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November 19, 2025

VIA E-MAIL

Courtney Johnstone
Florida Department of Environmental Protection
Division of Waste Management, Voluntary Cleanup Tax Credit
2600 Blair Stone Road, MS 4535
Tallahassee, Florida 32399-2400
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**Re: Chapter 62-788, Florida Administrative Code, Rulemaking –
Follow-up to November 6, 2025, Meeting**

Dear Ms. Johnstone:

The Florida Brownfields Association ("FBA") appreciates meeting with the Florida Department of Environmental Protection ("FDEP") on November 6, 2025, to discuss the ongoing Chapter 62-788, F.A.C., rulemaking effort initiated by FDEP. The FBA provides the following additional comments below.

I. Rule 62-788.301(4)(m), F.A.C.

As initially discussed in its comment letter dated October 27, 2025, FBA continues to take the position that FDEP has limited statutorily delegated rulemaking authority under Section 376.30781(12), Fla. Stat., which states: "[t]he Department of Environmental Protection may adopt rules to prescribe the necessary forms required to claim tax credits under this section and to provide the administrative guidelines and procedures required to administer this section" (emphasis added). Consequently, FDEP may promulgate rules, but only if such rules set forth necessary forms or provide administrative guidelines and procedures relating to administration of the statute.

FBA has significant concerns that the updated draft version of Rule 62-788.301(4)(m) that was provided by FDEP and discussed during the November 6, 2025, meeting would exceed FDEP's delegated rulemaking authority and may result in a formal rule challenge with further expenditure of resources by various parties. On a practical level, the updated draft language also would be unworkable without further clarifications and revisions.

At the same time, FDEP recognizes that the current version of Rule 62-788.301(4)(m) contains certain language regarding Voluntary Cleanup Tax Credit eligibility for engineering controls and such Rule is already in effect.

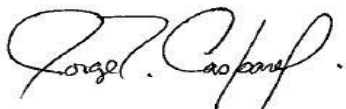
While FBA does not opine as to the validity of current Rule 62-788.301(4)(m) or whether it falls within FDEP's statutorily delegated rulemaking authority, FBA recommends that, during the pending rulemaking effort, FDEP refrain from making any changes to Rule 62-788.301(4)(m) as it currently exists. More generally, FBA recommends that any changes to Chapter 62-788 made through the pending rulemaking effort be limited to rule changes mandated by CS/HB 733 (2025), and that any rule changes unconnected to CS/HB 733 be closely considered to ensure that they unequivocally fall within the limited rulemaking authority granted by Section 376.30781(12).

II. Voluntary Cleanup Tax Credit Guidance

FBA's view is that updates to FDEP's "VCTC FAQs" or preparation of a separate guidance document regarding Voluntary Cleanup Tax Credit eligibility may be helpful to tax credit applicants and related professionals who assist with preparation of the tax credit applications. Clarification of recurring questions and issues could potentially be addressed through guidance. FBA, including through its Legislative, Policy & Technical committee, would be happy to provide comments and input in connection with FDEP's preparation of such guidance.

If you have any questions or comments on this letter, please do not hesitate to let us know. The FBA looks forward to continuing its collegial and constructive relationship with FDEP on this Chapter 62-788 rulemaking effort.

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