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Practical Applications to changes in DEP's Risk Base Corrective Action Policy

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DEP Programs Utilizing RBCA

- Petroleum Cleanup Program; §§376.3071, et seq., Florida Statutes
- Drycleaning Facility Restoration; §§ 376.3078, et seq., Florida Statutes
- The Florida Brownfields Redevelopment Act; §§376.77-.85, Florida Statutes
- “Global RBCA”; §376.30701, Florida Statutes
- Chapter 62-780, Florida Administrative Code

RBCA

- Section 376.30701, Florida Statutes
 - Applicability. “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 for site rehabilitation exists pursuant to other provisions of this Chapter or Chapter 403.” New 2003. §376.30701(1)(a), Florida Statutes.
 - Intent: “It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure In establishing these rules, the Department shall apply to the maximum extent feasible a risk based corrective action process to achieve protection of human health and safety and the environment in a cost effective manner based on the principles set forth in this subsection. These rules shall prescribe a phased risk based corrective action process that is iterative and that tailors site rehabilitation tasks to site specific conditions and risks.” Section 1, Chapter 2003-173, Laws of Florida, §376.30701(2), Florida Statutes

RBCA

- Application of Risk-Based Corrective Action to Contaminated Sites.
 - Chapter 62-780, Florida Administrative Code
 - Applicability. “This chapter applies to site rehabilitation conducted at sites contaminated with pollutants, hazardous substances, drycleaning solvents, petroleum and petroleum products, and supersedes Chapters 62-770, 62-782, and 62-785, FAC.” New June 12, 2013

RBCA ACTL 2013-14

- 20 different ACTLs were proposed to DEP a total of 15 different sites (some sites appear on the list twice).
- Of the 20 proposed ACTLs DEP agreed with 16 and disagreed with 4.
- 2 of the agreed-upon values were resubmittals for previous values DEP had rejected and those previous values are also included in the “disagreed with” total.
- The majority of these values are submitted in the context of a risk assessment and the assumptions in that risk assessment as well as choices for parameter values in the calculation are important factors in decisions regarding ACTLs.
 - Source Brian Dougherty, FDEP Waste Division

Florida RBCA since 2010

2010 - 14 sites, 15 different ACTL proposal documents reviewed (5 we concurred with the values, 10 we disagreed with the proposed ACTLs)

2011 - 6 sites, 8 different ACTL proposal documents reviewed (5 we concurred with the values, 3 we disagreed with the proposed ACTLs)

2012 - 7 sites, 10 different ACTL proposal documents reviewed (5 we concurred with the values, 3 we disagreed with the proposed ACTLs, 2 were resubmissions of the rejected values in a different report)


2013 - 15 sites, 20 different ACTL proposal documents reviewed (12 we concurred with the values, for one site 2 chemical specific RSC-based ACTLs were developed and of course accepted. 4 we disagreed with the proposed ACTLs, 2 were resubmissions of rejected values in a previous report).

Site Closure with Conditions

- November 1, 2013, Memorandum from Jorge Caspary, DEP Waste Division Director
 - Applies to Site Rehabilitation Completion Order with Condition per Chapter 62-780, FAC
 - Institutional Controls are restrictions including deed restrictions, restrictive covenants, or conservation easements. §376.301(22) and 376.79(10), F.S.
 - ICs for groundwater include county or municipal ordinances prohibiting installation of potable water wells in urban areas or requiring new potable wells to utilize county or municipal water systems, where groundwater is undrinkable, and prohibition on wells in potable wellhead protection areas
 - In these cases, no RC by deed or title is necessary
- Source, Jorge Caspary, DEP Waste Division Director

Recent DEP Determinations Involving ACTLs and Naturally Occurring Contaminants

- Determination of Background Conditions and the Applicability of Site Rehabilitation Requirements for Cattlemen Road property, Sarasota, October 11, 2013
- Amended Conditional Site Rehabilitation Completion Order for Appolonia property, Palm Beach County, January 10, 2014
- Determination of Background Conditions and the Applicability of Site Rehabilitation Requirements for Highland Dunes property, Palm Beach County, June 16, 2014

A crocodile is resting on a large, dark log in a swampy environment. The background is filled with tall, green grasses and reeds. The water is murky and reflects the surrounding vegetation. The overall scene is a natural, outdoor setting.

THE END