local development processes needed to facilitate redevelopment of a brownfield area. When determining whether a delegation pursuant to this subsection of all or part of the brownfields program to a local pollution control program is appropriate, the department shall consider the following. The local pollution control program must:

(a) Have and maintain the administrative organization, staff, and financial and other resources to effectively and efficiently implement and enforce the statutory requirements of the delegated brownfields program; and
(b) Provide for the enforcement of the requirements of the delegated brownfields program, and for notice and a right to challenge governmental action, by appropriate administrative and judicial process, which shall be specified in the delegation.

The local pollution control program shall not be delegated authority to take action on or to make decisions regarding any brownfield site on land owned by the local government. Any delegation agreement entered into pursuant to this subsection shall contain such terms and conditions necessary to ensure the effective and efficient administration and enforcement of the statutory requirements of the brownfields program as established by the act and the relevant rules and other criteria of the department.

(12) Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas, to help eliminate the public health and environmental hazards, and to promote the creation of jobs and economic development in these previously run-down, blighted, and underutilized areas.

History.--s. 4, ch. 97-277; s. 3, ch. 98-75.

376.81 Brownfield site and brownfield areas contamination cleanup criteria.--

(1) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 1998, the secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner as provided in this subsection. The rule shall also include protocols for the use of natural attenuation and the issuance of "no further action" letters. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

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

(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this section, to temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to
facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the brownfield site rehabilitation agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for brownfield site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

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

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

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

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

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

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

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

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

(i) Establish appropriate cleanup target levels for soils.

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

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

3. The department may set alternative cleanup target levels based upon an applicant's demonstration, using site-specific modeling and risk assessment studies, that human health, public safety, and the environment are protected.

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

History.--s. 5, ch. 97-277; s. 4, ch. 98-75.

376.82 Eligibility criteria and liability protection.--

(1) ELIGIBILITY.--Any person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield rehabilitation program established in ss. 376.77-376.85, subject to the following:

(a) Potential brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. ss. 9601, et seq., as amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as amended; or under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act, as amended (42 U.S.C.A. s. 6928(h)); or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility; a postclosure permit; or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984, are not eligible for participation unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to 1paragraph (2)(e). A brownfield site within an eligible brownfield area that
subsequently becomes subject to formal judicial or administrative enforcement action or corrective action under such federal authority shall have its eligibility revoked unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g).

(b) Persons who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority established in this chapter or chapter 403, including those persons subject to a pending consent order with the state, are eligible for participation in a brownfield corrective action if:

1. The proposed brownfield site is currently idle or underutilized as a result of the contamination, and participation in the brownfield program will immediately, after cleanup or sooner, result in increased economic productivity at the site, including at a minimum the creation of 10 new permanent jobs, whether full-time or part-time, which are not associated with implementation of the brownfield site corrective action plan; and

2. The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action, as evidenced by a determination issued by the department or an approved local pollution control program.

(c) Potential brownfield sites owned by the state or a local government which contain contamination for which a governmental entity is potentially responsible and which are already designated as federal brownfield pilot projects or have filed an application for designation to the United States Environmental Protection Agency are eligible for participation in a brownfield corrective action.

(d) After July 1, 1997, petroleum and drycleaning contamination sites shall not receive both restoration funding assistance available for the discharge under this chapter and any state assistance available under s. 288.107. Nothing in this act shall affect the cleanup criteria, priority ranking, and other rights and obligations inherent in petroleum contamination and drycleaning contamination site rehabilitation under ss. 376.30-376.319, or the availability of economic incentives otherwise provided for by law.

(2) LIABILITY PROTECTION.--

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the contaminated site or sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.

(b) This section shall not be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person; however, such an
action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the department or approved local pollution control program.

(c) This section shall not affect the ability or authority to seek contribution from any person who may have liability with respect to the contaminated site and who did not receive cleanup liability protection under this act.

(d) The liability protection provided under this section shall become effective upon execution of a brownfield site rehabilitation agreement and shall remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the site rehabilitation agreement. Any statute of limitations that would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. 376.80(10).

(e) Completion of the performance of the remediation obligations at the brownfield site shall be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program, which letter shall include the following statement: "Based upon the information provided by (property owner) concerning property located at (address), it is the opinion of (the Florida Department of Environmental Protection or approved local pollution control program) that (party) has successfully and satisfactorily implemented the approved brownfield site rehabilitation agreement schedule and, accordingly, no further action is required to assure that any land use identified in the brownfield site rehabilitation agreement is consistent with existing and proposed uses."

(f) Compliance with the agreement referenced in s. 376.80(5)(i) must be evidenced by a finding by the local government with jurisdiction over the brownfield area that the terms of the agreement have been met.

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

(h) No unit of state or local government may be held liable for implementing corrective actions at a contaminated site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by
virtue of its function as a sovereign, or as a result of ownership from donation, gift, or foreclosure unless the state or local government has otherwise caused or contributed to a release of a contaminant at the brownfield site.

(i) The Legislature finds and declares that certain brownfield sites may be redeveloped for open space, or limited recreational, cultural, or historical preservation purposes, and that such facilities enhance the redeveloped environment, attract visitors, and provide wholesome activities for employees and residents of the area. Further, the Legislature finds that purchasers of contaminated sites who are nonprofit conservation organizations acting for the public interest and who did not cause or contribute to the release of contamination on the site warrant protection from liability.

(j) Notwithstanding any provision of this chapter, chapter 403, other laws, or ordinances of local governments, a nonprofit, charitable, federal tax-exempt, s. 501(c)(3) national land conservation corporation which purchases title to property in the state for the purpose of conveying such land to any governmental entity for conservation, historical preservation or cultural resource, park, greenway, or other similar uses shall not be liable to the state, local government, or any third party for penalties or remediation costs in connection with environmental contamination found in the soil or groundwater of such property, provided that such corporation did not cause the original deposit or release of the environmental contaminants, and provided the department and local pollution control program and responsible parties have access to the land for investigation, remediation, or monitoring purposes.

(3) REOPENERS.--Upon completion of site rehabilitation in compliance with ss. 376.77-376.85, no additional site rehabilitation shall be required unless it is demonstrated:

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

(b) That new information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with s. 376.81, or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment in violation of the terms of ss. 376.77-376.85;

(c) That the remediation efforts failed to achieve the site rehabilitation criteria established under s. 376.81;

(d) That the level of risk is increased beyond the acceptable risk established under s. 376.81 due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the brownfield site thus causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures to
assure that human health, public safety, and the environment are protected to levels consistent with s. 376.81; or

(e) That a new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program established under s. 376.80.

(4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

(a) The Legislature declares that, in order to achieve the economic redevelopment and site rehabilitation of brownfield sites in accordance with this act, it is imperative to encourage financing of real property transactions involving brownfield site rehabilitation plans. Accordingly, lenders, including those serving as a trustee, personal representative, or in any other fiduciary capacity, in connection with a loan, are entitled to the liability protection established in subsection (2) if they have not caused or contributed to a release of a contaminant at the brownfield site.

(b) Lenders who hold indicia of ownership of a parcel within a brownfield area primarily to protect a security interest or who own a parcel within a brownfield area as a result of foreclosure or a deed in lieu of foreclosure of a security interest and who seek to sell, transfer, or otherwise divest the parcel via sale at the earliest practicable time are not liable for the release or discharge of a contaminant from the parcel; for the failure of the person responsible for brownfield site rehabilitation to comply with the brownfield site rehabilitation agreement; or for future site rehabilitation activities required pursuant to a opener provision established in subsection (3) where the lender has not divested the borrower of, or otherwise engaged in, decisionmaking control of the site rehabilitation or site operations or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the site as soon as practicable and when an act or omission of the lender has not otherwise caused or contributed to a release of a contaminant at the brownfield site.

(c) The economic incentives that were granted to a person responsible for site rehabilitation by state or local governments shall not accrue to a lender who obtains ownership of the brownfield site by one of the methods described in this subsection. The economic incentives are abated during the lender's ownership, but they may be transferred and reinstated upon the sale of the brownfield site.

History.--s. 6, ch. 97-277; s. 5, ch. 98-75.

1Note.--Provisions relating to agreements with the Environmental Protection Agency are in paragraph (2)(g).

376.83 Violation; penalties.--

(1) It is a violation of ss. 376.77-376.85, and it is prohibited for any person, to knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained, or to falsify, tamper
with, or knowingly render inaccurate any monitoring device or method required to be maintained under ss. 376.77-376.85, or by any permit, rule, or order issued under this chapter or chapter 403.

(2) Any person who willfully commits a violation specified in subsection (1) is guilty of a misdemeanor of the first degree, punishable by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

History.--s. 7, ch. 97-277; s. 6, ch. 98-75.

1376.84 Brownfield redevelopment economic incentives.--It is the intent of the Legislature that brownfield redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of these sites. Different standards than those in place for new development, as allowed under current state and local laws, should be used to the fullest extent to encourage the redevelopment of a brownfield. State and local governments are encouraged to offer redevelopment incentives for this purpose, as an ongoing public investment in infrastructure and services, to help eliminate the public health and environmental hazards, and to promote the creation of jobs in these areas. Such incentives may include financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of the brownfield pursuant to this act.

(1) Financial incentives and local incentives for redevelopment may include, but not be limited to:

(a) Tax increment financing through community redevelopment agencies pursuant to part III of chapter 163.

(b) Enterprise zone tax exemptions for businesses pursuant to chapters 196 and 290.

(c) Safe neighborhood improvement districts as provided in ss. 163.501-163.523.

(d) Waiver, reduction, or limitation by line of business with respect to occupational license taxes pursuant to chapter 205.

(e) Tax exemption for historic properties as provided in s. 196.1997.

(f) Residential electricity exemption of up to the first 500 kilowatts of use may be exempted from the municipal public service tax pursuant to s. 166.231.

(g) Minority business enterprise programs as provided in s. 287.0943.

(h) Electric and gas tax exemption as provided in s. 166.231(6).

(i) Economic development tax abatement as provided in s. 196.1995.
(j) Grants, including community development block grants.

(k) Pledging of revenues to secure bonds.

(l) Low-interest revolving loans and zero-interest loan pools.

(m) Local grant programs for facade, storefront, signage, and other business improvements.

(n) Governmental coordination of loan programs with lenders, such as microloans, business reserve fund loans, letter of credit enhancements, gap financing, land lease and sublease loans, and private equity.

(o) Payment schedules over time for payment of fees, within criteria, and marginal cost pricing.

(2) Regulatory incentives may include, but not be limited to:

(a) Cities' absorption of developers' concurrency needs.

(b) Developers' performance of certain analyses.

(c) Exemptions and lessening of state and local review requirements.

(d) Water and sewer regulatory incentives.

(e) Waiver of transportation impact fees and permit fees.

(f) Zoning incentives to reduce review requirements for redevelopment changes in use and occupancy; establishment of code criteria for specific uses; and institution of credits for previous use within the area.

(g) Flexibility in parking standards and buffer zone standards.

(h) Environmental management through specific code criteria and conditions allowed by current law.

(i) Maintenance standards and activities by ordinance and otherwise, and increased security and crime prevention measures available through special assessments.

(j) Traffic-calming measures.

(k) Historic preservation ordinances, loan programs, and review and permitting procedures.
(1) One-stop permitting and streamlined development and permitting process.

(3) Technical assistance incentives may include, but not be limited to:

(a) Expedited development applications.

(b) Formal and informal information on business incentives and financial programs.

(c) Site design assistance.

(d) Marketing and promotion of projects or areas.

History.--s. 8, ch. 97-277.

1Note.--

A. Section 9, ch. 97-277, provides that:

"(1) The Legislature recognizes that the United States Environmental Protection Agency has created several pilot projects for redevelopment of brownfield areas to gather information on the best ways to return old industrial and commercial sites to productive use in situations where redevelopment is complicated by potential environmental contamination. These pilot project areas will perform initial work to seek developers to restore the sites, and will also incorporate the efforts of lenders, regulators, and other groups. The Environmental Protection Agency initiative is flexible, allowing local governments to use a variety of approaches to rehabilitate abandoned or underutilized sites, neighborhoods, and small regional areas.

"(2) The Legislature has determined that it would be beneficial to provide similar incentives in this state for the rehabilitation and redevelopment of brownfields. Accordingly, the department shall, contingent upon funds being available in the General Appropriations Act for fiscal year 1997-1998, award grants to each United States Environmental Protection national or regional brownfield pilot project."

B. Section 12, ch. 97-277, provides that "[f]rom funds available in the 1997-1998 General Appropriations Act for Brownfields Redevelopment grants shall be made as follows:

"(a) For United States Environmental Protection Agency brownfield pilot projects designated as of May 1, 1997, grants shall be issued in the amount of $500,000 per pilot.

"(b) For United States Environmental Protection Agency brownfield pilot projects designated by the effective date of this act grants shall be issued in the amount of $200,000 per pilot. Should funds be insufficient to meet this provision than a pro-rata distribution shall be made among eligible pilot projects."
"(c) Remaining funds shall be split on a pro-rata basis to those pilot projects that applied but did not receive the United States Environmental Protection Agency designation. Such grants shall not exceed $200,000.

"(d) Should the United States Environmental Protection Agency fail to designate pilot projects by the effective date of this act then remaining funds shall be distributed on a pro-rata share to those pilot projects that applied.

"(e) Should funds remain after satisfying the provisions of (a), (b), (c), and (d) then distribution shall be done on a pro-rata basis to sites that applied or have been designated on or before May 1, 1997.

"(f) Grant funds awarded pursuant to this section shall be used by local governments to set up and implement a program which promotes brownfield redevelopment."

376.85 Annual report.--The Department of Environmental Protection shall prepare an annual report to the Legislature, beginning in December 1998, which shall include, but not be limited to the number, size, and locations of brownfield sites: that have been remediated under the provisions of this act; that are currently under rehabilitation pursuant to a negotiated site rehabilitation agreement with the department or a delegated local program; where alternative cleanup target levels have been established pursuant to s. 376.81(1)(g)3.; and, where engineering and institutional control strategies are being employed as conditions of a "no further action order" to maintain the protections provided in s. 376.81(1)(g)1. and 2.

History.--s. 13, ch. 97-277.

376.86 Brownfield Areas Loan Guarantee Program.--

(1) The Brownfield Areas Loan Guarantee Council is created to review and approve or deny by a majority vote of its membership, the situations and circumstances for participation in partnerships by agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfields Redevelopment Act for a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued pursuant to law. The limited state loan guaranty applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. A limited state guaranty of private loans or a loan loss reserve is authorized for lenders licensed to operate in the state upon a determination by the council that such an arrangement would be in the public interest and the likelihood of the success of the loan is great.

(2) The council shall consist of the secretary of the Department of Environmental Protection or the secretary's designee, the secretary of the Department of Community Affairs or the secretary's designee, the Executive Director of the State Board of Administration or the executive director's designee, the Executive Director of the Florida Housing Finance Agency or the executive director's designee, and the Director of the
Governor's Office of Tourism, Trade, and Economic Development or the director's designee. The chairperson of the council shall be the Director of the Governor's Office of Tourism, Trade, and Economic Development. Staff services for activities of the council shall be provided as needed by the member agencies.

(3) The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund. The investment must be limited as follows:

(a) Not more than $5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. Of that amount, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses which meet the requirements of subsection (4).

(b) The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

(4) A lender seeking a limited state guaranty for a loan from the Brownfield Areas Loan Guarantee Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield area and determined its feasibility in accordance with its standard procedures. The procedures include, but are not limited to:

(a) Obtaining a satisfactory credit report from a source deemed reliable by the lender;

(b) Reviewing a report of environmental conditions at the project and determining that actions are underway to comply with specific recommendations;

(c) Investigating the background and experience of the entity to receive the loan and manage the project and determining that the managing entity appears to possess the experience, competence, and capacity to manage the project;

(d) Determining that conditions exist to establish a financially sound redevelopment project that exposes the state loan guarantee program to a reasonable or acceptable level of risk; and

(e) Determining that the local government with jurisdiction over the area where the brownfield redevelopment project is located has committed in-kind resources, local financial incentives, or local financial resources to the total project cost.

(5) A lender covered by a limited state guaranty for a loan is not entitled to file a claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are
exhausted. If the lender has received collateral security in connection with the loan, the lender must first exhaust all available remedies against the collateral security.

(6) The council may, by rule, establish requirements for the issuance of loan guarantees, including contractual provisions to foster reimbursement, in the event of default, to the guarantee fund.

(7) The council may receive public and private funds, federal grants, and private donations in carrying out its responsibilities.

(8) The council shall provide an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. This section shall be reviewed by the Legislature by October 1, 2003, and a determination made related to the need to continue or modify this section. New loan guarantees may not be approved in 2003 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans under this section.

History.--s. 10, ch. 98-75.

376.87 Brownfield Property Ownership Clearance Assistance.--

(1) The Legislature recognizes that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. Oftentimes lienholders on brownfield property are reluctant to foreclose on the property out of concern for liability questions and may be willing to settle for a reduced value on their lien to clear up any of their rights to the property and to clear the way for organized efforts by a private and public partnership to revitalize and redevelop brownfield areas.

(2) The Legislature recognizes that a revolving loan fund could assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. Such a revolving loan fund could be repaid in later years from the resale of brownfield properties following site rehabilitation and other activities that will enhance the properties' ultimate value.

History.--s. 15, ch. 98-75.

376.875 Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.--

(1) There is created the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund to be administered by the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor for the purposes of funding for low-interest loans for the purchase of outstanding, unresolved contractor liens, tax
certificates, or other liens or claims on brownfield sites designated as part of a brownfield area by a local government under s. 376.80. The loans may be used for a negotiated settlement of legally recognized liens or claims at a value less than their face value taking into account the overall feasibility of redevelopment of the brownfield area.

(2) The trust fund must be used for the deposit of all moneys appropriated by the Legislature to fund this revolving loan program. All moneys in the fund that are not needed on an immediate basis for loans must be invested under s. 215.49. The principal and interest of all loans repaid and investment earnings must be deposited into the fund.

(3) The Office of Tourism, Trade, and Economic Development may make loans to local governments, community redevelopment agencies created under s. 163.356 or s. 163.357, or persons or nonprofit corporations responsible for brownfield site rehabilitation designated under s. 376.80, for the purposes described in subsection (1).

(4) The terms of loans made under this section may not exceed 5 years. The interest rate on loans may be no greater than that paid on the last bonds sold under s. 14, Art. VII of the State Constitution. A loan to any brownfield area may be no more than 25 percent of the total funds available for making loans during that fiscal year.

(5) The Office of Tourism, Trade, and Economic Development may adopt rules necessary to specify the application process and timing, determination of the overall economic feasibility of individual loan applications, and other aspects of carrying out the purposes of this section.

History.--s. 1, ch. 98-118.