

By Senator Constantine

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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.

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

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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

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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,

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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

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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:

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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

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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.;

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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

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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, 2010.