

By Senator Constantine

22-01432-09

20091450__

1 A bill to be entitled
2 An act relating to brownfields; amending s. 376.81,
3 F.S.; deleting an obsolete date with respect to the
4 establishment of rules governing the brownfield
5 rehabilitation program; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsection (1) of section 376.81, Florida
10 Statutes, is amended to read:

11 376.81 Brownfield site and brownfield areas contamination
12 cleanup criteria.—

13 (1) It is the intent of the Legislature to protect the
14 health of all people under actual circumstances of exposure. ~~By~~
15 ~~July 1, 2001,~~ The secretary of the department shall establish
16 criteria by rule for the purpose of determining, on a site-
17 specific basis, the rehabilitation program tasks that comprise a
18 site rehabilitation program and the level at which a
19 rehabilitation program task and a site rehabilitation program
20 may be deemed completed. In establishing the rule, the
21 department shall apply, to the maximum extent feasible, a risk-
22 based corrective action process to achieve protection of human
23 health and safety and the environment in a cost-effective manner
24 based on the principles set forth in this subsection. The rule
25 must prescribe a phased risk-based corrective action process
26 that is iterative and that tailors site rehabilitation tasks to
27 site-specific conditions and risks. The department and the
28 person responsible for brownfield site rehabilitation are
29 encouraged to establish decision points at which risk management

22-01432-09

20091450__

30 decisions will be made. The department shall provide an early
31 decision, when requested, regarding applicable exposure factors
32 and a risk management approach based on the current and future
33 land use at the site. The rule shall also include protocols for
34 the use of natural attenuation, the use of institutional and
35 engineering controls, and the issuance of "no further action"
36 letters. The criteria for determining what constitutes a
37 rehabilitation program task or completion of a site
38 rehabilitation program task or site rehabilitation program must:

39 (a) Consider the current exposure and potential risk of
40 exposure to humans and the environment, including multiple
41 pathways of exposure. The physical, chemical, and biological
42 characteristics of each contaminant must be considered in order
43 to determine the feasibility of risk-based corrective action
44 assessment.

45 (b) Establish the point of compliance at the source of the
46 contamination. However, the department is authorized to
47 temporarily move the point of compliance to the boundary of the
48 property, or to the edge of the plume when the plume is within
49 the property boundary, while cleanup, including cleanup through
50 natural attenuation processes in conjunction with appropriate
51 monitoring, is proceeding. The department also is authorized,
52 pursuant to criteria provided for in this section, to
53 temporarily extend the point of compliance beyond the property
54 boundary with appropriate monitoring, if such extension is
55 needed to facilitate natural attenuation or to address the
56 current conditions of the plume, provided human health, public
57 safety, and the environment are protected. When temporarily
58 extending the point of compliance beyond the property boundary,

22-01432-09

20091450__

59 it cannot be extended further than the lateral extent of the
60 plume at the time of execution of the brownfield site
61 rehabilitation agreement, if known, or the lateral extent of the
62 plume as defined at the time of site assessment. Temporary
63 extension of the point of compliance beyond the property
64 boundary, as provided in this paragraph, must include actual
65 notice by the person responsible for brownfield site
66 rehabilitation to local governments and the owners of any
67 property into which the point of compliance is allowed to extend
68 and constructive notice to residents and business tenants of the
69 property into which the point of compliance is allowed to
70 extend. Persons receiving notice pursuant to this paragraph
71 shall have the opportunity to comment within 30 days of receipt
72 of the notice.

73 (c) Ensure that the site-specific cleanup goal is that all
74 contaminated brownfield sites and brownfield areas ultimately
75 achieve the applicable cleanup target levels provided in this
76 section. In the circumstances provided below, and after
77 constructive notice and opportunity to comment within 30 days
78 from receipt of the notice to local government, to owners of any
79 property into which the point of compliance is allowed to
80 extend, and to residents on any property into which the point of
81 compliance is allowed to extend, the department may allow
82 concentrations of contaminants to temporarily exceed the
83 applicable cleanup target levels while cleanup, including
84 cleanup through natural attenuation processes in conjunction
85 with appropriate monitoring, is proceeding, if human health,
86 public safety, and the environment are protected.

87 (d) Allow brownfield site and brownfield area

22-01432-09

20091450__

88 rehabilitation programs to include the use of institutional or
89 engineering controls, where appropriate, to eliminate or control
90 the potential exposure to contaminants of humans or the
91 environment. The use of controls must be preapproved by the
92 department and only after constructive notice and opportunity to
93 comment within 30 days from receipt of notice is provided to
94 local governments, to owners of any property into which the
95 point of compliance is allowed to extend, and to residents on
96 any property into which the point of compliance is allowed to
97 extend. When institutional or engineering controls are
98 implemented to control exposure, the removal of the controls
99 must have prior department approval and must be accompanied by
100 the resumption of active cleanup, or other approved controls,
101 unless cleanup target levels under this section have been
102 achieved.

103 (e) Consider the additive effects of contaminants. The
104 synergistic and antagonistic effects shall also be considered
105 when the scientific data become available.

106 (f) Take into consideration individual site
107 characteristics, which shall include, but not be limited to, the
108 current and projected use of the affected groundwater and
109 surface water in the vicinity of the site, current and projected
110 land uses of the area affected by the contamination, the exposed
111 population, the degree and extent of contamination, the rate of
112 contaminant migration, the apparent or potential rate of
113 contaminant degradation through natural attenuation processes,
114 the location of the plume, and the potential for further
115 migration in relation to site property boundaries.

116 (g) Apply state water quality standards as follows:

22-01432-09

20091450__

117 1. Cleanup target levels for each contaminant found in
118 groundwater shall be the applicable state water quality
119 standards. Where such standards do not exist, the cleanup target
120 levels for groundwater shall be based on the minimum criteria
121 specified in department rule. The department shall apply the
122 following, as appropriate, in establishing the applicable
123 cleanup target levels: calculations using a lifetime cancer risk
124 level of 1.0E-6; a hazard index of 1 or less; the best
125 achievable detection limit; and nuisance, organoleptic, and
126 aesthetic considerations. However, the department shall not
127 require site rehabilitation to achieve a cleanup target level
128 for any individual contaminant which is more stringent than the
129 site-specific, naturally occurring background concentration for
130 that contaminant.

131 2. Where surface waters are exposed to contaminated
132 groundwater, the cleanup target levels for the contaminants
133 shall be based on the more protective of the groundwater or
134 surface water standards as established by department rule. The
135 point of measuring compliance with the surface water standards
136 shall be in the groundwater immediately adjacent to the surface
137 water body.

138 3. Using risk-based corrective action principles, the
139 department shall approve alternative cleanup target levels in
140 conjunction with institutional and engineering controls, if
141 needed, based upon an applicant's demonstration, using site-
142 specific data, modeling results, risk assessment studies, risk
143 reduction techniques, or a combination thereof, that human
144 health, public safety, and the environment are protected to the
145 same degree as provided in subparagraphs 1. and 2. Where a state

22-01432-09

20091450__

146 water quality standard is applicable, a deviation may not result
147 in the application of cleanup target levels more stringent than
148 the standard. In determining whether it is appropriate to
149 establish alternative cleanup target levels at a site, the
150 department must consider the effectiveness of source removal, if
151 any, which has been completed at the site and the practical
152 likelihood of the use of low yield or poor quality groundwater,
153 the use of groundwater near marine surface water bodies, the
154 current and projected use of the affected groundwater in the
155 vicinity of the site, or the use of groundwater in the immediate
156 vicinity of the contaminated area, where it has been
157 demonstrated that the groundwater contamination is not migrating
158 away from such localized source, provided human health, public
159 safety, and the environment are protected. When using
160 alternative cleanup target levels at a brownfield site,
161 institutional controls shall not be required if:

162 a. The only cleanup target levels exceeded are the
163 groundwater cleanup target levels derived from nuisance,
164 organoleptic, or aesthetic considerations;

165 b. Concentrations of all contaminants meet the state water
166 quality standards or minimum criteria, based on protection of
167 human health, provided in subparagraph 1.;

168 c. All of the groundwater cleanup target levels established
169 pursuant to subparagraph 1. are met at the property boundary;

170 d. The person responsible for brownfield site
171 rehabilitation has demonstrated that the contaminants will not
172 migrate beyond the property boundary at concentrations exceeding
173 the groundwater cleanup target levels established pursuant to
174 subparagraph 1.;

22-01432-09

20091450__

175 e. The property has access to and is using an offsite water
176 supply and no unplugged private wells are used for domestic
177 purposes; and

178 f. The real property owner provides written acceptance of
179 the "no further action" proposal to the department or the local
180 pollution control program.

181 (h) Provide for the department to issue a "no further
182 action order," with conditions, including, but not limited to,
183 the use of institutional or engineering controls where
184 appropriate, when alternative cleanup target levels established
185 pursuant to subparagraph (g)3. have been achieved, or when the
186 person responsible for brownfield site rehabilitation can
187 demonstrate that the cleanup target level is unachievable within
188 available technologies. Prior to issuing such an order, the
189 department shall consider the feasibility of an alternative site
190 rehabilitation technology in the brownfield area.

191 (i) Establish appropriate cleanup target levels for soils.

192 1. In establishing soil cleanup target levels for human
193 exposure to each contaminant found in soils from the land
194 surface to 2 feet below land surface, the department shall apply
195 the following, as appropriate: calculations using a lifetime
196 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
197 the best achievable detection limit. However, the department
198 shall not require site rehabilitation to achieve a cleanup
199 target level for an individual contaminant which is more
200 stringent than the site-specific, naturally occurring background
201 concentration for that contaminant. Institutional controls or
202 other methods shall be used to prevent human exposure to
203 contaminated soils more than 2 feet below the land surface. Any

22-01432-09

20091450__

204 removal of such institutional controls shall require such
205 contaminated soils to be remediated.

206 2. Leachability-based soil target levels shall be based on
207 protection of the groundwater cleanup target levels or the
208 alternate cleanup target levels for groundwater established
209 pursuant to this paragraph, as appropriate. Source removal and
210 other cost-effective alternatives that are technologically
211 feasible shall be considered in achieving the leachability soil
212 target levels established by the department. The leachability
213 goals shall not be applicable if the department determines,
214 based upon individual site characteristics, and in conjunction
215 with institutional and engineering controls, if needed, that
216 contaminants will not leach into the groundwater at levels that
217 pose a threat to human health, public safety, and the
218 environment.

219 3. Using risk-based corrective action principles, the
220 department shall approve alternative cleanup target levels in
221 conjunction with institutional and engineering controls, if
222 needed, based upon an applicant's demonstration, using site-
223 specific data, modeling results, risk assessment studies, risk
224 reduction techniques, or a combination thereof, that human
225 health, public safety, and the environment are protected to the
226 same degree as provided in subparagraphs 1. and 2.

227 Section 2. This act shall take effect July 1, 2009.