

Practice Update

Florida Doubles Brownfield Cleanup and Redevelopment Tax Credits & Adds Innovative Tools for Site Cleanups

June 15, 2017

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Innovative Florida environmental site cleanup and Brownfield programs received a boost as the 2017 regular session of the Florida Legislature concluded. Yesterday, Governor Scott signed into law a measure designed to add flexibility and to quicken the pace of petroleum and drycleaner site cleanup using creative Florida Department of Environmental Protection (FDEP) programs. Following another record year in state Voluntary Cleanup Tax Credit (VCTC) participation, Governor Rick Scott and the Florida Legislature doubled annual VCTC funding for voluntary Brownfield and contaminated site cleanup. These legislative moves will ready more sites for redevelopment across Florida.

Florida's Brownfield Tax Credit & State Brownfield Incentives

Voluntary Cleanup Tax Credit (VCTC). On May 25, 2017, Governor Rick Scott signed into law comprehensive tax legislation, which doubled the funding for Florida's VCTC program. The VCTC tax credit is a key state financial incentive to encourage the voluntary cleanup and redevelopment of Brownfield sites and certain drycleaner sites affected

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by contamination. Administered by FDEP, the Florida Legislature permanently increased VCTC funding from \$5 million to \$10 million per year as of July 1, 2017. Eligible sites can receive a 50% VCTC state tax credit applied to state corporate income tax for environmental cleanup costs incurred and paid for the calendar year. For 2016, the VCTC program had another record year, receiving applications seeking over \$14 million in annual VCTC tax credits. VCTC tax credits are transferable to third parties on an open market.

Brownfield Redevelopment Job Bonus. In the 2017 session, the Florida Legislature authorized continued funding for Florida's Brownfield Redevelopment Job Bonus incentive, which provides \$2,500 per new job created on or adjacent to Brownfield sites, subject to program criteria. Following Governor Scott post-session budget actions in June 2017, this funding is expected to remain in place.

New Petroleum Redevelopment Initiative

Yesterday, Governor Scott signed into law Senate Bill 1018 (SB 1018). SB 1018 adds innovative new elements to FDEP's petroleum advanced cleanup program, which are designed to encourage the cleanup of petroleum impacted sites that are scheduled or planned for redevelopment. The bill provides an additional \$5 million per year for FDEP's new petroleum redevelopment initiative, out of a total of \$30 million in advanced FDEP cleanup funding. Applications are awarded on a first-come, first served basis, are not subject to a percentage or cost share commitment requirement, and may be awarded outside of FDEP petroleum site ranking order. A facility or an applicant is eligible for up to \$1 million in cleanup work in a fiscal year. These provisions take effect on July 1, 2017.

Advanced Site Assessment for Drycleaner Sites

SB 1018 also establishes a new advanced site assessment tool for sites in FDEP's state-funded drycleaner cleanup program. Under the legislation, a real property owner may apply for state-funded advanced site assessment to be performed in advance of FDEP drycleaner site ranking order, up to a maximum of \$70,000 per site. This new program allows for the selection of sites if (i) site cleanup is expected to provide cost savings to FDEP, (ii) assessment is expected to offer better evaluation of contamination risk, and (iii) the property owner agrees to implement a risk-based closure using approved controls as may apply. This measure takes effect July 1, 2017. There is a cap on total annual funding. FDEP is expected to release instructions and a form for program application.

A key existing tool for drycleaner cleanup remains FDEP's Voluntary Cleanup Agreement (VCA), which enables real property owners who did not own or operate a drycleaner facility at the site to voluntarily agree to conduct cleanup. Parties performing cleanup under VCAs may apply for and obtain state VCTC tax credits, similar to Brownfield sites, and receive liability protections.

New Contamination Notification Requirements

SB 1018 also includes new state contamination notification provisions, requiring property and facility owners and operators to report a "reportable pollution release" to FDEP within 24 hours after discovery by the owner or operator. A "reportable pollution release" is defined as the release or discharge of a substance from an installation to air, land, or waters that is not authorized by law and that is reportable to FDEP's State Watch Office pursuant to a FDEP rule, permit, or other requirement. Additional notice is required to FDEP within 24 hours after discovery of off-site migration following the initial reporting. FDEP is required to publish these notices on an accessible Web site and to establish electronic mailing lists. The new provision follows a recent state administrative challenge to a

previous proposed FDEP rule and a 2016 FDEP emergency rule that had expired. This statutory provision also takes effect July 1, 2017.

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