

# Enforcement of Rule 62-780 F.A.C.

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A General Introduction

## §376.30701(1)(a) F.S.

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This section shall not create or establish any new liability for site rehabilitation at contaminated sites. This section is intended to describe a risk based corrective action process to be applied at sites where legal responsibility exists pursuant to other provisions of this chapter [376] of chapter 403.

## “Contaminated Site” 780.150(13) F.A.C. & “Contaminants” 780.150(10) F.A.C

- (13) “Contaminated site” means any contiguous land, sediment, surface water, or groundwater area that contains contaminants that may be harmful to human health or the environment.
- (10) “Contaminant” means any physical, chemical, biological, or radiological substance present in any medium that may result in adverse effects to human health or the environment, or that creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

# §376.30701(1)(b) F.S.

- This section shall apply to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of this chapter [376] or chapter 403, except for those contaminated sites subject to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs pursuant to ss. 376.3071, 376.81, and 376.3078, respectively.

“Pollutants” §376.301(36) F.S. &

“Hazardous Substances” §376.301(21) F.S.

- (36) "Pollutants" includes any "product" as defined in s. 377.19(11), pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.
  - §377.19 (11) F.S. "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.
- (21) "Hazardous substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the Superfund Amendments and Reauthorization Act of 1986.

## §376.30701(1)(c) F.S.

- This section shall apply to a variety of site rehabilitation scenarios including, but not limited to, site rehabilitation conducted voluntarily, site rehabilitation conducted pursuant to the department's enforcement authority, or site rehabilitation conducted as a state-managed cleanup by the department.

# Rule 62-780.150

## Applicability

- (1) Chapter 376 Or 403 Liability;
- (2) Voluntary Rehabilitation;
- (3) State-Managed Cleanups;

## 62-780.150(1) F.A.C.

- Every person who has legal responsibility for site rehabilitation pursuant to Chapter 376 or 403, F.S., except those specifically excluded herein, shall comply with the provisions of this chapter and are subject to enforcement to compel compliance with the provisions of this chapter.

## 62-780.110(9) F.A.C.

- ...violations of relevant provisions of Chapter 376 or 403, F.S., that result in legal responsibility for site rehabilitation pursuant to those chapters are subject to this chapter [62-780].

## 62-780.150(2) F.A.C.

- Any person who has no legal responsibility for site rehabilitation but who voluntarily rehabilitates a site shall comply with the provisions of this chapter if that person wishes the Department to review any documents concerning site rehabilitation or issue any order with respect to completion of the rehabilitation tasks.

# 62-780.150(3) F.A.C.

- This chapter applies to site rehabilitation conducted as a state-managed cleanup by the Department.

## Cleanup Target Levels Applicable at Contaminated Sites 62-780.150(5) F.A.C.

- “CTL” 780.150(13) F.A.C. means cleanup target level.
- CTLs for each contaminant found in groundwater, surface water, or soil, as specified in Chapter 62-777, F.A.C., Tables I and II, or derived pursuant to Chapter 62-777, F.A.C., or alternative CTLs that may be established pursuant to Rule 62-780.650 or 62-780.680, F.A.C., are applicable in implementing the provisions of this chapter.

# Where 780 and Associated CTL's **Do Not Apply** 62-780.150(4) F.A.C.

- (4) This chapter and the CTLs developed pursuant to this chapter apply to cleanups conducted by persons legally responsible for site rehabilitation of contaminated sites, whether the release or discharge causing or contributing to the contamination occurred prior to, on, or after the effective date of this chapter, unless:
  - (a) The Department has accepted CTLs for a site in an approved technical document (for example, Risk Assessment Report, Natural Attenuation with Monitoring Plan, Remedial Action Plan), current permit, Superfund Record of Decision with which the Department has concurred, or other written agreement with the Department, and the PRSR continues the activities necessary to achieve those CTLs in accordance with the approved technical document, permit, Superfund Record of Decision, or other written agreement until those CTLs are achieved; or
  - (b) The site has received a "No Further Action" order or a "Site Rehabilitation Completion" order from the Department prior to the effective date of this rule chapter. However, the PRSR may elect to have the criteria of this chapter, including CTLs established pursuant thereto, apply in lieu of those in an approved technical document, current permit, or other written agreement.

# Where 780 and Associated CTL's **Do Not Apply** 62-780.150(6)-(9) F.A.C.

- (6) If a Consent Order or permit that requires assessment and rehabilitation of a site has been entered into with the Department prior to the effective date of this chapter, compliance with the terms of the Consent Order or permit shall constitute compliance with the provisions of this chapter.
- (7) This chapter does not apply to site rehabilitation being performed pursuant to Chapter 62-770, 62-782, or 62-785, F.A.C.
- (8) This chapter does not apply to site rehabilitation being performed pursuant to Chapter 62-730, F.A.C., except to the extent that rules promulgated under Section 376.30701, F.S., are referred to or incorporated by reference in Chapter 62-730, F.A.C.
- (9) This chapter does not apply to the rehabilitation of sites contaminated with radiological substances to the extent that such rehabilitation is governed by Chapter 404, F.S., or the Federal Atomic Energy Act of 1954, Chapter 1073, Statute 923, as amended.

# Enforcement Proceedings

- §376.30701(1)(b) F.S. *This section shall apply to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of this chapter, 376, or chapter 403*

# Enforcement - Authority

- The Department possesses both Civil and Administrative authority to ensure compliance with applicable regulatory controls related to contaminated sites, including the provisions within Rule 62-780 F.A.C.

# FDEP Enforcement Guidance

- The FDEP *Enforcement Manual* describes “the Department’s compliance and enforcement philosophy .”
- <http://www.dep.state.fl.us/legal/Enforcement/enforcement.htm>

# 780 Enforcement

- The previously introduced *Enforcement Manual* currently contains 3 model administrative Notice of Violations that FDEP Waste Cleanup staff will likely utilize to pursue 780 compliance. The causes of action contained in these NOVs are;
  - § 403.727(4) Fla. Stat. --- prohibition on the release or threatened release of a hazardous substance.
  - § 403.087 Fla. Stat. --- prohibits a reasonably expected source of water pollution being maintained without a permit.
  - §§ 376.302(1)(a) and 376.305(1) Fla. Stat. --- prohibition of the discharge of pollutants or hazardous substances into or upon the surface or ground waters of the state...in violation of Department 'standard' [as defined at § 403.803(13) Fla. Stat.]
  - § 403.161(1)(b) Fla. Stat. --- failure to comply with any Department issued permit.

QUESTIONS?