

1 **CHAPTER 62-788**

2 **VOLUNTARY CLEANUP TAX CREDIT RULE**

3 62-788.101 Applicability and Limitations

4 62-788.151 Referenced Guidelines

5 62-788.201 Definitions

6 62-788.301 Site Rehabilitation Voluntary Cleanup Tax Credit Application Process

7 62-788.311 Site Rehabilitation Completion Order Bonus Voluntary Cleanup Tax Credit Application Process

8 62-788.321 Affordable Housing Bonus Voluntary Cleanup Tax Credit Application Process

9 62-788.331 Health Care Bonus Voluntary Cleanup Tax Credit Application Process

10 62-788.341 Solid Waste Removal Voluntary Cleanup Tax Credit Application Process

11 62-788.401 Eligibility Determination

12
13 **62-788.101 Applicability and Limitations.**

14 (1) This chapter applies to any tax credit applicant seeking a tax credit toward corporate income tax pursuant to
15 Sections 220.1845 and 376.30781, Florida Statutes (F.S.). A tax credit applicant shall claim tax credits for the costs
16 of voluntary cleanup activity using the percentages and the amounts in Table 1 by completing Florida Department of
17 Environmental Protection (Department) Form 62-788.101(1) Voluntary Cleanup Tax Credit Application and
18 Affidavit, effective date Month Year ~~March 2022~~, hereby adopted and incorporated by reference. Copies of this form
19 are available from the Department's Voluntary Cleanup Tax Credit (VCTC) Program, Mail Station 4505, 2600 Blair
20 Stone Road, Tallahassee, Florida 32399-2400, or online at [https://floridadep.gov/waste/waste-](https://floridadep.gov/waste/waste-cleanup/documents/vctc-application-form)
21 [cleanup/documents/vctc-application-form](https://floridadep.gov/waste/waste-cleanup/documents/vctc-application-form) or <DOS Link> [http://www.flrules.org/Gateway/reference.asp?No=Ref-](http://www.flrules.org/Gateway/reference.asp?No=Ref-14053)
22 [14053](http://www.flrules.org/Gateway/reference.asp?No=Ref-14053).

23 (2) A tax credit applicant can only submit a single completed application per contaminated or Brownfield site for
24 each calendar year's site rehabilitation costs. A tax credit applicant can be multiple entities working together to
25 rehabilitate a contaminated or Brownfield site as identified and described in the Voluntary Cleanup Agreement (VCA)
26 or Brownfield Site Rehabilitation Agreement (BSRA). Multiple entities must work together to prepare one application
27 document, as detailed in subsection 62-788.301(1), Florida Administrative Code (F.A.C.).

(3) Each application must be accompanied by a nonrefundable review fee of \$250, even if the application includes multiple tax credit applicants or claims multiple tax credit types. The nonrefundable review fee must be made payable to the Water Quality Assurance Trust Fund.

(4) Table 1: Tax Credit Percentages and Amounts for Eligible Sites Pursuant to subsection 62-788.101(1), F.A.C.

	Tax Credit Type ¹				
	Site Rehabilitation ²	Site Rehabilitation Completion Order (SRCO) Bonus ³	Affordable Housing Bonus ⁴	Health Care Bonus ⁵	Solid Waste Removal ⁶
Application Frequency	Annually	Once	Once	Once	Once
Percentage and Maximum Credit for Costs Incurred and Paid from 07/01/1998 to 06/30/2006	35%; \$250,000	10%; \$50,000	N/A	N/A	N/A
Percentage and Maximum Credit for Costs Incurred and Paid after 06/30/2006	50%; \$500,000	25%; \$500,000	25%; \$500,000	N/A	50%; \$500,000
Percentage and Maximum Credit for Costs Incurred and Paid after 12/31/2007	50%; \$500,000	25%; \$500,000	25%; \$500,000	25%; \$500,000	50%; \$500,000

¹ More than one Tax Credit Type listed in Table 1 can be claimed in a single VCTC application.

² The maximum site rehabilitation tax credit issued per contaminated or Brownfield site shall not exceed \$500,000 annually.

³ The maximum SRCO bonus tax credit issued per contaminated or Brownfield site shall not exceed \$500,000.

⁴ The maximum Affordable Housing bonus tax credit issued per Brownfield site, as identified and described in the BSRA, shall not exceed \$500,000.

⁵ The maximum Health Care bonus tax credit issued per Brownfield site, as identified and described in the BSRA, shall not exceed \$500,000.

⁶ The maximum Solid Waste Removal tax credit issued per Brownfield site, as identified and described in the BSRA,

shall not exceed \$500,000.

(5) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History--New 3-9-22, Amended.

62-788.151 Referenced Guidelines.

Specific references to the guideline listed below are made within this chapter. The guideline is not a standard as defined in Section 403.803, F.S. Use of this guideline is not mandatory; the guideline is included for informational purposes only.

(1) A Guideline for Agreed-Upon Procedures Attestation Service for the Voluntary Cleanup Tax Credit (VCTC) Program, dated December 2021. Copies of this guideline are available from the Department's Voluntary Cleanup Tax Credit (VCTC) Program, Mail Station 4505, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, or online at <https://floridadep.gov/waste/waste-cleanup/documents/vctc-cpa-guidelines> or <http://www.flrules.org/Gateway/reference.asp?No=Ref-14054>.

(2) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History--New 3-9-22, Amended.

62-788.201 Definitions.

(1) All words and phrases defined in Sections 376.301, 376.30781, 376.79, and 403.703, F.S., shall have the same meaning when used in this chapter unless otherwise set forth in this subsection or unless the context clearly indicates otherwise. See Sections 376.301 and 376.79, F.S., for definitions of the following: "Contaminant," "Contaminated site," "Department," "Engineering controls," "Person," and "Site rehabilitation." See Section 376.301, F.S., for the definitions of the following: "Drycleaning facility," "Drycleaning solvents," and "Real property owner." See Section 376.30781, F.S., for definitions of the following: "Solid waste disposal area," ~~"Monetary compensation,"~~ and "Solid waste removal." See Section 376.79, F.S., for definitions of the following: "Brownfield," "Brownfield area," "Brownfield sites," "Local pollution control program," and "Person responsible for brownfield site rehabilitation." See Section 403.703, F.S., for definitions of the following: "Recovered materials" and "Solid waste." See Section 420.0004, F.S., for the definition of "Affordable."

(2) “Integral to site rehabilitation” means work that is necessary to implement the requirements of Chapter 62-780, F.A.C.

(3) “Voluntary Cleanup Agreement” or “VCA” means a voluntary drycleaning solvent contaminated site cleanup agreement entered by an applicant and the Department pursuant to Section 376.3078, F.S.

(4) “Redevelopment” means construction activities occurring at the Brownfield or drycleaning site that are not necessary to implement the requirements of Chapter 62-780, F.A.C., and therefore, are not eligible for tax credit consideration.

~~(5)~~(3) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.301, 376.3078, 376.30781, 376.79, 403.703 FS. History—New 3-9-22, Amended _____.

62-788.301 Site Rehabilitation Voluntary Cleanup Tax Credit Application Process.

(1) A tax credit applicant, or multiple tax credit applicants working jointly to conduct site rehabilitation at a single contaminated site, can only file one tax credit application per contaminated site per year, claiming the percentage and the amount for the Site Rehabilitation Tax Credit Type in Table 1, for the cost of voluntary cleanup activity that is integral to site rehabilitation. If multiple tax credit applicants submit an application, then they must indicate on the application form each tax credit applicant’s percentage contribution toward payment of site rehabilitation costs.

(2) Complete applications for the annual site rehabilitation tax credit must be received by the Department’s Division of Waste Management in Tallahassee by 5:00 p.m. (Eastern Standard Time) on January 31 of the year following the calendar year for which a tax credit applicant is claiming site rehabilitation costs. If January 31 falls on a weekend, then the deadline moves forward to the next business day. A tax credit applicant shall submit an application using Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. In addition to the requirements of subsection 62-788.101(3), F.A.C., the application must include the following:

(a) A completed and signed affidavit from each tax credit applicant (multiple tax credit applicants submitting a joint application must each sign a separate affidavit) certifying that all information contained in the application, including all records of costs incurred and paid and claimed in the tax credit application, are true and correct [Section VII. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.];

(b) If the application is submitted by the real property owner, then the Real Property Owner Affidavit section of

the application form must also be completed and signed by the real property owner stating that it is not, and has never been, the owner or operator of the drycleaning facility where the contamination exists [Section II.D. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.];

(c) Proof that the tax credit applicant has entered into a ~~voluntary cleanup agreement (VCA)~~ or a BSRA, as applicable. A copy of the cover page and the signature page(s) of the VCA or BSRA, as applicable, will suffice as proof;

(d) Proof of payment of all applicable deductibles pursuant to Section 376.3078(3)(e), F.S., for eligible drycleaning solvent cleanup program sites. As referenced in Section 376.3078(5)(a), F.S., if deductibles must be ~~were~~ paid prior to submitting a tax credit application, evidence of the deductible payment must be included in the tax credit application. ~~then the tax credit applicant shall include a copy of the cancelled check or a receipt for a cashier's check or money order as proof of payment and~~ If the deductible was paid and noted in an application for the previous year, the applicant must note the application year the deductible was paid in Section II.C. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. ~~If deductibles have not been paid, the tax credit applicant shall fill out the deductible information in Section II.C. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C., and enclose a cashier's check or money order for the appropriate amount.~~

(e) Copies of documents that clearly describe the goods or services and associated costs that are being claimed in the application. If such documents also include costs for goods or services that are not being claimed in the application such goods or services and the associated costs shall be clearly annotated or shall otherwise clearly identify such goods or services and unclaimed costs. Inclusion of a cost-summary table that provides detail of claimed costs as represented by payment requests and payment records is required as referenced in 62-788.301(2)(f), F.A.C. ~~Though not required, inclusion of a cost-summary table that provides detail of claimed costs as represented by payment requests and payment records is encouraged.~~ Copies of documents for goods or services that are being claimed shall demonstrate a link between the contractual records, the payment requests associated with the contractual records, and the payment records for the claimed portions of the payment requests, as required by each of the following three subparagraphs:

1. Contractual records must describe the scope of work performed at the Brownfield site as defined in the BSRA or the contaminated site as defined in the VCA that was integral to site rehabilitation during the time period covered by the application. These contractual records shall correlate the costs claimed with both the payment requests and the payment records provided in accordance with subparagraphs 62-788.301(2)(e)2. and 3., F.A.C. If the tax credit

applicant did not procure the services listed on the contractual records included in the application, then the tax credit applicant must explain its relationship to the entity that procured those services. Examples of such contractual records include contracts, documentation of contract negotiations, proposals, work orders, task assignments, and change orders;

2. Payment requests must describe the goods or services provided that were integral to site rehabilitation during the time period covered by the application. These payment requests shall correlate the costs claimed with both the contractual records and payment records provided in accordance with subparagraphs 62-788.301(2)(e)1. and 3., F.A.C. The payment requests must include the name of the payee, a description of the goods or services provided, the period of service during which the goods or services were provided, the date upon which the payment request was issued, and the total amount being requested. Examples of such payment requests are invoices, payment applications, sales tickets, and account statements. Payment requests that include costs for goods or services that are not being claimed in the VCTC application must clearly identify which costs are being claimed; and

3. Payment records involving actual costs incurred that were integral to site rehabilitation during the time period covered by the application and paid prior to submittal of the tax credit application (or by the January 31 application deadline). These payment records shall correlate the costs claimed with both the contractual records and the payment requests provided in accordance with subparagraphs 62-788.301(2)(e)1. and 2., F.A.C. The payment records shall also demonstrate that the tax credit applicant, which must be the signatory to the VCA or BSRA, paid the costs of site rehabilitation. For cases in which costs were prepaid (e.g., made in a previous year), the amount claimed must be only for the prorated portion of the prepaid work conducted in the calendar year for which tax credits are sought. Documentation must support these expense amounts and the timing of the work and show that it is part of the prepaid scope. Additionally, the Certified Public Accountant (CPA) must clearly describe these transactions and the proration amount claimed in a given calendar year in the report described in paragraph 62-788.301(2)(h) ~~62-788.301(2)(g)~~, F.A.C. Payment records include, but are not limited to, cancelled checks and bank statements that show payment was received by the Payee;

(f) A cost-summary table that clearly summarizes the information required by paragraph 62-788.301(2)(e), F.A.C. must be provided. The cost-summary table must list all payee name(s) and include, at a minimum, the following information associated with each payee: the corresponding invoice numbers or statement dates; the payment amounts made by the applicant on each invoice or statement; and the amount of costs included in the invoice or statement that

are integral to site rehabilitation and being claimed by the applicant. The cost-summary table must also include the dollar amount of the total costs claimed as being integral to site rehabilitation and this dollar amount must be provided at the bottom of the cost-summary table.

(g)(f) A certification form stating that rehabilitation activities associated with the documentation submitted pursuant to paragraph (e) have been conducted under the observation of, and related technical documents have been signed and sealed by, an appropriate registered technical professional in each contributing technical discipline [Section V. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.]; and

(h)(g) Proof that the documentation submitted pursuant to paragraph (e) has been reviewed and verified by an independent CPA in accordance with standards established by the American Institute of Certified Public Accountants [Section VI. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.]. The CPA's report shall clearly state the total costs integral to site rehabilitation ~~amount~~ claimed in the application and the total costs integral to site rehabilitation ~~amount~~ approved by the CPA. A copy of the CPA's report shall be submitted with the tax credit application [refer to A Guideline for Agreed-Upon Procedures Attestation Service for the Voluntary Cleanup Tax Credit (VCTC) Program, dated December 2021, referenced in subsection 62-788.151(1), F.A.C.].

(3) The CPA and appropriate registered technical professional(s) submitting forms as part of a tax credit application shall verify such forms. Verification shall be accomplished as provided in Section 92.525(2), F.S., and subject to the provisions of Section 92.525(3), F.S. This verification requirement is accomplished by completing and signing the appropriate certifications included as part of the application form, Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.

(4) For purposes of Rule 62-788.301, F.A.C., integral costs are those the tax credit applicant(s) incurred and paid in the applicable timeframe that were "integral to site rehabilitation," as defined in Rule 62-788.201, F.A.C. Site rehabilitation costs include activities conducted pursuant to Chapter 62-780, F.A.C. Costs for work undertaken at a contaminated or Brownfield site that meets the definition of "redevelopment" as defined in Rule 62-788.201, F.A.C., are categorically ineligible for site rehabilitation tax credit consideration. In addition to the express definition of "integral to site rehabilitation" as defined in Rule 62-788.201, F.A.C., the Department defines the following costs as not being that are not integral to site rehabilitation and are therefore ineligible for tax credit consideration under this section include, but are not limited to, the following:

(a) Costs related to Brownfield area designation and preparing a tax credit application (as detailed in Section

376.30781(14)(d), F.S.);

(b) Costs of demolition or vegetation or tree removal not directly associated with integral site rehabilitation activity;

(c) Costs to address contamination that did not result from the polluting activity at, or is not emanating from, the applicant's contaminated site referenced in the VCA or the Brownfield site as defined by the BSRA ~~is from a source outside of the tax credit applicant's site being addressed under a VCA or BSRA;~~

(d) Costs related to expedited laboratory analyses;

(e) Costs of bonds or supplemental insurance that is not directly associated with integral site rehabilitation activity;

(f) Unpaid contractor retainage costs or claimed incurred retainage costs for work performed in a year beyond the applicable application timeframe;

(g) Costs to remove or close in place an underground or aboveground storage tank (which is considered a compliance activity in accordance with Chapter 62-761 or 62-762, F.A.C.);

(h) Costs for Hazardous Waste Operations and Emergency Response training of staff;

(i) Any fees, deductibles, or copayments required to be paid for those participating in a state-funded cleanup program pursuant to Sections 376.305, 376.3071, 376.30713, 376.3072, and 376.3078, F.S.

(j) Costs of administrative activities or legal discussions related to property transactions, contracts, late fees, or financial audits not directly associated with integral to site rehabilitation activities;

(k) Costs for grant-required activities that are not integral to site rehabilitation;

(l) Costs for sampling or mitigation of asbestos, methane, or lead-based paint; and

(m) Costs for installation of pervious or impervious surfaces beyond what is necessary for an effective engineering control. Remedial action plan approvals issued pursuant to Chapter 62-780, F.A.C., are alone insufficient for a determination whether the claimed costs for the installation of pervious or impervious surfaces are integral to site rehabilitation as defined in Rule 62-788.201(2), F.A.C. Costs for the installation of pervious or impervious surface engineering control components will be deducted, excluded, or reduced by proration as follows: Costs for engineering controls that are not integral to site rehabilitation. Building slabs or foundations can be approved engineering controls over contaminated material to reduce or eliminate the potential for migration of, or exposure to, contaminants, pursuant to Rules 62-780.301 and 62-780.680, F.A.C., including the supporting subbase material (fill pad) and the poured slab or foundation. Building slab and foundation costs are prorated in relation to what is integral to site rehabilitation for

~~the engineering control to be effective to reduce or eliminate potential for migration of or exposure to contaminants per Chapter 62-780, F.A.C., and will exclude any costs associated with the slab or foundation that are in excess of what is required to be an engineering control. In addition, costs for thicker sidewalks or parking lots, rebar reinforcement, excess subbase material, building footers or stem walls that are not integral to site rehabilitation for the engineering control to be effective to reduce or eliminate potential for migration of or exposure to contaminants per Chapter 62-780, F.A.C., will also be excluded if they are in excess of what is required to be an engineering control.~~

1. The Department will reduce by proration building slab and foundation installation costs in relation to what is integral to site rehabilitation for the pervious or impervious surface to be effective to reduce or eliminate potential for migration of, or exposure to, contaminants per Chapter 62-780, F.A.C., and will exclude any costs associated with the slab or foundation that are in excess of what is required to be an engineering control. In addition, costs for thicker sidewalks or parking lots, rebar reinforcement, excess subbase material, building footers or stem walls that are associated with redevelopment and are not necessary to reduce or eliminate potential for migration of or exposure to contaminants per Chapter 62-780, F.A.C., will also be excluded.

2. The Department will reduce by proration installation costs for pervious and impervious surfaces in relation to the known, and not inferred, horizontal extent of soil contamination as identified during site assessment conducted in accordance with Rule 62-780.600, F.A.C. If soil contamination is being moved for consolidation and creates a larger contaminated soil area than previously identified during site assessment, the applicant may only claim costs for pervious and impervious surfaces for an area equivalent to the known original horizontal extent of soil contamination. The Department will exclude all costs for the installation of pervious and impervious surfaces that exceed the area of known original horizontal extent of the soil contamination identified during site assessment.

3. The Department will prorate installation costs for pervious or impervious surfaces to exclude those costs incurred by the applicant to replace previous pervious or impervious surfaces serving as engineering controls. Previously existing pervious or impervious surfaces are considered effective engineering controls, regardless of whether they were relied upon for site rehabilitation completion under Rules 62-780.680(2) or (3), F.A.C., unless the applicant demonstrates the previous pervious or impervious surface fails to meet the definition of an engineering control. The applicant must submit to the Department its justification for asserting that the previous pervious or impervious surface was not an effective engineering control in its application. Nothing within this rule limits the Department from requesting additional information as part of the review process detailed in paragraph 62-788.401(4).

F.A.C. The applicant's justification may include photographs, professional certifications, and technical evidence that the previous pervious or impervious surface did not serve as an effective engineering control.

4. The Department will exclude all costs for the installation of pervious or impervious surfaces in areas where soil contamination was not identified as being present during site assessment conducted pursuant to Rule 62-780.600.

F.A.C.

(5) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History--New 3-9-22, Amended

62-788.311 Site Rehabilitation Completion Order Bonus Voluntary Cleanup Tax Credit Application Process.

(1) Tax credit applicants that complete site rehabilitation at a contaminated site and receive an SRCO are eligible to receive a one-time ~~an~~ additional tax credit, which shall be calculated using the percentage and the amount for the SRCO Bonus Tax Credit Type in Table 1, based only upon the total site rehabilitation costs that the Department ~~has~~ determined eligible for the VCTC in previous site rehabilitation applications (or current, if final year costs are claimed at the same time as the SRCO bonus). To receive the SRCO bonus tax credit, the tax credit applicant shall submit a copy of the SRCO with its application form, excluding previously submitted annual site rehabilitation cost documentation. However, in order for the tax credit applicant to claim the SRCO bonus tax credit in the same year as the final year's annual site rehabilitation costs, the tax credit applicant must submit its claim for both the final year's site rehabilitation costs and the SRCO bonus tax credit in the same application. If multiple tax credit applicants are submitting an application, then they must indicate on the application form each tax credit applicant's percentage contribution toward payment of total site rehabilitation costs.

(2) The tax credit applicant, or multiple tax credit applicants working jointly, must claim the SRCO bonus tax credit within two ~~one~~ calendar years ~~year~~ of the SRCO being issued. The tax credit applicant shall submit an application using Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. In addition to the requirements of subsection 62-788.101(3), F.A.C., the application must include the following:

(a) A completed and signed affidavit [Section VII. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.] from each tax credit applicant (multiple tax credit applicants submitting a joint application

must each sign a separate affidavit) certifying that all information contained in the application is true and correct;

(b) If the application is submitted by the real property owner, then the Real Property Owner Affidavit section of the application form [Section II.D. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.] must also be completed and signed by the real property owner stating that it is not, and has never been, the owner or operator of the drycleaning facility where the contamination exists;

(c) A copy of the SRCO pursuant to subsection 62-788.311(1), F.A.C.;

(3) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History—New 3-9-22, Amended

62-788.321 Affordable Housing Bonus Voluntary Cleanup Tax Credit Application Process.

(1) A tax credit applicant, or multiple tax credit applicants working jointly, claiming the affordable housing bonus tax credit can file a one-time application for this additional credit using Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. The affordable housing bonus tax credit amount per Brownfield site, as identified and described in the BSRA, shall be calculated using the percentage and the amount for the Affordable Housing Bonus Tax Credit Type in Table 1, based upon the total site rehabilitation costs that the Department has determined eligible for the VCTC since July 1, 2006, in previous site rehabilitation applications (or current, if final year costs are claimed at the same time as this bonus). If multiple tax credit applicants are submitting an application, then they must indicate on the application form each tax credit applicant's percentage contribution toward payment of total site rehabilitation costs since July 1, 2006.

(2) Tax credit applicants shall claim the affordable housing bonus tax credit when the requirements listed in Section 376.30781(3)(d), F.S., are met, and are not required to include site rehabilitation documentation previously submitted. Though use of the entire Brownfield site must be limited to housing, the affordable housing bonus tax credit amount can be prorated if some portion of the housing development does not meet the definition of affordable (e.g., "market rate" units).

(3) Complete applications for the affordable housing bonus tax credit must be submitted to the Department's Division of Waste Management in Tallahassee. A tax credit applicant shall submit an application using Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. In addition to the requirements of

subsection 62-788.101(3), F.A.C., the application must include the following:

(a) A completed and signed affidavit [Section VII. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.] from each tax credit applicant (multiple tax credit applicants submitting a joint application must each sign a separate affidavit) certifying that all information contained in the application is true and correct;

(b) A certification letter pursuant to Section 376.30781(3)(d), F.S.

(4) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History--New 3-9-22, Amended

62-788.331 Health Care Bonus Voluntary Cleanup Tax Credit Application Process.

(1) A tax credit applicant, or multiple tax credit applicants working jointly, claiming the health care bonus tax credit can file a one-time application for this additional credit using Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. The health care bonus tax credit amount per Bbrownfield site, as identified and described in the BSRA, shall be calculated using the percentage and the amount for the Health Care Bonus Tax Credit Type in Table 1, based upon the total site rehabilitation costs that the Department has determined eligible for the VCTC since January 1, 2008, in previous site rehabilitation applications (or current, if final year costs are claimed at the same time as this bonus). If multiple tax credit applicants are submitting an application, then they must indicate on the application form each tax credit applicant's percentage contribution toward payment of total site rehabilitation costs since January 1, 2008.

(2) Tax credit applicants shall claim the health care tax credit when the requirements listed in Section 376.30781(3)(f), F.S., are met, and are not required to include site rehabilitation documentation previously submitted.

(3) Complete applications for the health care bonus tax credit must be submitted to the Department's Division of Waste Management in Tallahassee. A tax credit applicant shall submit an application using Form 62-788.900(1), incorporated by reference in subsection 62-788.101(1), F.A.C. In addition to the requirements of subsection 62-788.101(3), F.A.C., the application must include the following:

(a) A completed and signed affidavit [Section VII. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.] from each tax credit applicant (multiple tax credit applicants submitting a joint application must each sign a separate affidavit) certifying that all information contained in the application is true and correct;

(b) The documentation required by Section 376.30781(3)(f), F.S.

(4) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History--New 3-9-22, Amended _____

62-788.341 Solid Waste Removal Voluntary Cleanup Tax Credit Application Process.

(1) A tax credit applicant, or multiple tax credit applicants jointly conducting solid waste removal from a Bbrownfield site, as identified and described in the BSRA, and claiming the solid waste removal tax credit can file a one-time application for this tax credit using Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. The solid waste removal tax credit shall be calculated using the percentage and the amount for the Solid Waste Removal Tax Credit Type in Table 1, based upon the costs for solid waste removal from the Bbrownfield site that have been incurred and paid since July 1, 2006. If multiple tax credit applicants are submitting an application, then they must indicate on the application form each tax credit applicant's percentage contribution toward payment of solid waste removal costs since July 1, 2006. Claims for the solid waste removal tax credit are not subject to a calendar-year limitation or annual filing deadline. Instead, the tax credit applicant shall submit the one-time solid waste removal VCTC claim when the tax credit applicant determines that the solid waste removal is complete.

(2) To receive the solid waste removal tax credit, the tax credit applicant must submit a statement ~~an affidavit~~ with its application form indicating ~~that states~~ that the tax credit applicant has consulted with the appropriate local government official and the appropriate Department District Solid Waste Supervisor and reviewed the available historical records, and to the best of the tax credit applicant's knowledge, the Bbrownfield site identified and described in the BSRA was never operated as a permitted solid waste disposal area, as defined in subsection 62-788.201, F.A.C., ~~or was never operated for monetary compensation, as defined in subsection 62-788.201, F.A.C.~~ The statement ~~affidavit~~ is included in Section IV.F. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C. ~~When consulting with the local government official and the Department District Solid Waste Supervisor, the tax credit applicant shall inquire whether the landfill or dump site operations involved any type of monetary compensation including private or government fees or assessments.~~

(3) Complete applications for the solid waste removal tax credit must be submitted to the Department's Division of Waste Management in Tallahassee. A tax credit applicant shall submit an application using Form 62-788.101(1),

incorporated by reference in subsection 62-788.101(1), F.A.C. In addition to the requirements of subsection 62-788.101(3), F.A.C., the application must include the following:

(a) A completed and signed affidavit [Section VII. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.] from each tax credit applicant (multiple tax credit applicants submitting a joint application must each sign a separate affidavit) certifying that all information contained in the application, including all records of costs incurred and paid and claimed in the tax credit application, are true and correct;

(b) Proof that the tax credit applicant has entered into a BSRA. A copy of the cover page and the signature page of the BSRA will suffice as proof;

(c) The statement affidavit required by subsection 62-788.341(2), F.A.C.; and

(d) Copies of documents that clearly describe the goods or services and associated costs that are being claimed in the application. Documents that include costs for goods or services that are not being claimed in the application shall be clearly annotated or shall otherwise clearly identify such goods or services and unclaimed costs. Inclusion of a cost-summary table that provides detail of claimed costs as represented by payment requests and payment records is required as referenced in 62-788.341(3)(e), F.A.C. Copies of documents for goods or services that are being claimed shall demonstrate a link between the contractual records, the payment requests associated with the contractual records, and the payment records for the claimed portions of the payment requests, as required by each of the following three subparagraphs:

1. Contractual records must describe the scope of work performed that was related to solid waste removal during the time period covered by the application. These contractual records shall correlate the costs claimed with both the payment requests and the payment records provided in accordance with subparagraphs 62-788.341(3)(d)2. and 3., F.A.C. If the tax credit applicant did not procure the services listed on the contractual records included in the application, then the tax credit applicant must explain its relationship to the entity that procured those services. Examples of such contractual records include contracts, documentation of contract negotiations, proposals, work orders, task assignments, and change orders; and

2. Payment requests that describe the goods or services provided for solid waste removal during the time period covered by the application. These payment requests shall correlate the costs claimed with both the contractual records and payment records provided in accordance with subparagraphs 62-788.341(3)(d)1. and 3., F.A.C. The payment requests must include the name of the payee, a description of the goods or services provided, the period of service

during which the goods or services were provided, the date upon which the payment request was issued, and the total amount being requested. Examples of such payment requests include, but are not limited to, invoices, payment applications, sales tickets, and account statements. Payment requests that include costs for goods or services that are not being claimed in the VCTC application must clearly identify which costs are being claimed; and

3. Payment records involving actual costs incurred and paid for solid waste removal during the time period covered by the application. These payment records shall correlate the costs claimed with both the contractual records and the payment requests provided in accordance with subparagraphs 62-788.341(3)(d)1. and 2., F.A.C. The payment records shall also demonstrate that the tax credit applicant, which must be the signatory to the BSRA, paid the costs for solid waste removal. Payment records; include, but are not limited to, cancelled checks and bank statements that show payment was received by the payee;

(e) A cost-summary table that clearly summarizes the information required by paragraph 62-788.341(3)(d), F.A.C., must be provided. The cost-summary table must list all payee name(s) and include, at a minimum, the following information associated with each payee: the corresponding invoice numbers or statement dates; the payment amounts made by the applicant on each invoice or statement; and the amount of costs included in the invoice or statement that are related to solid waste removal and being claimed by the applicant. The cost-summary table must also include the dollar amount of the total costs claimed for solid waste removal and this dollar amount must be provided at the bottom of the cost-summary table.

~~(f)~~(e) A certification form stating that the solid waste removal associated with the documentation submitted pursuant to paragraph (d) has been conducted under the observation of, and related technical documents have been signed and sealed by, an appropriate registered technical professional in each contributing technical discipline. However, if the scope of the solid waste removal does not require oversight by a registered technical professional in this state, the registered technical professional certification form is not required as part of the solid waste removal tax credit application [Section V. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.]; and

~~(g)~~(f) Proof that the documentation submitted pursuant to paragraph (d) has been reviewed and verified by an independent CPA in accordance with standards established by the American Institute of Certified Public Accountants [Section VI. of Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.]. The CPA's report shall also clearly state the total solid waste removal costs ~~amount~~ claimed in the application and the total solid

waste removal costs amount approved by the CPA. A copy of the CPA's report shall be submitted with the tax credit application [refer to A Guideline for Agreed-Upon Procedures Attestation Service for the Voluntary Cleanup Tax Credit (VCTC) Program, dated December 2021, referenced in subsection 62-788.151(1), F.A.C.].

(4) The CPA and appropriate registered technical professional(s) submitting forms as part of a tax credit application shall verify such forms. Verification shall be accomplished as provided in Section 92.525(2), F.S., and subject to the provisions of Section 92.525(3), F.S. This verification requirement is accomplished by completing and signing the appropriate certifications included as part of the application form, Form 62-788.101(1), incorporated by reference in subsection 62-788.101(1), F.A.C.

(5) For purposes of Rule 62-788.341, F.A.C., integral costs are those the tax credit applicant(s) incurred and paid to perform solid waste removal as defined in subsection 62-788.201, F.A.C. Eligible solid waste removal costs are further described as follows:

(a) Costs for transporting solid waste, even if the solid waste contains recoverable material that could have been, but was not, separated from the solid waste:

1. Off the Brownfield site to a licensed or exempt solid waste management facility, or
2. To a temporary storage area meeting the requirements of this subparagraph. The temporary storage area must be approved or exempt as follows:

a. If the temporary storage area is located off the Brownfield site, it must operate only in accordance with a permit issued pursuant to Chapter 62-701, F.A.C.;

b. If the temporary storage area is located on the Brownfield site, it must operate only in accordance with either a permit issued pursuant to Chapter 62-701, F.A.C., or only in accordance with specific written authorization in the BSRA; or

c. If the temporary storage area is located on the Brownfield site and is within the footprint of the solid waste disposal area being removed, it is exempt from the requirement for a solid waste permit in accordance with Section 403.707(1), F.S., provided the Department is notified at least seven days before temporary storage begins and that the temporary storage area meets the following requirements:

(I) The storage area must be operated so that the activity will not cause or contribute to any uncontrolled discharge to the environment of leachate, storm water, or gas;

(II) Any hazardous waste that is generated by this activity must be managed in accordance with Chapter 62-730,

F.A.C.; and

(III) If the solid waste being stored includes Class I solid waste as defined in Rule 62-701.200, F.A.C., the storage area must be evaluated as soon as the temporary storage activities cease to ensure that no soil or ground water contamination in excess of applicable standards or criteria remains;

(b) Costs for sorting and screening, provided that such processing occurs on the Bbrownfield site; and

(c) Costs for deposition of the solid waste at a permitted or exempt solid waste management facility, whether the solid waste is disposed of or recycled. However, costs associated with the deposition of recovered materials that were separated from the solid waste stream are not integral.

(6) The tax credits claimed pursuant to Rule 62-788.341, F.A.C., shall not include costs associated with solid waste that is created at the Bbrownfield site as part of the site's redevelopment activities, such as land clearing debris or construction and demolition debris, or costs that are not considered necessary to perform solid waste removal, such as Bbrownfield area designation and tax credit application preparation and submittal costs.

(7) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History—New 3-9-22, Amended

62-788.401 Eligibility Determination.

(1) Tax credit allocation will be conducted on a first-come, first-served basis based upon the date and time complete applications are received by the Department's Division of Waste Management.

(2) Complete applications will secure a position in the first-come, first-served application line for allocation of tax credits and will be reviewed for eligibility, in conjunction with the applicable CPA and technical professional documents, to verify that the work was either integral to site rehabilitation or was for solid waste removal; that the work claimed was performed in the applicable timeframe; and that the costs claimed were properly documented. Complete applications for bonus tax credits with no site rehabilitation or solid waste removal component will be part of the same first-come, first-served application line. Incomplete applications will not secure a position in the first-come, first-served order for allocation of tax credits, and shall instead be addressed pursuant to subsection (3) below, as applicable.

(3) When an application is determined to be incomplete, either by the tax credit applicant or by the Department,

the process to cure the application is guided by the timing this determination is made in relation to the annual application deadline and the type of application submitted:

(a) If, after initial submittal of an annual site rehabilitation application, but prior to the January 31 annual application deadline, pursuant to subsection 62-788.301(3), F.A.C., the tax credit applicant can correct and re-submit the application by the January 31 annual application deadline. In this case, the application's place in the first-come, first-served order line would be the date and time the corrected application (or supplemental material) was received by the Department.

(b) If after the January 31 annual application deadline, the Department determines that the annual tax credit application is incomplete, the Department shall notify the tax credit applicant in writing by the method indicated on the application form. The tax credit applicant shall have 30 days after receiving such notification to correct any deficiencies. Upon timely correction of any deficiencies, as evidenced by the date and time that the now complete tax credit application is received by the Department, the application shall secure a place in the first-come, first-served application line and shall be processed pursuant to subsection (2) above. However, tax credit applicants correcting completeness deficiencies identified by the Department cannot otherwise change or supplement their application.

(c) Tax credit applicants not subject to the January 31 annual application deadline (i.e., solid waste or any bonus application with no annual site rehabilitation component) shall have one opportunity to correct completeness deficiencies identified by the Department in the original submittal. The Department shall notify such tax credit applicants in writing by the method indicated on the application form. The tax credit applicant shall have 30 days after receiving such notification to correct any deficiencies. Upon timely correction of any deficiencies, as evidenced by the date and time that the now complete tax credit application is received by the Department, the application shall secure a place in the first-come, first-served application line and shall be processed pursuant to subsection (2) above. However, tax credit applicants correcting completeness deficiencies identified by the Department cannot otherwise change or supplement their application, including the addition of supplemental solid waste removal costs, if applicable.

(4) The Department will review each the complete tax credit application package submitted by an ~~each tax credit~~ applicant to verify that the tax credit applicant has met the qualifying statutory and rule criteria for the tax credits being sought and has submitted all required documentation. For applications claiming site rehabilitation or solid waste removal costs, the Department will review relevant technical documentation or reports within the Brownfield or drycleaning site file to ascertain whether claimed costs are eligible for tax credits. Technical documentation or reports

to support the eligibility of claimed site rehabilitation or solid waste removal costs must exist within the Brownfield or drycleaning site file at the time the application is received by the Department. The Department will not consider technical documentation or reports submitted after the Department's receipt of the tax credit application in its review of claimed site rehabilitation or solid waste removal costs. If review of the relevant technical documentation or reports do not verify whether the claimed site rehabilitation or solid waste removal costs are eligible for tax credits, the Department will request additional information from the applicant to ascertain whether claimed site rehabilitation or solid waste removal costs are eligible for tax credits under the qualifying statute and rule criteria. Such requests for additional information are solely to aid the Department in evaluating claimed costs and cannot cure, amend, or complete deficient applications. ~~Upon verification that the tax credit applicant has met such completeness requirements, the Department shall have until June May 1 (for annual site rehabilitation applications subject to the January 31 deadline) to issue a written decision granting eligibility for tax credits, in accordance with the percentages and the amounts specified in Table 1. The June May 1 deadline for annual site rehabilitation tax credit certificate awards shall not apply to any tax credit application for which the Department has issued a notice of deficiency pursuant to paragraph 62-788.401(3)(b), F.A.C.; instead, the Department shall respond to those applications within 120 90 days of receiving the completing documentation. The Department shall respond to any solid waste or bonus application with no annual site rehabilitation component within 120 90 days of the date the application is deemed complete.~~

(5) If multiple tax credit applicants are submitting a joint application, each tax credit applicant shall receive a separate order (and tax credit certificate) awarding tax credits in the same proportion as their contribution toward payment of site rehabilitation costs or solid waste removal costs, as applicable. Tax credits for bonus applications submitted by multiple tax credit applicants will similarly be awarded in the same proportion as the tax credit applicants' contribution toward payment of site rehabilitation costs.

(6) The Department shall be responsible for allocating the tax credits not to exceed the amount authorized annually pursuant to Section 376.30781, F.S.

(7) This rule shall be reviewed, and if necessary, repealed or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 376.30781 FS. Law Implemented 220.1845, 376.30781 FS. History--New 3-9-22, Amended _____
