



April 18, 2016

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Florida Department of Environmental Protection
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Division of Waste Management
2600 Blair Stone Road MS 4535
Tallahassee, Florida 32399-2400

Via: E-Mail

Re: Florida Brownfields Association comments on FDEP 04-04-16
Draft Revisions to Chapter 62-780, FAC

Dear Brian:

On behalf of the Florida Brownfields Association, we are submitting the following recommendations and attached proposed draft revisions to Chapter 62-780, FAC. Comments are divided into three overall groupings involving toxicology / risk evaluation, general technical comments, and site rehabilitation at sites including old landfills (as more particularly described below). A copy of the Department's Workshop draft revised to reflect the FBA recommended revisions is attached. The bulk of the FBA's proposed revisions are highlighted in aqua (relating to Sections I and II, below). Suggested revisions relating to site rehabilitation relating to old landfills are highlighted in gray.

I. Toxicology and Risk Evaluation Comments

1. 62-780.650(1)(a)(4)(b) Risk Assessment. Consideration of non-site-specific exposure factors "applicable to Florida exposure scenario" is too limiting. The FBA recommends removing "applicable to a Florida exposure scenario" and replacing with the phrase "relevant or applicable to the actual conditions of exposure".

2. 62-780.650(1)(b)(2) Risk Assessment. The use of multiple tiers of specific information sources for developing toxicity values for quantifying human health risks and for developing alternative CTLs is overly complicated and potentially too limiting. The FBA recommends removal of the multiple "tiers" and instead listing the following three sources, in order of preference:

- (I) USEPA Integrated Risk Information System (IRIS) database,
- (II) Provisional Peer Reviewed Toxicity Values (PPRTV) derived by EPA's Superfund Technical Support Center for the USEPA Superfund program.
- (III) Values proposed by a PRSR and accepted by FDEP that meet statutory requirements.

The addition of subsection (III) as proposed allows the PRSR the flexibility to use a toxicity value not in IRIS or PPRTV with Department approval. The science should dictate the use/implementation of toxicity factors. The 'gold standard' for toxicity

factor is the USEPA IRIS database. The values derived by EPA under the IRIS program receive a high level of review for suitability as toxicity inputs for risk-based use. Alternative sources may not reflect the current scientific understanding. The proposed language allows the use of alternative values when USEPA approved values are unavailable but provides the Department an opportunity to review the proposed values for scientific validity. If the multiple tiers are removed as requested, then subsections (12) – (20) of 62-780.100 Referenced Guidelines and Information Sources, also should also be removed.

3. 62-780.650(3)(b) Risk Assessment. The FBA has concerns that the addition of language on sensitive populations such as “children and pregnant women” or “any identified sub-populations” is problematic and open to misuse or overly complicated interpretation. Toxicity factors developed under the USEPA IRIS program have an inherent consideration for sensitive subpopulations¹. No additional segregation of sensitive populations is warranted to account for differences in individual sensitivity to exposures. However, the FBA expects the Department to continue using the risk paradigm where the exposure to non-carcinogenic compounds is focused on the child receptor (consistent with USEPA guidance and the existing FDEP methodology).

Language was included in the most recent draft that specifies that the 90th percentile of the ‘variability distribution’ be considered. The inclusion of the term ‘variability’ is problematic as the model, as proposed, includes both variability and uncertainty (uncertainty surrounds practically every exposure input). In a strict reading of this language, a PRSR would not even be able to conduct a proper PRA (variability alone). This language also complicates the inclusion of uncertainty factors such as relative bioavailability within a PRA, but provides no insight on how such factor might otherwise be included.

The FBA recommends keeping the language substantially as it was (prior to proposed rule revisions) with the following limited revisions from the Workshop as follows:

“(b) The selection of the alternative CTL shall be the value that is protective for the pathways and routes by which human and environmental receptors may be exposed representing the 90th percentile of the final exposure or risk distribution produced by the model (~~equivalent to~~ the 10th percentile of the CTL distribution if demonstrated to be equivalent).”

II. General Technical Comments

1. Implementation SB 100. As discussed during the Workshop, revisions in the Workshop draft relating to implementation of SB 100 as it related to applicability of alternative groundwater CTLs were broader than the enabling legislation. We concur with the Department’s comments during the Workshop that those sections of the rule would be revised to conform to the scope of applicability set forth in SB 100.

2. 62-780.200(XX) Acronym and Definitions (Conceptual Site Model): The FBA recommends inserting the word “mitigation” between “support remedial alternatives(s),” and “cleanup technology evaluations”. The CSM also should be used to develop and evaluate mitigation and engineering control strategies, which do not constitute “remediation.”

3. 62-780.220(7) Notice requirements for “Closure Using Institutional, Engineering Controls

¹ For example, USEPA defines the Reference Dose (RfD) is an estimate (with uncertainty spanning perhaps an order of magnitude) of daily exposure [RfD] to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious noncancer effects during a lifetime.

or Alternative CTLs. The FBA recommends removing the specific use of “mail”, “mailing”, and “mailed” and replace with the broader term “written notice” in this section. From the Workshop we understand that the Department does not intend to require “actual notice” as that term is defined, based on the express language of 376.30701(20(c) and (d). If proof of delivery is not required, then the language should accommodate the reality that there are other alternatives to “mail”, such as commercial courier services or hand delivery that would effectual such notice.

4. 62-780.525(5)(c) Interim Source Removal. The FBA recommends insertion of the phrase “or related short-term extraction technology” language on Interim Soil Vapor Extraction technology being a viable remedial option as an Interim Source Removal activity prior to approval of a Remedial Action Plan should be broadened to account for multi-phase extraction and similar activities where localized impacted groundwater is also removed for a short duration.

5. 62-780.560(1), (2) Petroleum or Petroleum Product De Minimis Discharges. FBA members have reported circumstances where there have been varying interpretations of the applicability of the de minimis provisions in the case of releases to impervious surfaces. The FBA recommends adding the phrase “or that migrates onto a pervious surface from an impervious surface” in sections (1) and (2) as noted in the attached draft.

6. 62-780.680(1)(b)(1)(d)(III) No Further Action and No Further Action with Controls. The FBA recommends modification of subsection (III) to allow alternative exposure unit sizes where the CSM reflects an alternative exposure unit that is protective of human health and the environment.

7. 62-780.680(3) Risk Management Options Level III. The second sentence of the first paragraph of the Section appears to have inadvertently omitted a reference to the ability to rely on engineering controls (as well as institutional controls) in developing ACTLs. The FBA recommends insertion of references to “engineering controls” in the second sentence as noted in our revised draft (attached).

III. Site Rehabilitation Related to Old Landfills

A number of our members have expressed concern that Chapter 62-780, F.A.C. as currently drafted does not facilitate the assessment and cleanup (and ultimately redevelopment) of old landfills. Virtually every local government is affected by the problems posed by old solid waste disposal sites, which often have related groundwater contamination issues, generate no tax revenue and are not conducive to redevelopment. As discussed during the Workshop, the FBA believes that the Legislative authority to address landfill cleanup and redevelopment through the existing brownfield program exists (See Section 220.1845, F.S.), subject to the Legislature’s express prohibition on Voluntary Cleanup Tax Credits (VCTC) eligibility for removal of solid waste in certain enumerated circumstances.

In light of the foregoing, the FBA recommends the following “surgical” revisions to 62-780, F.A.C., which we believe will facilitate old landfill assessment and cleanup under the brownfield program, without requiring revisions to 62-701, F.A.C. Given the level of effort needed to reopen 62-780, F.A.C., we urge the Department to incorporate appropriate revisions in this round of rule changes, rather than to defer this to some later time. We look forward to discussing these suggestions with you at your convenience.

1. 62-780.100 Referenced Guidelines and Information Sources. Add a new section (“X” - TBD):

“(X) [Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida Version 2.1 Final, February 3, 2011.](#)”

See paragraph 3, below for additional explanation. This guidance document would likely require some modification.

2. 62-780.150 Applicability. Modify paragraph (3) as follows:

“(3) Any person who voluntarily rehabilitates a site shall comply with the provisions of this chapter if that person wishes the Department to review any documents concerning site rehabilitation or issue any order with respect to completion of the rehabilitation tasks. The cleanup criteria contained in this chapter shall apply to voluntary cleanups conducted at all sites contaminated with drycleaning solvents including site rehabilitation at drycleaning facilities or wholesale supply facilities governed by the terms of a Voluntary Cleanup Agreement (VCA) executed by the Person Responsible for Site Rehabilitation (PRSR) and the Department pursuant to Section 376.3078(11), F.S. The cleanup criteria contained in this chapter also shall apply to any voluntary brownfield site rehabilitation that is governed by the terms of a Brownfield Site Rehabilitation Agreement (BSRA), within a designated brownfield area, including without limitation any site comprising land used for management or disposal of solid waste that ceased accepting solid waste for management or disposal prior to July 1, 1997 and: (i) is or was exempt from permitting under Chapter 62-701, F.A.C., or predecessor regulations, or (ii) has escheated to the County; or (iii) has contamination outside the boundaries of the permitted solid waste management facility; or (iv) where the PRSR did not receive monetary compensation for disposal of solid waste at a solid waste disposal area located on the site. The BSRA shall be executed by the person responsible for brownfield site rehabilitation (i.e., the PRSR) and the Department pursuant to Section 376.80(5), F.S.”

While the Legislative authority may be broader than set forth above, we believe the inclusion of the above language would address most types of problem sites as identified by our members. The inclusion of the July 1, 1997 date is based on the brownfield eligibility provision of 376.82(1), F.S. Inclusion of this language requires revisions to the definitional section, as described in paragraph 4, below.

3. 62-780.150 Applicability. Add a new paragraph (12) as follows:

“(12) For sites that are subject to a BSRA, the PRSR may propose and the Department may agree to accomplish any step in site rehabilitation pursuant to 62-780.700, F.A.C. in solid waste areas at a site or any part of a site under the guidance referenced in subsection 62-780.100(21), F.A.C.”

This insert will allow a streamlined approach to management of solid waste at BSRA sites consistent with existing guidance, in order to facilitate VCTCs. Changes to the referenced guidance document may be necessary.

4. 62-780.200 Acronyms and Definitions. Add the following additional statutory cross-references at the beginning of 62-780.200, F.A.C., to accommodate the language added in 62-780.150(3), F.A.C., as discussed in paragraph 2, above.

“All words and phrases defined in Sections 376.301 and 376.79, F.S., shall have the same meaning when used in this chapter unless specifically stated otherwise in this chapter. See Section 403.703, F.S. for definition of “Solid waste.” See Section 220.1845, F.S. for definition of “Monetary compensation.” See Sections 376.301 and 376.79, F.S., for definitions of the following terms...”

5. 62-780.200 Acronyms and Definitions. Revise paragraph (45) “Source removal” as follows:

(45) "Source removal" means (a) the removal of free product, contaminated groundwater, contaminated sediment, or contaminated soil, or (b) the removal of solid waste, contaminants from soil or sediment that has been contaminated to the extent that leaching or other impact to groundwater or surface water has occurred or is occurring, after approval of a Remedial Action Plan pursuant to Rule 62-780.700, F.A.C.

Note that the above revision would capture the circumstance where the presence of solid waste has caused impacts to groundwater that are not the result of leaching from the waste itself.

6. 62-780.600(3) Site Assessment. Insert the following additional objective under paragraph (3):

"(1) To determine the extent of buried solid waste, if any."

7. 62-780.600(5)(a) Site Assessment. Modify site assessment tasks, as applicable, as follows:

"(a) Use of geophysical equipment such as magnetometers, ground penetrating radar, or metal detectors to detect storage tank system(s) or buried solid waste;"

...

"(t) Performance of a professional land survey of a petroleum contamination site in order to develop an accurate base map, if the Department determines that the site map provided in a report is not accurate; ~~and~~

(u) Establishment of the parameters or exposure assumptions that will be used to develop the alternative CTLs pursuant to Rule 62-780.650, F.A.C., if the PRSR chooses this option; ~~and~~ (v) Use of visual observations to determine the presence and extent of solid waste."

8. 62-780.600(8) Site Assessment. Modify site assessment report requirements to include a new subsection 29:

"29. A scaled site map that shows the estimated extent of buried solid waste on the site."

9. 62-780.700(1) Active Remediation. Modify paragraph (1) as follows:

"(1) If the conditions at a site do not satisfy the No Further Action criteria of Rule 62-780.680, F.A.C., or the Natural Attenuation Monitoring criteria of Rule 62-780.690, F.A.C., within the time frames specified in Table A, located at the end of Rule 62-780.900, F.A.C., or the CAD, the PRSR shall prepare and submit to the Department for review an electronic or paper copy of a Remedial Action Plan. The Remedial Action Plan shall be prepared pursuant to this rule and shall contain all of the information required herein. The objective of the active remediation shall be to meet the applicable No Further Action criteria of Rule 62-780.680, F.A.C., or the Natural Attenuation Monitoring criteria of Rule 62-780.690, F.A.C. The Remedial Action Plan shall provide a design that addresses cleanup of all contaminated soil, sediment, groundwater, ~~or~~ surface water, or for sites that are subject to a BSRA, solid waste, as a result of the discharge for which the PRSR is conducting site rehabilitation."

Please do not hesitate to contact any of us if you have questions regarding our submittal.

Yours sincerely,



Laurel Lockett, Carlton Fields, FBA President
813-229-4139

Jon S

Tom Lewis, Cardo, Technical Committee Co-Chair
850-385-8232

Nicole Penichet

Nicole Penichet, Geosyntec, Technical Committee Co-Chair
813-558-0995

Enclosures

cc: FBA Board & Technical Committee

April 19, 2016

By Electronic Mail

Dr. Brian Dougherty, Administrator
Division of Waste Management
Florida Department of Environmental Protection
Twin Towers Office Building, MS 4500
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Chapter 62-780, F.A.C. – Draft Rule Amendments (April 5, 2016)

Dear Brian:

On behalf of the Florida Electric Power Coordinating Group, Inc. Environmental Committee (FCG) and Florida Power & Light Company (FPL), I am submitting this letter for the purpose of providing written comments in regard to draft rule amendments to Chapter 62-780, Florida Administrative Code (F.A.C.). The FCG is a not-for-profit association of twenty-eight (28) investor-owned, municipally-owned, and cooperatively-owned electric utilities engaged in the business of providing the majority of electric power to the public in the State of Florida. FPL is the largest electric utility in Florida and one of the largest rate-regulated utilities in the United States. FPL generates power from 15 power plants and delivers it by way of 74,000 miles of power lines to approximately 4.8 million customers in about half the State of Florida.

FCG members and FPL are responsible for conducting site rehabilitation activities at certain sites in Florida which are governed by the provisions of Chapter 62-780, F.A.C. Indeed, over the years, the FCG and FPL have been extensively involved in the drafting and passage of most of the Florida Statutes authorizing the Florida Department of Environmental Protection's (FDEP or Department) contamination cleanup programs, as well as the subsequent development of implementing rules, including Section 376.30701, Florida Statutes and Chapter 62-780, F.A.C. The FCG and FPL continue to actively work with the Department in addressing implementation and other policy development issues related to the agency's contamination cleanup programs.

The FCG's and FPL's joint written comments are provided below and, where appropriate, reference line numbers in FDEP's April 5, 2016, working draft that was the subject of discussion at the rule workshop. For purposes of these comments, the line numbers referenced are those on the "comments included" draft. These comments have been developed with technical and toxicological input from Dr. Christopher Teaf, Doug Covert and their colleagues at Hazardous Substance & Waste Management Research, Inc. (HSWMR). The FCG and FPL hope that, to the extent FDEP agrees to incorporate these comments, appropriate changes are included in the next draft version of Chapter 62-780, F.A.C. that the agency develops.

General Comments - Chapter 62-780, F.A.C.

The FCG and FPL note that FDEP proposes to bifurcate the current emergency response and interim source removal rule section (Rule 62-780.500) into two separate rule sections addressing emergency response and interim source removal activities, respectively. In prior written comments, the FCG and FPL requested confirmation from FDEP that the existing Mineral Oil Dielectric Fluid (MODEF) and Heavy Fuel Oil (HFO) response action protocols will not be eliminated or otherwise modified as a result of FDEP's bifurcation of this rule section. Based on discussion during the course of the June 30, 2015, November 4, 2015, and April 5, 2016, rule workshops, Department representatives confirmed that the agency's rulemaking and the proposed new rule sections are not intended to eliminate or otherwise substantially modify these protocols. The FCG and FPL support inclusion of the protocols in Rule 62-780.100, F.A.C. (Referenced Guidelines and Information Sources). As requested by the Department, the FCG and FPL are reviewing both protocols and will provide FDEP with suggested revisions and updates to the protocols for the agency's consideration.

The FCG and FPL wish to reiterate comments made at the workshop regarding the new guidance document being developed by FDEP and the University of Florida entitled "Guidance for the Use of Dose-Additivity in Evaluating the Additive and Synergistic Effects of Contaminants." As was discussed at the workshop, this document is not yet available from FDEP and the FCG and FPL believe that adequate time should be provided to the regulated community for review and comment on this important guidance which will have significant, and long-term bearing on site-specific cleanup target levels. During the workshop, FDEP staff announced its goal to have any outstanding rule language issues resolved, with this and other guidance documents (e.g., Institutional Controls Procedure Guidance (ICPG)) completed, by early May 2016. While the FCG and FPL recognize that FDEP has its own internal schedule and priorities that it must address, the FCG and FPL believe that more time should be afforded in this rulemaking to further the mutual goal of a workable, flexible cleanup rule that addresses environmental contamination in a practical, cost-effective manner

while fully protecting human health and the environment. The FCG and FPL believe that there are a number of outstanding issues and tasks that need to be completed before this rule chapter is “ready” for initiation of the formal rule adoption process. We suggest that the Department should consider extending its internal rulemaking schedule to allow for completion of these tasks and for conducting an additional rule workshop.

Specific Comments – Chapter 62-780, F.A.C.

1. **Rule 62-780.150(6); Lines 104-109.** As discussed during the recent rule workshop, the FCG and FPL note that FDEP is attempting to further articulate the types of materials for which it might develop cleanup target levels (CTLs) for contaminants not already listed in Chapter 62-777, F.A.C. In the rule draft, the Department includes language listing “pollutants, chemicals or other substances.” We note that FDEP’s statutory authority is limited to “pollutants and hazardous substances” in this regard and the FCG and FPL suggest that FDEP’s proposed language on line 108 be modified to read “discharged pollutants or hazardous substances.”
2. **Rule 62-780.200; Line 132.** With the enactment of Chapter No. 2016-184, Laws of Florida (effective July 1, 2016), definitions for the terms “long-term natural attenuation” and “background concentration” will need to be specifically incorporated into this rule section. The definitions and other provisions of Sections 1 to 4 of Chapter No. 2016-184, Laws of Florida, are specifically applicable to site rehabilitation being conducted under Sections 376.30701 and 376.81, Florida Statutes and not to other FDEP cleanup programs (e.g., state-funded petroleum and drycleaning solvent contaminated sites). Thus, these definitions and other provisions of Chapter No. 2016-184, Laws of Florida will need to be narrowly incorporated into the rule chapter. In this regard, the FCG and FPL propose the following definitions for the terms “background concentrations” and “long-term natural attenuation.”

(3) “Background concentrations” means concentrations of contaminants that are naturally occurring or resulting from anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation, in the groundwater, surface water, soil, or sediment in the vicinity of the site. This definition is not applicable to contaminated sites undergoing site rehabilitation pursuant to Sections 376.3071 and 376.3078, F.S. However, this definition may apply to petroleum contamination sites being addressed pursuant

to Section 376.3071, F.S., that are not eligible for state-funded site rehabilitation, if the Person Responsible For Site Rehabilitation elects to have it apply.

(XX) “Long-term natural attenuation” means natural attenuation approved by the department as a site rehabilitation program task for a period of more than 5 years. This definition is not applicable to contaminated sites undergoing site rehabilitation pursuant to Sections 376.3071 and 376.3078, F.S. However, this definition may apply to petroleum contamination sites being addressed pursuant to Section 376.3071, F.S., that are not eligible for state-funded site rehabilitation, if the Person Responsible For Site Rehabilitation elects to have it apply.

3. **Rule 62-780.200(46); Lines 292-294.** The FCG and FPL recommend that the definition of “surface water” be further clarified by inserting a new sentence beginning on line 294 providing that “Stormwater and wastewater process water retention or treatment facilities, and canals and trenches that are integral to such facilities, that are not connected to other surface water, are not included in the definition of surface water.” That language was previously included in the definition of the term “surface water” in existing waste cleanup rules (e.g., Chapters 62-770, 62-782, and 62-785, F.A.C.) prior to 2005 when Chapter 62-780, F.A.C., was initially promulgated. The FCG and FPL believe that this clarification is consistent with current agency interpretation and implementation.
4. **Rule 62-780.220(7); Lines 442-469.** The FCG and FPL believe that the Department’s proposed language providing that mail notice be sent to any party holding an easement “for the area subject to the institutional or engineering control” is vague and overly broad. Currently, under the ICPG, a Person Responsible for Conducting Site Rehabilitation (PRSR) is able to determine on its own whether or not a proposed institutional or engineering control causes a material conflict with an existing easement. As currently drafted, notice would seemingly be required to any easement holder identified for the property, even where such easement is not materially affected by the proposed control. The FCG and FPL believe that current FDEP policy allowing the PRSR to make this determination should continue and this draft rule language should be modified accordingly.

On a related note, FCG members and FPL are uniquely affected by institutional and engineering controls that may have been placed on real property when company representatives have to respond to electric service disruptions

associated with underground electric utility infrastructure. In those instances where an electric utility identifies that it may be working in areas addressed by controls where remaining soil and/or groundwater contamination exist, it still may have to work immediately in those areas to restore electric utility service and there may not be adequate time available for obtaining FDEP pre-approval of excavation and/or dewatering plans. The FCG and FPL would like to discuss this issue further with the Department and explore whether a guidance policy/protocol might be developed to address these situations. Along those lines, it may be beneficial to have such discussions prior to the release of the revised draft of the ICPG.

5. **Rule 62-780.500(1); Lines 539-549.** Existing rule language addresses “unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action to alleviate a threat to human health, public safety, or the environment ...”. The criteria upon which such a decision should be based (e.g., volume, mass, concentration, chemical characteristics), and identification of the entity that should make that decision are not clear in existing rule language. This comment was discussed at some length during the recent rule workshop and the FCG and FPL continue to recommend to FDEP that these points be clarified in this rule subsection.
6. **Rule 62-780.500(3)(a)5; Lines 657-661.** In response to prior FCG and FPL comments, FDEP has proposed draft rule language in the context of emergency response action source removal of a non-petroleum product spill that provides for use of visual staining markers and other soil screening methods in conducting source removal. Similar language is suggested for new Rule 62-780.525 on lines 953-958. In response to concerns expressed at the recent rule workshop regarding quality assurance/quality control and data confirmation that contaminants in soil have been removed to meet applicable target cleanup levels, the FCG and FPL suggest that this concern can be addressed by draft rule language providing that soil screening methods must be Department-approved. As discussed during the rule workshop, the FCG and FPL believe that development of appropriate agency guidance would be helpful in implementation of this concept in emergency response and interim source removal actions.
7. **Rule 62-780.500(4)(a); Line 760.** The FCG and FPL suggest that the word “shall” be inserted after the word “environment” as it appears to have been inadvertently omitted in the April 5 rule draft.

8. **Rule 62-780.550(3); Line 1101.** In response to comments at the rule workshop that this passage should be clarified further to indicate that no additional obligations exist upon completing a de minimis discharge cleanup, the FCG and FPL propose that the following sentence be inserted at the end of line 1101: “Upon completing removal activities and maintaining records in accordance with this Rule, no other site rehabilitation requirements of this chapter are required to be followed.”
9. **Rule 62-780.650(1)(b)2.; Lines 1598-1619.** In support of comments made at the recent rule workshop, the FCG and FPL suggest that the hierarchy of toxicological references that may be used in development of alternative cleanup target levels should be revised to move language currently found at Rule 62-780.650(1)(b)2.c.(V) (see lines 1618-1619) to the introductory paragraph at line 1598. On line 1598, after the word “preference”, the following language should be inserted: “, or values from sources that are proposed by a PRSR and accepted by FDEP that meet statutory requirements.”
10. **Rule 62-780.650(3)(b); Lines 1663-1667.** The FCG and FPL reviewed FDEP’s draft language developed in response to FCG and FPL’s prior comments on this rule provision and we believe it is significantly improved and workable.
11. **Rule 62-780.680(1)(b)1.d.(II); Lines 1771-1774.** The FCG and FPL support the draft rule language proposed by FDEP in the April 5 rule draft and do not believe it should be modified to eliminate language regarding the 95% UCL as suggested by one commenter at the rule workshop.
12. **Rule 62-780.680(1)(c)1.a.; Lines 1819-1833.** On line 1819, after the word “that”, the FCG and FPL recommend that the following be inserted to clarify the scope of sites eligible for the “organoleptic carve-out”:

contaminated sites undergoing site rehabilitation pursuant to Sections 376.30701 and 376.81, F.S., and petroleum contamination sites being addressed pursuant to Section 376.3071, F.S., that are not eligible for state-funded site rehabilitation, if the PRSR elects,

This suggested language attempts to implement the statutory limitations of Chapter No. 2016-184, Laws of Florida.

13. **Rule 62-780.690(3); Line 2182.** The FCG and FPL suggest that a new sentence be added at the end of line 2182 to read: "This subsection shall only apply to contaminated sites undergoing site rehabilitation pursuant to Sections 376.30701 and 376.81, F.S., and petroleum contamination sites being addressed pursuant to Section 376.3071, F.S., that are not eligible for state-funded site rehabilitation, if the PRSR elects to have this subsection apply." This suggested language attempts to implement the statutory limitations of Chapter No. 2016-184, Laws of Florida.

Comments - Institutional Controls Procedures Guidance

The FCG and FPL commend the Department on its continued implementation of additional flexibilities in the agency's contamination cleanup programs, as evidenced by the proposed ICPG revisions which include more detailed discussion on the use of alternative institutional controls (e.g., governmental controls). It is our understanding that the ICPG is undergoing additional revision and will be made available for review and comment in the near future. As this guidance document is extremely important in the conditional regulatory closure of contaminated sites, the FCG and FPL reiterate the prior general comment that sufficient time be provided to the regulated community for review and development of comments once the revised ICPG draft is issued, with the understanding that this process may necessitate an additional workshop.

* * *

Dr. Brian Dougherty
April 19, 2016
Page 8 of 8

The FCG and FPL very much appreciate the consideration that FDEP gives their comments and comments of the regulated community. After you have reviewed these comments, should you have any questions, please do not hesitate to contact me at (850) 425-2254.

Sincerely,

Hopping Green & Sams



By: _____
Michael P. Petrovich

Attorneys for the Florida Electric Power
Coordinating Group, Inc., Environmental
Committee

and

Florida Power & Light Company

cc: Rebecca Robinette, Esq., FDEP
FCG Solid Waste Subcommittee
Mark Jones, Florida Power & Light Co.
Pat Maher, Florida Power & Light Co.
Dr. Christopher Teaf, HSWMR

From: [Mayorga, Wilbur \(RER\)](#)
To: [Dougherty, Brian](#)
Cc: [Bucknor, Lorna \(RER\)](#)
Subject: FW: 62-780 draft rule
Date: Tuesday, April 19, 2016 6:17:30 PM
Importance: High

Reference: 62-780 FAC draft

Please see suggested language/edits

1. Page 14 line 661

Insert:

and provided that the field method has been verified and validated against standard laboratory methods and provided the detection limit of soil screening instrumentation is appropriate based on the cleanup target levels for the pollutant of hazardous substance

after that has been discharged line 661

2. Page 20 lines 958

Insert:

and provided that the field method has been verified and validated against standard laboratory methods using a sufficient number of samples and provided the detection limit of soil screening instrumentation is appropriate based on the the cleanup target levels for the pollutant of hazardous substance

after the word discharged on line 958

3. Page 22 lines 1023

Insert

provided that air emissions monitoring and frequency of monitoring shall be performed pursuant to paragraphs 62-780.700(4)(a) and (11)(i), F.A.C.:

after

(c) Interim Soil Vapor Extraction may be performed by the PRSR as an interim source removal activity prior to approval of a Remedial Action Plan prepared and submitted pursuant to Rule 62-780.700, F.A.C., at line 1023

4. Page 37 lines 1776

Delete

the approved Conceptual Site Model adequately demonstrates.

and insert

it has been demonstrated, using statistically appropriate techniques which shall include an appropriate number of samples which are representative of the exposure unit.

Thanks

Wilbur Mayorga, P.E., Chief
Environmental Monitoring & Restoration Division
Miami-Dade County
Department of Regulatory and Economic Resources
Overtown Transit Village
701 NW 1st Court 4th floor
Miami, FL 33136
Phone: 305-372-6700
Fax 305-372-6729
E-Mail: MAYORW@MIAMIDADE.GOV
"Delivering Excellence Every day"

From: [Applegate, Joe](#)
To: [Dougherty, Brian](#)
Subject: RE: 62-70 Rule Workshop - comments
Date: Thursday, April 14, 2016 11:49:46 AM

Do you anticipate that the organoleptic carve-outs for TEX compounds, that was applied to Brownfields, allowing the higher level health based numbers for TEX, now be accepted for unrestricted closure for Petroleum Program Sites? I thought that was the intent of the SB100, no?

From: Dougherty, Brian [mailto:Brian.Dougherty@dep.state.fl.us]
Sent: Tuesday, April 12, 2016 9:01 AM
To: Applegate, Joe
Subject: RE: 62-70 Rule Workshop - comments

Thanks Joe,

I'll confess I don't really understand the whole practice of 'defining' acronyms as separate definitions, I assumed it had something to do with the folklore of rulemaking and so continued that tradition. Your explanation makes a lot of sense, and I'll see if we can condense the acronym into the definition, that makes for a cleaner presentation overall.

We're all a bit confused by the way SB 100 was drafted. Working with OGC to sort it out. Right now it looks like petroleum (except non-program sites that opt in) and drycleaning (program and non-program) are excluded from some of the bigger changes made by the bill. We should have some proposed rule language on the table soon to address.

Take care,
Brian

From: Applegate, Joe [mailto:Joe.Applegate@arcadis.com]
Sent: Monday, April 11, 2016 1:55 PM
To: Dougherty, Brian <Brian.Dougherty@dep.state.fl.us>
Subject: RE: 62-70 Rule Workshop - comments

Hi Brian,

Great job leading the 62-780 workshop last week! I have some minor comments on the definitions for your thoughts:

1. Definitions

- a. There are a few instances where acronyms are defined such as items 7 and 8 – CAD and Cleanup Agreement Document, respectively, where these might be better defined as 7) Cleanup Agreement Document (CAD) all under item 7. Sometimes there are acronyms that are simply defined with no follow-up definition (TOPC, TRPHs, etc), but others that have both. In those cases, I think it is the case where the item had been defined in statute, but you are clarifying with the acronym. In cases where you are defining the term spelled out, I am not sure you need to define the acronym outside of the definition. If you looks at Voluntary Cleanup Agreement

(VCA), I think this is the appropriate way to do it.

- b. I had asked if Institutional controls had been defined in statute and the response was yes. This is correct, I downloaded the definitions from 376 and have attached – there may be some other terms that have already been defined, but I am all for including as many as you can in rule.
 - i. Contaminant is in statute, the revised rule included contaminated or contamination
 - ii. “Engineering Controls” are included in statute, the current redline includes “Engineering Control”
 - iii. PRSR is already in statute, but it appears the redline has an expansion on definition, which I agree is needed
 - iv. Response action contractor is in statute already

Just in case you don’t have them, I attached the definitions from statute.

I am still a little confused about SB 100, since the RBCA statute was merged with SB100, the applicability appears to be “all contaminated sites” (line 78) whereas some of the details later in the statute text reference specific applicability to certain programs (i.e., Brownfields). I think the intent was for the changes (such as the carve outs) to be applied to all contaminated sites (except nonprogram petroleum).

Thanks again,

Joe

From: Dougherty, Brian [<mailto:Brian.Dougherty@dep.state.fl.us>]
Sent: Thursday, March 31, 2016 12:34 PM
To: Applegate, Joe
Subject: RE: 62-70 Rule Workshop -

Hi Joe,

It is posted on <http://www.dep.state.fl.us/waste/>

I overlooked posting to the CMF page as well and have asked for that.

See you Tuesday,

Brian

From: Applegate, Joe [<mailto:Joe.Applegate@arcadis.com>]
Sent: Thursday, March 31, 2016 12:28 PM
To: Dougherty, Brian <Brian.Dougherty@dep.state.fl.us>
Subject: RE: 62-70 Rule Workshop -

Thank you Brian.

The note below said that the proposed rule text would be available a week before the workshop and I assume you are still working on the last round of comments you received internally, but just

wanted to check, I didn't see any draft on the website ☺

Je

From: Dougherty, Brian [<mailto:Brian.Dougherty@dep.state.fl.us>]
Sent: Wednesday, March 30, 2016 1:28 PM
To: Applegate, Joe <Joe.Applegate@arcadis.com>
Subject: RE: 62-70 Rule Workshop -

Hi Joe,

It is on the 5th. I think you can get to our calendar at: <https://www.fldepnet.org/public-notices/>
Brian

From: Applegate, Joe [<mailto:Joe.Applegate@arcadis.com>]
Sent: Wednesday, March 30, 2016 10:55 AM
To: Dougherty, Brian <Brian.Dougherty@dep.state.fl.us>
Subject: 62-70 Rule Workshop -

Hi Brian,

Is the workshop scheduled for Monday April 4th or Tuesday April 5th ? Someone indicated to me today that it was scheduled for Monday but I don't see it on the website (if it is there, where would I find it) and you last email indicated April 5th?

Thanks and please let me know,

Joe

From: Dougherty, Brian [<mailto:Brian.Dougherty@dep.state.fl.us>]
Sent: Friday, February 19, 2016 7:56 AM
To: Dougherty, Brian <Brian.Dougherty@dep.state.fl.us>
Subject: 62-780 Rule Workshop

Good morning,

Wanted to let everyone know we have scheduled a rule workshop for 62-780 for April 5th, 2016 in room 609 of the Bob Martinez Center, 2600 Blair Stone Rd., Tallahassee. The workshop will begin at 9:00 a.m. and last until no later than 4:00 p.m. I've attached a calendar item for your convenience. The text of the FAR notice that will appear this Monday (2/22) is below.

The workshop will be available by teleconference at:

Call-In Number: 888-670-3525

Participant code: 164-302-8932

And by webinar at:

[Join 62-780 Rule Workshop Skype Meeting](#)

(Please note the link text seems to be case sensitive.)

This workshop will focus on just 62-780 with the goal of getting a final draft of the rule. The proposed rule text will be available one week before the workshop. The discussion relating to 62-777 and the Contaminated Media Forum will be continuing, and be looking for announcements of upcoming teleconferences for those items.

Please let me know if you have any questions,

Thanks,

Brian

Notice of Development of Rulemaking

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

[62-780.100](#): Referenced Guidelines and Information Sources

[62-780.150](#): Applicability

[62-780.200](#): Acronyms and Definitions

[62-780.210](#): Contamination Reporting

[62-780.220](#): Notices

[62-780.300](#): Quality Assurance Requirements

[62-780.400](#): Professional Certifications

[62-780.450](#): Combined Document

[62-780.500](#): Emergency Response Action or Interim Source Removal

[62-780.550](#): Nonpetroleum De Minimis Discharges

[62-780.560](#): Petroleum or Petroleum Product De Minimis Discharges

[62-780.600](#): Site Assessment

[62-780.610](#): Fate and Transport Model and Statistical Method Requirements

[62-780.650](#): Risk Assessment

[62-780.680](#): No Further Action and No Further Action with Controls

[62-780.690](#): Natural Attenuation Monitoring

[62-780.700](#): Active Remediation

[62-780.750](#): Post Active Remediation Monitoring

[62-780.790](#): Time Schedules

[62-780.900](#): Forms

PURPOSE AND EFFECT: Review and discussion of changes made in response to public comment from the previous rule workshop. Chapter 62-780, F.A.C. has not been substantially updated on a technical basis since adoption in 2005. In the intervening time, much has been learned with regard to applying Risk-Based Corrective Action (RBCA) principles to contaminated site management and closure. The department is reviewing and updating these rules given technical advancement since original rule adoption. In addition, a number of inconsistencies or incongruities have been uncovered within the rule chapter, and these will be corrected. Specific topics to be addressed include notice requirements for conditional closure, addressing additivity, evaluation of Incremental Sampling Methodology, and splitting the current rule 62-780.500 into two separate rules, one for emergency response actions and one for interim source removal.

The agenda and draft rule will be available at <http://www.dep.state.fl.us/waste/> by March 29th or by contacting the contact person listed below.

SUBJECT AREA TO BE ADDRESSED: Contaminated Site Cleanup, Risk Based Corrective Action.

RULEMAKING AUTHORITY: [376.303](#), [376.3071](#), [376.30701](#), [376.30702](#), [376.3078\(4\)](#), [376.3078\(9\)](#), [376.81](#), [403.061](#),

[403.0877](#), [403.7255 FS](#).

LAW IMPLEMENTED: [376.303](#), [376.305](#), [376.3071](#), [376.30701](#), [376.30702](#), [376.30711](#), [376.3078\(4\)](#), [376.3078\(9\)](#), [376.315](#), [376.80](#), [376.81](#), [403.021](#), [403.061](#), [403.062](#), [403.0877](#), [403.7255 FS](#).

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: April 5, 2016 from 9:00 a.m. until no later than 4:00 p.m.

PLACE: Room 609, Bob Martinez Center, 2400 Blair Stone Rd., Tallahassee

The workshop will also be available by teleconference: 1(888)670-3525 participant code: 164-302-8932 and webinar at <https://meet.lync.com/floridadep/brian.dougherty/w3tnd4dc> (note this link is case sensitive)

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Brian Dougherty at (850)245-7503 or brian.dougherty@dep.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Brian Dougherty at (850)245-7503 or brian.dougherty@dep.state.fl.us.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

[REDACTED]

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