

# 2022 IN-PERSON BROWNFIELDS CONFERENCE

## *Brownfields – Its History in Florida*

We're Back and Better Than Ever

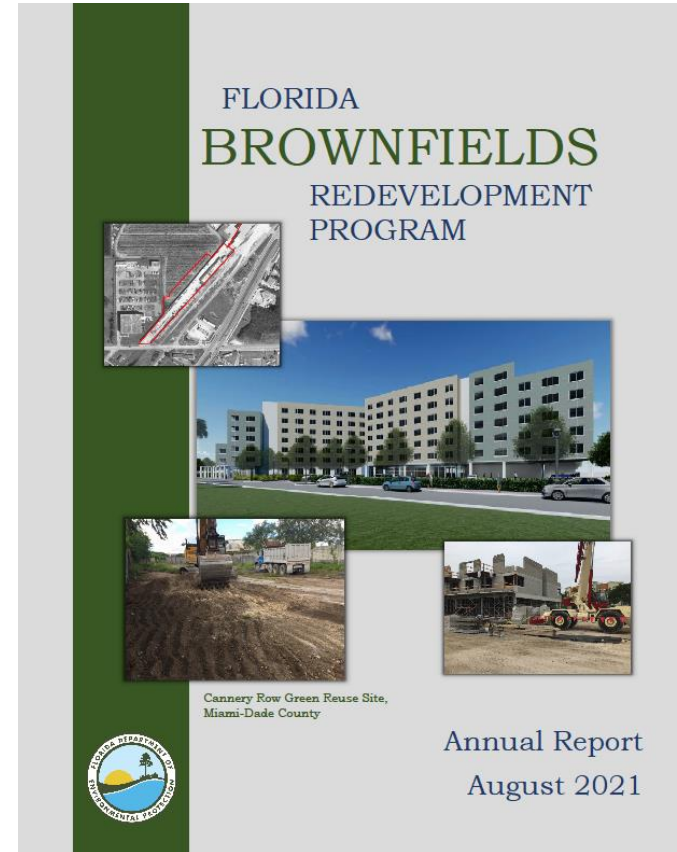


Michael O. Sznajstajler, Esq.  
Shareholder

F. Joseph Ullo, Jr. P.E., Esq.  
Shareholder

# For Our Discussion Today

- Brownfields History in Florida
- Opening the door to the brownfields...
  - Key statutory components
  - Changes over time
- VCTC
  - VCTC Sales
  - Rating the program
  - Ideas for the future
- 2020-2022 Legislative Effort
- Future Legislative Efforts
- Questions and Answers



# Champions over Time



- **Brownfield Pioneers – 1997 and 1998**  
Senator Jack Latvala and Rep. Lee Constantine

Establish the Act with Job Bonus and VCTC



- **First Update – 2006**  
Senator Lee Constantine and Rep. Mitch Needelman

Adds affordable housing bonus to VCTC  
Increase site rehabilitation bonus from 10 to 25%

# Champions over Time



- **Recovering from Recession -- 2008**  
Senator Lee Constantine and Rep. Alan Williams

Encourage Healthcare Facilities  
Solid Waste disposal eligible for Tax Credits



- **From \$2 to \$5 – 2011**  
Senator Jack Latvala and Rep. Debbie Mayfield

Increase in VCTC to respond to successful program

# Champions over Time

## Responding to Needs – 2014

Reps. Charlie Stone and Travis Hutson  
Senator Thad Altman



- Expansion of liability limitations;
  - diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property....
- Streamlined Designation Process for certain areas.





# Change in VCTC Strategy

- 2015 – FBA succeeds in wiping out the backlog –
  - \$21.6 Million included in the state tax package
- 2017 – Florida Agrees that Brownfields are Worth the Price – Raise VCTC from \$5 to \$10 Million annually
- 2018 – Second backlog addressed
  - \$18.5 Million included in state tax package and reverting to \$10 Million thereafter
- 2021 – Third backlog addressed
  - \$27.5 Million included in state tax package and reverting to \$10 million thereafter

# Playing Defense or Responding to Actions

- Opposed and helped clarify the Brownfields Redevelopment Job Bonus Tax Refund tied to BSRA with legislation in 2013;
- Opposed the repeal of the Brownfield Loan Guaranty in 2020;
- Opposed changes to language that gives local government greater discretion in designations; and
- Every session we continuously show the value and presence of the program and usage of the law.

# Returning to Action on the Substance: 2020 Session



## 2020 -- Overview

Senator Dennis Baxley &

Rep. Charlie Stone

### ***CS/SB 1350 HB 1001 proposed:***

- Cleanup Bonus Revised
- Clarifying Solid Waste Removal Credit
- Giving flexibility for PRFBSRs
- Creating an exception to the brownfield program eligibility requirement of creating at least 10 new jobs if the project provides benefits including affordable housing, recreation areas, conservation areas, or parks, or cultural or historical preservation.



# Returning to Action on the Substance: 2020 Session

- CS/SB 1350 HB 1001 also adjusted liability provisions –
  - Limited statutory causes of action under s. 376.313(3), F.S., to only damages to real or personal property directly resulting from pollution, and requires that the pollution was not authorized by any government approval or permit.
  - Described defenses to causes of action under 376.313(3), F.S., as strict-liability exceptions instead of defenses.
  - Added to the liability protection in the brownfield program relief from statutory causes of action arising under s. 376.313(3), F.S., which impose strict liability for damages from pollution for certain sites.
  - Provided the liability protection in the brownfield program to any subsequent property owner of a brownfield site.

# Derailing the 2020 Session

- Complicating factors in 2020:
  - *Liepo v. Simons Trucking*, 286 So.3d 143 (Fla. 2019);
  - PFAS; and
  - COVID 19.

# 2022 Legislative Session

- HB 795/SB 1562 – Let there be light!
- HB 1475/SB1418 – PFAS Round 2
- HB 1151/SB 7012 – PFAS Round 2 Cont.
- HB 909/SB 1210 – Every sheep's favorite sport is baa-dminton
- HB 685/SB 800 – Local financial support

# FBA Legislative Ideas for 2022 and Beyond

- Revisit 2020 packages
- Procedural Fixes
  - Land Use Map Changes for Conditional Closures within Brownfield Areas
  - Timing for FDEP Response to VCTC Applications
  - Private Area Designations
  - EPA Enforcement Language
- Consider amendments that will drive behaviors
  - Renewable energy & Promoting green space
  - Flexibility on use of fill material meeting commercial standards
  - Enhancing Liability Protection

# Two States – Two Approaches

## Florida:

- Could not have caused or contributed after a set date.
- Make a showing to the local government.
- Groundwater remediation required for closure.
- No review fees.
- Local Government very active.

## Georgia:

- Must be a qualified prospective purchaser.
- Must submit financial assurance.
- Source abatement required
- Application review fee -- \$3,000.
- Local Government involved in tax abatement.



# Making the Proposition More Attractive

- Upon the director's approval of the prospective purchaser corrective action plan or concurrence with the certification of compliance described in this Code section, whichever first occurs, a prospective purchaser shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release, nor shall the prospective purchaser be required to certify compliance with risk reduction standards for ground water, perform corrective action, or otherwise be liable for any preexisting releases to ground water associated with the qualifying property.
- O.C.G.A. 12-8-207 (2010)

# Making the Proposition More Attractive

- Upon the department's approval of the site assessment report, any person, including his or her successors and assigns, who has executed a brownfield site rehabilitation agreement shall not be required to meet cleanup target levels, perform remedial action, or otherwise be liable for any preexisting ground water contamination associated with the contaminated site so long as such person performs and maintains risk reduction for the brownfield site.
- Section 376.82(a), Florida Statutes (to be added)

# Opening up Superfund Sites

- Section 376.82(1)(a) -- Potential brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq.... are not eligible for participation unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g).

# EPA FDEP Brownfield MOA

- EPA Grant Funding under 128(a).
- Who can participate?
  - Region 4 also recognizes that those RCRA sites which participate in the BP may qualify for the economic and regulatory benefits specific to the Act.
- Who cannot participate?
  - Notwithstanding a Brownfield site's eligibility to participate in the BP, the Agencies agree that notwithstanding a Brownfield site's eligibility to participate in the BP, the Agencies agree that this MOA shall not apply to...

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**I. PURPOSES**

- A. The Florida Department of Environmental Protection ("FDEP") and Region 4 of the United States Environmental Protection Agency ("Region 4") (collectively "the Agencies"), enter into this Memorandum of Agreement ("MOA") to:
1. Define the roles and responsibilities of Region 4 and FDEP to facilitate FDEP's implementation of the Florida Brownfield Redevelopment Act ("Act"), Sections 376.77 - 376.85, Florida Statutes ("F.S."), and the Brownfield Cleanup Criteria Rule, Chapter 62-785, Florida Administrative Code ("F.A.C."), more commonly known as the Brownfield Redevelopment Program ("BP");
  2. Recognize the BP for grant funding eligibility purposes pursuant to § 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, *et seq.*, ("CERCLA");
  3. Express how the Agencies generally intend to exercise their respective authorities at Brownfield sites which, for the purposes of this MOA, are defined as sites that have executed a Brownfield Site Rehabilitation Agreement ("BSRA"), as defined in the Act;
  4. Promote the Federal "One Cleanup Program" initiative by working together to achieve cleanups that protect human health and the environment by making greater use of available State and Federal authorities; sharing science and technological approaches; and selecting the optimum programmatic tools to increase the pace, effectiveness, efficiency, and quality of cleanups;
  5. Facilitate the cleanup and beneficial reuse of Brownfield sites in Florida by maximizing the use of existing infrastructures, thereby conserving and minimizing development of green spaces and pristine open areas;
  6. Provide opportunities for the Agencies to exercise their authorities under CERCLA and Chapters 376 and 403, F.S., and use their resources to ensure appropriate Brownfield site rehabilitation tasks, as defined in the Act, are mutually complementary and are not duplicative; and
  7. Provide coordinated and consistent technical assistance and information to promote informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, local units of government, and elected officials.
- B. The Agencies believe the revitalization of existing contaminated or potentially contaminated Brownfield sites will provide significant benefits to the environment, public health, and the economies of affected local communities.

# Proposed Amendment to Open the Door

- (g) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs. In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield site, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees **to clarify its roles and responsibilities and enforcement intentions** ~~forego enforcement of federal corrective action authority~~ at brownfield sites that have received a site rehabilitation completion or “no further action” determination from the department or the approved local pollution control program or **that are in compliance with** ~~are in the process of implementing~~ a brownfield site rehabilitation agreement in accordance with this act.



# Let's Hear Yours!!



# For More Information

## **Michael O. Sznajstajler**

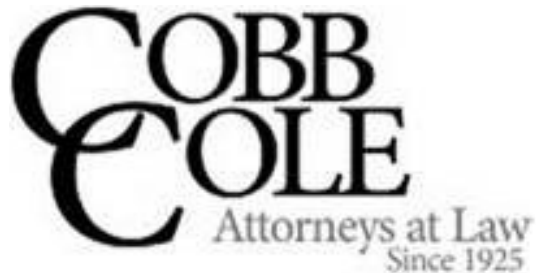
Shareholder

Cobb Cole

Daytona Beach, FL

386-323-9222

[Michael.Sznajstajler@Cobbcole.com](mailto:Michael.Sznajstajler@Cobbcole.com)



## **F. Joseph Ullio, Jr.**

Shareholder

Stearns Weaver Miller, P.A.

Tallahassee, FL

850-329-4847

[jullo@stearnsweaver.com](mailto:jullo@stearnsweaver.com)

**STEARNS WEAVER MILLER**

---