December 23, 2025

VIA E-MAIL

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Division of Waste Management, Voluntary Cleanup Tax Credit
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Re: Chapter 62-788, Florida Administrative Code, Rulemaking – Comments Regarding December 2025 Version of Proposed Amendments to Chapter 62-788 and Form 62-788.101(1)

Dear Ms. Johnstone:

The Florida Brownfields Association ("FBA") appreciates the continued discussions with the Florida Department of Environmental Protection ("FDEP") concerning the ongoing Chapter 62-788, F.A.C., rulemaking effort initiated by FDEP. FBA provides the following comments on the December 2025 version of the proposed amendments to Chapter 62-788 and Form 62-788.101(1) that were provided to FBA via e-mail from FDEP on December 9, 2025.

I. Chapter 62-788

While FBA believes that progress has been made toward a Rule that reflects the updates in CS/HB 733 (2025) and the statutory aims of Section 376.30781, Florida Statutes, as explained below, FBA has several pending concerns and seeks to improve certain Rule 62-788 language.

A. Rule 62-788.311(1)

FBA has significant concerns regarding FDEP's proposed language at lines 221-223 of Rule 62-788.311(1), which appears to have been included for the first time in the December 2025 version of the proposed amendments.

Section 376.30781 does not contain a statutory limitation of one SRCO tax credit bonus per site. The potential restriction via Rule of one SRCO bonus per contaminated or Brownfield site creates a requirement that is not statutorily authorized and may represent an invalid exercise of delegated rulemaking

authority by FDEP. *See* § 120.52(8)(b), (d), (e), Fla. Stat. ("A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies: … The agency has exceeded its grant of rulemaking authority … [or] The rule enlarges, modifies, or contravenes the specific provisions of law implemented … [or] The rule is arbitrary or capricious.").

As a result, FBA recommends the following language be deleted (FBA's revisions are in double strikethrough).

> ~~Once a contaminated site receives an SRCO bonus tax credit, a subsequent contaminated or Brownfield site subject to the original SRCO cannot receive an additional SRCO bonus tax credit.~~

The complex realities of site rehabilitation provide further grounds for this elimination. It is a distinct possibility that a site will have more than one SRCO or CSRCO over its lifetime. For example, a site rehabilitated using engineering controls may initially achieve environmental regulatory closure through issuance of a CSRCO, but subsequently a new developer may intend to repurpose the site for a different use and, in doing so, seek clean closure without conditions. Impacted soil may be removed during that subsequent site rehabilitation effort and an SRCO may be issued as part of that process. In that instance, the site will have had a second closure order (SRCO), but it would be ineligible for the SRCO tax credit bonus if FDEP's proposed limitation is finalized in the Rule. This potential result runs counter to the express statutory purpose in Section 376.30781(3)(c) of "encourage[ing] completion of site rehabilitation at contaminated sites that are being voluntarily cleaned up."

As another example, FDEP's proposed Rule language could potentially be read to limit SRCO tax credit bonuses in situations where one parcel within a larger site obtains an SRCO and another parcel within the same site later seeks an SRCO. FDEP's proposed language could be construed to prohibit an SRCO tax credit bonus regarding the second SRCO. This restrictive outcome is not the intent of Section 376.30781(3)(c) and is overly limiting given the broad statutory goal of encouraging voluntary cleanup. *See* § 376.30781(1), Fla. Stat. ("The Legislature finds that . . . it is in the state's interest to encourage the cleanup, at the earliest possible time, of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas. … It is the intent of the Legislature to encourage the voluntary cleanup of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas by providing a tax credit for the restoration of such property in specified circumstances."). Accordingly, FBA seeks elimination of the proposed Rule language noted above.

B. Rule 62-788.341(2)

FBA further recommends that lines 303-306 in proposed Rule 62-788.341(2) be revised as shown below (FBA's revisions are in double strikethrough) so that the Rule becomes consistent with the CS/HB 733:

> (2) To receive the solid waste removal tax credit, the tax credit applicant must submit a statement ~~an affidavit~~ with its application form indicating ~~that states~~ that ~~the tax credit applicant has~~ consulted with the appropriate local government official

~~and the appropriate Department District Solid Waste Supervisor and~~ ~~reviewed the available historical records, and~~ to the best of the tax credit applicant's knowledge, the B~~b~~rownfield site identified and described in the BSRA was never operated as a permitted solid waste disposal area, as defined in subsection 62-788.201, F.A.C.~~,~~ ~~or was never operated for monetary compensation, as defined in subsection 62-788.201, F.A.C.~~

These revisions by FBA would eliminate the referenced review of "available historical records" to make the Rule language consistent with CS/HB 733, which deleted the reference to "available historical records." *See* CS/HB 733, at line 147. This change by FBA is necessary to align the Rule with CS/HB 733 and eliminate requirements not imposed by statute. The phrase "available historical records" also creates ambiguity and uncertainty as to what constitutes such records.

C. Rule 62-788.401(4)

FBA is concerned that FDEP's proposed changes to Rule 62-788.401(4) exceed FDEP's statutorily delegated rulemaking authority. FDEP's proposed amendments to this Rule provide unnecessary restrictions on the documentation that FDEP will review as part of a Voluntary Cleanup Tax Credit ("VCTC") application – and impose restrictions not contemplated by statute.

Sections 376.30781(6)-(8) set forth the information and materials that must be provided by the applicant as part of the VCTC application. The statute makes no reference to documents needing to be in the "site file" or documents needing to be "otherwise available for review" at the time the VCTC application is received by FDEP.

Perhaps more importantly, the statute does not prohibit FDEP from considering technical documentation or reports that are completed after FDEP's receipt of the VCTC application. Critically, in a submitted VCTC application, the technical professional already has certified that the "costs incurred in [the] application were integral, necessary, and required for either site rehabilitation or for solid waste removal, as applicable." This certification confirms it is not necessary to supplement a VCTC application with a report that was completed after FDEP's receipt of the VCTC application, but FDEP should nonetheless not prohibit review of such a report to the extent it is relevant to the application. In fact, FDEP is statutorily required to review "any supplemental documentation that the VCTC applicant may submit prior to the annual application deadline," § 376.30781(8), Fla. Stat., and there is no statutory prohibition on FDEP's review of materials after the application deadline.

The Rule should not artificially accelerate the technical report preparation timeline, which is often governed by Chapter 62-780, a BSRA, or other agreement with FDEP. In practice, situations arise in which underlying site rehabilitation work has been performed – including potential sampling with lab results – before submission of a VCTC application, but the related technical report is not able to be completed until after submission of the VCTC application. In other words, underlying data and analysis may be used to support a VCTC application upon its submission, but the related technical report might not be completed until after FDEP's receipt of the VCTC application. FDEP should not preclude itself from reviewing a later-completed report in the event such review would be relevant to a VCTC application.

Additionally, FDEP's proposed Rule amendments would erroneously preclude requests for additional information from remedying a deficient VCTC application. Section 376.30781(8)(a) expressly allows a VCTC applicant to submit additional information and authorizes such information to correct application deficiencies: "If the department determines that an application is incomplete, the department shall notify the applicant in writing and the applicant shall have 30 days after receiving such notification to correct any deficiency. Upon timely correction of any deficiencies, the tax credit application secures a place in the first-come, first-served application line. Tax credit applications may not be altered to claim additional costs during this time."

Accordingly, FBA recommends that FDEP's proposed language in lines 451-462 of Rule 62-788.401(4) be eliminated as follows (FBA's revisions are in double strikethrough).

> (4) … ~~For applications claiming site rehabilitation or solid waste removal costs, the Department will review relevant technical documentation or reports within the Brownfield or drycleaning site file to ascertain whether claimed costs are eligible for tax credits. Technical documentation or reports to support the eligibility of claimed site rehabilitation or solid waste removal costs not located within the Brownfield or drycleaning site file must be otherwise available for review at the time the application is received by the Department. The Department will not consider technical documentation or reports completed after the Department's receipt of the tax credit application in its review of claimed site rehabilitation or solid waste removal costs. If review of the relevant technical documentation or reports do not verify whether the claimed site rehabilitation or solid waste removal costs are eligible for tax credits, the Department will request additional information from the applicant to ascertain whether claimed site rehabilitation or solid waste removal costs are eligible for tax credits under the qualifying statute and rule criteria. Such requests for additional information are solely to aid the Department in evaluating claimed costs and cannot cure, amend, or complete deficient applications.~~

FBA also recommends that FDEP keep, and not eliminate, the "and has submitted all required documentation" language in line 451 of the current Rule 62-788.401(4) shown below.

> (4) The Department will review each ~~the~~ complete tax credit application package submitted by an ~~each tax credit~~ applicant to verify that the tax credit applicant has met the qualifying statutory and rule criteria for the tax credits being sought ~~and has submitted all required documentation~~.

II. Form 62-788.101(1)

Similar to FBA's comments above, FBA seeks deletion of the following footnote that FDEP proposes to add to Form 62-788.101(1) pages 5, 6, 7, and 8 (FBA's revisions are in double strike through): "~~Tax credit applicants correcting completeness deficiencies identified by the Department cannot change, supplement, or amend their application after the applicable application deadline~~." This Form language risks running afoul to Section 376.30781(8)(a), which authorizes a tax credit applicant to submit additional information and allows such information to correct application deficiencies.

FBA also recommends that the term "brownfield site" in the Form be updated throughout to reference "Brownfield site" so it is consistent with the revised Rule.

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FBA appreciates FDEP transmitting a copy of the December 2025 version of the Rule and Form to FBA for review. FBA looks forward to continuing its collegial and constructive effort with FDEP on the Chapter 62-788 rulemaking. If you have any questions or comments on this letter, please do not hesitate to let us know.

On behalf of the FBA and its Board of Directors,

Jorge R. Caspary, P.G.
2025 FBA President

Michael J. Larson, Esq.
2025 FBA President-Elect

cc: Tim Bahr, Director, Division of Waste Management, FDEP
Scott Sweeney, Brownfields Program Manager, FDEP
FBA Board of Directors