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1
2 An act relating to pollution; creating s. 403.076,
3 F.S.; providing a short title; creating s. 403.077,
4 F.S.; defining the term "reportable pollution
5 release"; requiring an owner or operator of an
6 installation at which a reportable pollution release
7 occurred to provide certain information to the
8 department within 24 hours after the discovery of the
9 release; authorizing multiple parties to submit one
10 notification under certain circumstances; authorizing
11 the owner or operator to amend notices; requiring the
12 owner or operator to make additional notice upon
13 discovery of the release migrating outside of
14 installation boundaries; requiring the department to
15 publish such information in a specified manner;
16 requiring the department to establish an electronic
17 mailing list; requiring the department to provide a
18 reporting form and e-mail address for such notice;
19 specifying that providing a notice does not constitute
20 an admission of liability or harm; specifying
21 penalties for violations; requiring the department to
22 adopt rules; creating s. 403.078, F.S.; specifying
23 that the act does not alter certain emergency
24 responsibilities pursuant to ch. 252, F.S.; amending
25 s. 403.161, F.S.; specifying penalties; amending s.
26 14.2016, F.S.; creating the State Watch Office within
27 the Division of Emergency Management; specifying the
28 purpose of the office; amending s. 376.3071, F.S.;
29 providing an exception to prompt payment requirements

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30 to subcontractors and suppliers; amending s.
31 376.30713, F.S.; revising legislative findings;
32 specifying that applicants for advanced cleanup of
33 certain individual sites are not subject to
34 application period limitations and need not pay a
35 certain cost-sharing commitment; requiring
36 applications by such applicants to be accepted on a
37 first-come, first-served basis; providing that such
38 applications are not subject to certain ranking
39 provisions; specifying application requirements;
40 providing construction; increasing the amount per year
41 that the Department of Environmental Protection may
42 use for advanced cleanup work; specifying expenditure
43 limitations; revising duties of property owners and
44 responsible parties with respect to voluntary cost-
45 share agreements; amending s. 376.3078, F.S.;
46 providing a statement of public interest; authorizing
47 site assessments in advance of site priority ranking
48 under certain circumstances; specifying criteria for
49 sites to be eligible for such assessments; specifying
50 what must be demonstrated through such assessments;
51 specifying criteria for the assignment of assessment
52 tasks; specifying funding limitations; specifying the
53 prioritization of requests; requiring the department
54 to evaluate the potential for using a specified trust
55 fund for a specified purpose; requiring the department
56 to issue a request for information regarding the
57 potential for damage to underground petroleum systems
58 and to compile a report; requiring the report to be

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59 submitted to the Legislature and the Governor;
60 providing an appropriation; providing an expiration
61 date; providing an effective date.
62

63 Be It Enacted by the Legislature of the State of Florida:
64

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

67 403.076 Short title.—Sections 403.076-403.078 may be cited
68 as the "Public Notice of Pollution Act."

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

71 403.077 Public notification of pollution.—

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

80 (2) OWNER AND OPERATOR RESPONSIBILITIES.—

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

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88 release.

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

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

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

109 (3) DEPARTMENT RESPONSIBILITIES.-

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

113 (b) The department shall create an electronic mailing list
114 for such notices and allow the public, including local
115 governments, health departments, news media, and other
116 interested persons, to subscribe to and receive periodic direct

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117 announcement of any notices submitted pursuant to subsection
118 (2). The department shall establish regional electronic mailing
119 lists, such as by county or district boundaries, to allow
120 subscribers to determine the notices they wish to receive by
121 geographic area.

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

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

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

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

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

137 403.078 Effect on other law.—The Public Notice of Pollution
138 Act does not alter or affect the emergency management
139 responsibilities of the Governor, the Division of Emergency
140 Management, or the governing body of any political subdivision
141 of the state pursuant to chapter 252.

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

144 403.161 Prohibitions, violation, penalty, intent.—

145 (1) It shall be a violation of this chapter, and it shall

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146 be prohibited for any person:

147 (e) To fail to provide required notice pursuant to s.
148 403.077.

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

151 14.2016 Division of Emergency Management.—

152 (1) The Division of Emergency Management is established
153 within the Executive Office of the Governor. The division shall
154 be a separate budget entity, as provided in the General
155 Appropriations Act and shall prepare and submit a budget request
156 in accordance with chapter 216. The division shall be
157 responsible for all professional, technical, and administrative
158 support functions necessary to carry out its responsibilities
159 under part I of chapter 252. The director of the division shall
160 be appointed by and serve at the pleasure of the Governor and
161 shall be the head of the division for all purposes. The division
162 shall administer programs to rapidly apply all available aid to
163 communities stricken by an emergency as defined in s. 252.34
164 and, for this purpose, shall provide liaison with federal
165 agencies and other public and private agencies.

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

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

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

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175 Section 6. Paragraph (h) of subsection (6) of section
176 376.3071, Florida Statutes, is amended to read:

177 376.3071 Inland Protection Trust Fund; creation; purposes;
178 funding.—

179 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

180 (h) The contractor, or the person to whom ~~which~~ the
181 contractor has assigned its right to payment pursuant to
182 paragraph (e), shall make prompt payment to subcontractors and
183 suppliers for their costs associated with an approved contract
184 pursuant to s. 287.0585, except that the contractor, or the
185 person to whom the contractor has assigned its right to payment
186 pursuant to paragraph (e), may remit payments to subcontractors
187 and suppliers within 30 working days after the contractor's
188 receipt of payment by the department before the penalties
189 required by s. 287.0585(1) are applicable.

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

193 376.30713 Advanced cleanup.—

194 (1) In addition to the legislative findings provided in s.
195 376.3071, the Legislature finds and declares:

196 (a) That the inability to conduct site rehabilitation in
197 advance of a site's priority ranking pursuant to s.
198 376.3071(5) (a) may substantially impede or prohibit property
199 redevelopment, property transactions, or the proper completion
200 of public works projects.

201 (c) It is in the public interest and of substantial
202 economic benefit to the state to provide an opportunity for site
203 rehabilitation to be conducted on a limited basis at

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204 contaminated sites, in advance of the site's priority ranking,
205 to encourage redevelopment and facilitate property transactions
206 or public works projects.

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

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

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

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

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

231 (II) For an aggregate application relying on a demonstrated
232 cost savings to the department, the applicant shall, in

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233 conjunction with the proposed agency term contractor, establish
234 and provide in the application the percentage of cost savings in
235 the aggregate that is being provided to the department for
236 cleanup of the sites under the application compared to the cost
237 of cleanup of those same sites using the current rates provided
238 to the department by the proposed agency term contractor.

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

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

246 (II) For an individual application relying on a
247 demonstrated cost savings to the department, the applicant
248 shall, in conjunction with the proposed agency term contractor,
249 establish and provide in the application a 25-percent cost
250 savings to the department for cleanup of the site under the
251 application compared to the cost of cleanup of the same site
252 using the current rates provided to the department by the
253 proposed agency term contractor.

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

257 3. A limited contamination assessment report.

258 4. A proposed course of action.

259 5. A department site access agreement, or similar
260 agreements approved by the department that do not violate state
261 law, entered into with the property owner or owners, as

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262 applicable, and evidence of authorization from such owner or
263 owners for petroleum site rehabilitation program tasks
264 consistent with the proposed course of action where the
265 applicant is not the property owner for any of the sites
266 contained in the application.

267

268 The limited contamination assessment report must be sufficient
269 to support the proposed course of action and to estimate the
270 cost of the proposed course of action. Costs incurred related to
271 conducting the limited contamination assessment report are not
272 refundable from the Inland Protection Trust Fund. Site
273 eligibility under this subsection or any other provision of this
274 section is not an entitlement to advanced cleanup or continued
275 restoration funding. The applicant shall certify to the
276 department that the applicant has the prerequisite authority to
277 enter into an advanced cleanup contract with the department. The
278 certification must be submitted with the application.

279 (b) The department shall rank the applications based on the
280 percentage of cost-sharing commitment proposed by the applicant,
281 with the highest ranking given to the applicant who proposes the
282 highest percentage of cost sharing. If the department receives
283 applications that propose identical cost-sharing commitments and
284 that exceed the funds available to commit to all such proposals
285 during the advanced cleanup application period, the department
286 shall proceed to rerank those applicants. Those applicants
287 submitting identical cost-sharing proposals that exceed funding
288 availability must be so notified by the department and offered
289 the opportunity to raise their individual cost-share
290 commitments, in a period specified in the notice. At the close

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291 of the period, the department shall proceed to rerank the
292 applications pursuant to this paragraph.

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

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

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

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

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

318 5. A certification to the department stating that the
319 applicant has the prerequisite authority to enter into an

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320 advanced cleanup contract with the department. The advanced
321 cleanup contract must include redevelopment and site
322 rehabilitation milestones.

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

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

332
333 Site eligibility under this section is not an entitlement to
334 advanced cleanup funding or continued restoration funding.

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

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

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

348 (c) A property owner or responsible party may enter into a

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349 voluntary cost-share agreement in which the property owner or
350 responsible party commits to bundle multiple sites and lists the
351 facilities that will be included in those future bundles. The
352 facilities listed are not subject to agency term contractor
353 assignment pursuant to department rule. The department must
354 reserve ~~reserves~~ the right to terminate or amend the voluntary
355 cost-share agreement for any identified site under the voluntary
356 cost-share agreement if the property owner or responsible party
357 fails to submit an application to bundle any site, not already
358 covered by an advance cleanup contract, under such voluntary
359 cost-share agreement within three ~~a~~ subsequent open application
360 periods or 18 months, whichever period is shorter, period during
361 which it is eligible to participate. The property owner or
362 responsible party must agree to conduct limited site assessments
363 on the identified sites within 12 months after the execution of
364 the voluntary cost-share agreement. For the purposes of this
365 section, the term "facility" includes, but is not limited to,
366 multiple site facilities such as airports, port facilities, and
367 terminal facilities even though such enterprises may be treated
368 as separate facilities for other purposes under this chapter.

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

371 376.3078 Drycleaning facility restoration; funds; uses;
372 liability; recovery of expenditures.-

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

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378 subsection (8).

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

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

390 2. The property owner agrees:

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

395 b. To implement and maintain, upon completion of the
396 cleanup, the required institutional controls, or a combination
397 of institutional and engineering controls, when the site meets
398 the site rehabilitation criteria for closure with controls in
399 accordance with department rules adopted pursuant to subsection
400 (4);

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

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

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

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

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

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

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

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

433
434 If the site does not meet one of the findings specified in
435 subparagraphs 1.-3., the department shall notify the property

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436 owner in writing of this decision, and the site shall be
437 returned to its priority ranking order in accordance with its
438 score.

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

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

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

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

457 Section 9. (1) The Department of Environmental Protection
458 shall evaluate the potential for using the Inland Protection
459 Trust Fund to respond to the damage or potential damage to
460 underground storage tank systems caused by ethanol or biodiesel.
461 The department shall issue a request for information regarding
462 the potential for damage to underground petroleum systems by
463 ethanol or biodiesel and the potential costs of implementing and
464 maintaining a program to address such damage. The department

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465 shall compile this information into a report, which shall be
466 submitted to the President of the Senate, the Speaker of the
467 House of Representatives, and the Governor by December 15, 2017.

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

471 (3) This section expires December 30, 2017.

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