

## Practice Update

# 2016 Environmental Legislation Makes Needed Improvements to Environmental Cleanup Programs

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Recently Governor Scott approved legislation which makes much needed improvements and modifications to several existing environmental cleanup programs in Florida including the Petroleum Restoration Program and the Brownfield Redevelopment Program. These changes are anticipated to streamline and facilitate petroleum and brownfield property cleanups in the State of Florida. CS/SB 100, Chapter 2016-184 modifies the Petroleum Restoration Program, and the Brownfield Redevelopment Program as set forth in Chapter 376 of the Florida Statutes. The effective date of the legislation is July 1, 2016. The Petroleum Restoration Program establishes the requirements and procedures for cleaning up contaminated land and prescribes the circumstances under which the state will pay for the cleanup. The Brownfield Program establishes a cleanup program whose primary goals are reducing public health and environmental hazards on existing commercial and industrial sites which are abandoned or underused and creates financial and regulatory incentives to encourage voluntary cleanup and redevelopment. CS/SB 100 makes the following changes:

1. Amends the Global Risk Based Corrective Action (RBCA) and brownfield program cleanup statute:

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- Defines “background concentration” to mean the concentrations of contaminants naturally occurring or resulting from anthropogenic (human) impacts unrelated to the discharge or pollutants or hazardous substances.
  - Defines “long-term natural attenuation” to mean natural attenuation by the Department of Environmental Protection (DEP) for a program task for a time period of more than five years.
  - Allows the use of risk assessment modeling and probabilistic risk assessment to create site specific Alternative Cleanup Target Levels (ACTLs).
  - Allows use of ACTLs without institution controls if certain specified conditions exist.
2. Expands the eligibility requirements under the Abandoned Tank Restoration Program (ATRP). Specifically, the bill removes the reporting deadline of June 30, 1996. The bill also removes certain evidence and knowledge requirements found in the ATRP, including removing the provision prohibiting eligibility if there was knowledge of the polluting condition when the title was acquired unless the person acquired title to the site after issuance of a notice of site eligibility by DEP.
3. Amends the provisions governing the Inland Protection Trust Fund. Notably, the bill
- requires the DEP to make productivity a priority in administering the Petroleum Restoration Program,
  - expands and makes permanent the authority of the DEP to fund certain costs associated with the Petroleum Restoration Program including certain survey, title report and recording fees, and
  - provides that the issuance of a site rehabilitation order (SRCO) does not alter a project’s eligibility for state-funded

remediation, if site conditions are not protective of human health.

4. Modifies the funding allowances and requirements for participation in the Low Scored Site Initiative (LSSI) program. The bill requires property owners to submit a “No Further Action” proposal demonstrating that certain criteria and conditions are met. If met, DEP must issue a site rehabilitation order that incorporates the conditions in the No Further Action proposal. Furthermore, the bill expands DEP’s authority regarding approval and funding for a variety of assessment and remediation costs as well as increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund the LSSI from \$30,000 to \$35,000.
5. Amends the provisions concerning Advanced Cleanup. Once effective, DEP will be authorized to consider an applicant’s cost saving demonstration of 25% rather than a commitment to pay 25% or more of the cleanup cost. Also, the bill reduces the number of sites that a facility owner or operator must bundle in order to meet the cost share requirement under the Advanced Cleanup. Additionally, the bill clarifies that a contractor must have evidence of authorization as well as a site access agreement from the property owner in the form of a DEP site access agreement, and the bill allows a property owner to enter into a voluntary cost share agreement for bundling multiple sites.

The above information is not an exhaustive list of the provisions in CS/SB 100. The full text can be accessed [here](#). The bill is set to take effect on July 1, 2016.

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