

## Sections 376.011 – 376.21, Florida Statutes

### POLLUTANT DISCHARGE PREVENTION AND REMOVAL

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; ss. 376.011-376.21.—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 unloading, 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.

(6) The department is specifically authorized to utilize risk-based cleanup criteria as described in ss. [376.3071](#), [376.3078](#), and [376.81](#) in conducting cleanups on lands owned by the state university system.

History.—s. 5, ch. 70-244; s. 2, ch. 71-137; s. 5, ch. 74-336; s. 62, ch. 79-65; s. 81, ch. 83-310; s. 11, ch. 90-54; s. 5, ch. 92-113; s. 290, ch. 94-356; s. 6, ch. 2000-317.

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](#).

History.—s. 7, ch. 70-244; s. 7, ch. 74-336; s. 1, ch. 77-174; s. 14, ch. 90-54; s. 7, ch. 92-113; s. 63, ch. 95-143; s. 3, ch. 96-263; s. 87, ch. 98-200.

376.0705 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, career 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.

History.—s. 29, ch. 90-54; s. 8, ch. 92-113; s. 291, ch. 94-356; s. 30, ch. 2004-357.

376.071 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.

#### 376.11 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 and the Fish and Wildlife Conservation Commission 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 Chief Financial Officer 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 and the Fish and Wildlife Conservation Commission related to the enforcement of ss. [376.011](#)-376.21.

(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 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.

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; s. 51, ch. 99-245; s. 18, ch. 2000-157; s. 5, ch. 2000-211; s. 389, ch. 2003-261; s. 6, ch. 2006-309.

376.12 Liabilities and defenses of responsible parties; liabilities of third parties; financial security requirements for vessels; liability of cargo owners; notification requirements.—

(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.

<sup>11</sup>(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.

History.—s. 12, ch. 70-244; s. 326, ch. 71-136; s. 12, ch. 74-336; ss. 4, 5, ch. 80-382; s. 18, ch. 90-54; s. 1, ch. 91-135; s. 293, ch. 94-356; s. 1013, ch. 95-148; s. 8, ch. 96-263; s. 104, ch. 96-410.

<sup>[1]</sup>Note.—As amended and substantially reworded by s. 8, ch. 96-263. Former paragraph (5)(b), relating to administrative procedures, was amended by s. 104, ch. 96-410, and reads:

(b) If either the claimant or the person determined by the secretary to be responsible for the discharge disagrees with the amount of the damage award, such person may request a hearing pursuant to ss. [120.569](#) and [120.57](#).

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 pre-discharge 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. As an alternative to the compensation schedule described in subsections (4), (5), (6), and (9), the department, when no responsible party is identified, when a responsible party opts out of the formula pursuant to paragraph (10)(a), or when the department conducts a cooperative damage assessment with federal agencies, may use methods of calculating natural resources damages in accordance with federal rules implementing the Oil Pollution Act of 1990, as amended.

(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 Fish and Wildlife Conservation Commission is \$10,000. Compensation for the death of any animal designated by rule as threatened by the Fish and Wildlife Conservation 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 Fish and Wildlife Conservation 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 cases in which the department is authorized to use a method of natural resources damage assessment other than the compensation schedules described in subsections (4), (5), (6), and (9), the department may use the methods described in federal rules implementing the Oil Pollution Act of 1990, as amended.

(a) When a responsible party is identified and the department is not conducting a cooperative damage assessment with federal agencies, 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 30 days after identification of the discharge by the department. 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 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 the lesser of the volume of the discharge or 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.

(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; s. 196, ch. 99-245; s. 3, ch. 2005-166.

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.

(c) 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 other 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 Chief Financial Officer, 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; s. 390, ch. 2003-261.

### 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, leave, or abandon any derelict vessel as defined in s. [823.11](#)(1) in this state.

(2)(a) The Fish and Wildlife Conservation Commission and its officers and all law enforcement officers as specified in s. [327.70](#) are authorized and empowered to remove any derelict vessel as defined in s. [823.11](#)(1) from public waters. All costs incurred by the commission or other law enforcement agency in the removal of any abandoned or derelict vessel shall be recoverable against the owner of the vessel. The Department of Legal Affairs shall represent the commission in such actions.

(b) The commission may establish a program to provide grants to 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](#)(11), funds available for grants may only be authorized by appropriations acts of the Legislature.

(c) The commission 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 for such removal but is not intended to be in contravention of any applicable federal act.

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; s. 257, ch. 99-245; s. 23, ch. 2001-56; s. 7, ch. 2006-309.

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.

376.19 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.