Voluntary Cleanup Tax Credits (VCTC)
Frequently Asked Questions

The following FAQs are provided for your convenience only. Please see the cited statute and rules for more complete information. Please contact the Department of Revenue if you have questions about the use and transferability of a tax credit certificate.

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Voluntary Cleanup Tax Credits (VCTC)
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1. What types of sites are eligible for the VCTC?

a) Brownfield sites in designated Brownfield areas that have a Brownfield Site Rehabilitation Agreement with the Department of Environmental Protection (Department);
b) Drycleaning Solvent Cleanup Program (DSCP) sites that have a Voluntary Cleanup Agreement (VCA) with the Department; or
c) Drycleaning Real Property Owner (DC-RPO) contaminated sites that are not eligible for the DSCP provided:
    1) The voluntary cleanup is undertaken by the real property owner (RPO),
    2) The RPO has never been the owner or operator of the drycleaning facility where the contamination exists, and
    3) The RPO has a VCA with the Department.

(See Section 376.30781(3)(a), Florida Statutes [F.S.]; Section 220.1845(2)(a), F.S.)

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2. What can I use this tax credit for?

The VCTC certificate can only be used to offset Florida corporate income tax. (See Section 376.30781(2) and Section 220.1845, F.S.)

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3. Can I use my in-house certified public accountant (CPA) for my tax credit application?

No. Use of an independent CPA is required by statute and rule for a VCTC application. Please also see question 4, below. (Section 376.30781(6)(c), F.S.; paragraph 62-788.301(2)(h), Florida Administrative Code [F.A.C.]; paragraph 62-788.341(3)(g), F.A.C.)

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4. When is a CPA report required?

A CPA report is required when an applicant is claiming annual site rehabilitation costs and/or solid waste removal costs. (Section 376.30781(6)(c), F.S.; paragraph 62-788.301(2)(h), F.A.C.; paragraph 62-788.341(3)(g), F.A.C.)

If the tax credit applicant is only applying for Site Rehabilitation Completion Order (SRCO), Affordable Housing, and/or Health Care Provider/Facility bonus tax credits, then neither a CPA nor a registered technical professional needs to review or sign the application because the costs have already been verified in a prior application. (Section 376.30781(3)(c), (d), and (f), F.S.; Section 220.1845(2)(h), (i), and (k), F.S.; subsection 62-788.311(1), subsection 62-788.321(1), and subsection 62-788.331(1), F.A.C.)

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5. Must the $250 review fee be paid by either a cashier's check or money order?

While a cashier's check or money order is preferred, these are not required (i.e., personal checks are acceptable). However, all check or money order payments must be made out to: The Water Quality Assurance Trust Fund. (Section 376.30781(6)(a), F.S.; subsection 62-788.101(3), F.A.C.) This applies to hard-copy submissions. See #29 for electronic application submission and fee payment.

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6. If a site is eligible for the Drycleaning Solvent Cleanup Program (DSCP) but the cleanup is being conducted voluntarily by the real property owner (RPO) who is also the owner or operator of the drycleaning facility, can the RPO apply for the VCTC?

Yes. All sites eligible for the DSCP are also eligible for the VCTC regardless of the RPO's involvement with the site. However, the deductible due to the DSCP must be paid prior to the first VCTC application submittal for the DSCP site. (Section 376.30781(3)(a) and (14)(a), F.S.; Section 220.1845(2)(e), F.S.; paragraph 62-788.301(2)(d), F.A.C.) The deductible due to the DSCP must be paid for all eligible DSCP sites. This includes sites at which the RPO is conducting the cleanup but had no involvement in the facility operation.

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7. If a site is not eligible for the DSCP, and a voluntary cleanup is being performed by someone other than the real property owner, can the person performing the voluntary cleanup apply for the VCTC?

No. Please see answer #1(c), above.

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8. What kind of costs can I claim to receive these tax credits?

a) Site Rehabilitation - Costs that are integral, necessary, and required for site rehabilitation under Chapter 62-780, F.A.C., may be submitted annually. Additionally, when the cleanup results in a Site Rehabilitation Completion Order, applicants can potentially apply for bonus(es) as described in #10(b) below. (Rule 62-788.101 and Rule 62-788.301, F.A.C.)
b) Solid Waste Removal - Costs for solid waste removal—as provided in Section 376.30781(3)(e), F.S., and Rule 62-788.341, F.A.C.—from a Brownfield site that was never operated as a permitted solid waste disposal area, may be claimed in a one-time application (may contain costs from multiple years).

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9. Do I have to remove all of the solid waste?

No. Unlike site rehabilitation, there is no defined endpoint required for solid waste removal. Therefore, the applicant determines when these activities are complete. The applicant must be able to show that solid waste was removed from the site and whether it was transported to a disposal facility or to a recycling facility. Costs to manage or relocate solid waste that is to remain on the Brownfield site are not eligible for a tax credit. (Section 376.30781(3)(e), F.S.; Section 220.1845(2)(j), F.S.; Rule 62-788.341, F.A.C.)

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10. What are the different tax credit types and award amounts?

a) Site Rehabilitation: While site rehabilitation pursuant to Chapter 62-780, F.A.C., is underway, one application per site per calendar year may be submitted for 50% of the costs incurred and paid, up to a maximum award of $500,000. Please also see #13(a) and #26(d), below. (Section 376.30781(3)(a)-(b), F.S.; Section 220.1845(2)(a)-(b), F.S.; Rule 62-788.301, F.A.C.)
b) Bonus Tax Credits:
    1) Site Rehabilitation Completion Order: When the cleanup of a contaminated or Brownfield site results in the Department issuing an SRCO—as provided in Sections 376.30781(3)(c), and 220.1845(2)(h), F.S., and Rule 62-788.311, F.A.C.—a bonus tax credit for an additional 25% of the total eligible site rehabilitation costs, up to a maximum award of $500,000, may be claimed. Please also see #11 and #13(b)(1), below.
    2) Affordable Housing: When redevelopment of the Brownfield site is limited to affordable housing—as provided in Sections 376.30781(3)(d), and 220.1845(2)(i), F.S., and Rule 62-788.321, F.A.C.—a bonus tax credit for an additional 25% of the total eligible Brownfield site rehabilitation costs, up to a maximum award of $500,000, may be claimed on the costs incurred and paid since July 1, 2006. Please also see #13(b)(2), below.
    3) Health Care Facility/Provider: When the applicant constructs a new Health Care Facility or Health Care Provider—as provided in Sections 376.30781(3)(f), and 220.1845(2)(k), F.S., and Rule 62-788.331, F.A.C.—a bonus tax credit for an additional 25% of the total eligible Brownfield site rehabilitation costs, up to a maximum award of $500,000, may be claimed on the costs incurred and paid since January 1, 2008. Please also see #13(b)(3), below.

c) Solid Waste Removal: When the applicant determines that solid waste removal from a brownfield site is complete, a one-time application for the solid waste removal costs incurred and paid since July 1, 2006, may be submitted, claiming 50% of the total eligible costs, up to maximum award of $500,000. Please also see #13(c) and #26(d), below. (Section 376.30781(3)(e), F.S.; Section 220.1845(2)(j), F.S.; Rule 62-788.341, F.A.C.)

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11. Can I claim site rehabilitation costs even if I don't find any contamination?

Yes. Annual site rehabilitation costs may be claimed for assessment, even if no contamination is found. However, the SRCO bonus discussed in #13(b)(1) is only applicable when contamination is documented and cleanup occurs.

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12. Can I claim solid waste removal costs without conducting site rehabilitation?

No. The Brownfield Site Rehabilitation Agreement (BSRA) is, first and foremost, a cleanup agreement. To enter into a BSRA, a party must agree to a cleanup schedule. Brownfields are defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination" (Section 376.79(4), F.S.). Brownfield sites are defined as "real property identified in a BSRA" (Section 376.79(6), F.S.). Even at sites where redevelopment is "hindered by the presence of solid waste" (Section 376.30781(3)(e), F.S.), an assessment will need to be conducted to evaluate the presence of environmental contamination. A Site Assessment Report, as specified in Chapter 62-780, F.A.C., is required for Brownfield sites under a BSRA, including those hindered by the presence of solid waste.

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13. When can I apply for each type of tax credit?

a) Site Rehabilitation – Annually, tax credits are available only for site rehabilitation conducted during the calendar year for which the tax credit application is submitted and the application must be submitted no later than January 31 of the year following the site-rehabilitation work. (Section 376.30781(5), F.S., and Rule 62-788.301, F.A.C.)
b) Bonus Tax Credits (not subject to January 31 deadline):
    1) Site Rehabilitation Completion Order: Once, upon issuance of an eligible SRCO; please see #11 above. Pursuant to Section 376.30781(3)(c), F.S., "the tax credit applicant may claim an additional 25 percent of the total site rehabilitation costs, not to exceed $500,000, if the Department of Environmental Protection has approved the applicant's annual site rehabilitation application and has issued a site rehabilitation completion order for that site." The SRCO bonus application must be received by the Department within two calendar years following issuance of the SRCO. (Section 376.30781(3)(c), F.S.; Section 220.1845(2)(h), F.S.; Rule 62-788.311, F.A.C.)
    2) Affordable Housing: Once, upon issuance of the required construction completion documents for the Brownfield site. This is in addition to the SRCO bonus, which could be claimed first (as detailed above) if required documentation in support of the Affordable Housing bonus application is not available. (Section 376.30781(3)(d), F.S.; Section 220.1845(2)(i), F.S.; Rule 62-788.321, F.A.C.)
    3) Health Care: Once, after the applicant constructs a new health care facility or health care provider on the Brownfield site. This is in addition to the SRCO bonus, which could be claimed first (as detailed above) if required documentation in support of the Health Care bonus application is not available. (Section 376.30791(3)(f), F.S.; Section 220.1845(2)(k), F.S.; Rule 62-788.331, F.A.C.)
c) Solid Waste Removal (not subject to January 31 deadline): Once, when the applicant decides the Brownfield site solid waste removal is finished. (Section 376.30781(3)(e), F.S.; Section 220.1845(2)(j), F.S.; Rule 62-788.341, F.A.C.)

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14. Can I claim costs for work that I performed prior to the Brownfield Area designation (designation) and Brownfield Site Rehabilitation Agreement (BSRA), or prior to signing a Voluntary Cleanup Agreement (VCA)?

Yes, provided the VCA, or the designation and BSRA, are effective by December 31 of the first calendar year for which the tax credit applicant is claiming costs, and provided the costs being claimed are certified as being either integral to site rehabilitation or for solid waste removal. The BSRA and VCA are negotiated documents that must be agreed upon between the person taking responsibility for the cleanup and the Department (or delegated county [Broward, Miami-Dade, or Hillsborough]). Please be aware that the processes involved with designation and with executing a cleanup agreement may take weeks, so planning and scheduling are important. Also, know that Brownfield area designation costs are not considered integral to site rehabilitation and are not eligible for VCTC. (Section 376.30781(2) and (14)(d), F.S.; paragraph 62-788.301(4)(a), F.A.C.)

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15. If multiple taxpayers submit a joint application, will they receive one tax credit certificate?

No. The Department will issue separate tax credit certificates awarding tax credits in the same proportion as each tax credit applicant's contribution toward payment of cleanup costs. (Section 376.30781(3)(b), F.S.; Section 220.1845(2)(b), F.S.; subsection 62-788.401(5), F.A.C.)

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16. If I submit a VCTC application, when can I expect to receive my eligibility determination order and tax credit certificate?

Provided an annual site rehabilitation tax credit application is complete by January 31, the eligibility determination order will be issued by June 1. Eligibility determination orders for incomplete applications that have been corrected as described in answer #26(a), will be issued within 120 days of the application being determined complete. (Section 376.30781(9)-(10), F.S.; subsection 62-788.401(4), F.A.C.)

Tax credit certificates will be issued in first-come, first-served order based on the date and time an application is deemed complete. If sufficient authorization is available, tax credit certificates will be issued after the eligibility determination is finalized based on the applicant's place in the queue (but no earlier than 25 days following the eligibility order). If there is no funding authorization available, applicants will receive their tax credit certificates in first-come, first-served order, based on the date the application was determined complete, when a sufficient authorization, if any, is available. (Section 376.30781(5), (8), and (11), F.S.; subsection 62-788.401(2), F.A.C.)

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17. What types of activities are considered eligible costs for the VCTC?

a) Site Rehabilitation: Costs that are "integral to site rehabilitation" can be claimed in a VCTC site rehabilitation tax credit application. The governing cleanup rule (Chapter 62-780, F.A.C.) describes the various site rehabilitation program tasks that are associated with cleaning up a contaminated site and that are considered integral to site rehabilitation. Generally, the following site rehabilitation costs are eligible: fieldwork (including soil and groundwater sampling); monitoring well installation and sampling; remedial system installation, operation and maintenance; contaminated source removal/excavation (including backfilling); implementation of institutional and engineering controls required under Chapter 62-780, F.A.C.; and data analysis, project meetings, and reporting directly related to these activities. (Section 376.30781(3)(a)-(b) and (5), F.S.; Section 220.1845(2)(a)-(b), F.S.) See subsection 62-788.301(4), F.A.C., for costs that are not "integral to site rehabilitation."

b) Solid Waste Removal: Costs that are for solid waste removal from a Brownfield site that was never operated as a permitted solid waste disposal area are eligible. These costs include excavation, sorting/screening, removal, and transportation; costs associated with just moving or relocating solid waste within a Brownfield site are not eligible. Solid waste that is removed must represent an existing condition, not one created by redevelopment activities, such as land clearing or building demolition. (Section 376.30781(3)(e) and (5), F.S.; Section 220.1845(2)(j), F.S.; subsection 62-788.341(5), F.A.C.)

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18. How are costs claimed for "lump sum" projects that require prepayment or scopes of work that are "billed ahead" (e.g., costs that are paid in full in one calendar year, but the work is not completed until the following calendar year)? Examples include retainers for legal services and professional services requiring prepayment.

Pursuant to Section 376.30781(5)(a), F.S., "[a]ll site rehabilitation costs claimed must have been for work conducted between January 1 and December 31 of the year for which the application is being submitted. All payment requests must have been received, and all costs must have been paid prior to submittal of the tax credit application, but no later than January 31 of the year after the calendar year for which site rehabilitation costs are being claimed." Therefore, the statute requires that, for costs to be allowable, payment must be made by January 31 of the subsequent year, and it doesn't preclude prepayment in a previous year. In these prepayment cases, the amount claimed should be only for the prorated portion of the pre-paid work conducted in the calendar year for which tax credits are sought. Documentation should support these expense amounts and the timing of the work and show that it is part of the prepaid scope. Additionally, the CPA's Report should clearly describe these transactions and the proration amount claimed in a given calendar year. See subparagraph 62-788.301(2)(e)3., F.A.C. Please also see #26(d), below.

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19. Why are some retainage costs claimed in the application for the calendar year in which they were paid deducted as being incurred in an earlier year?

If a portion of the potentially eligible costs (such as a percentage of the contract amount) is not paid immediately upon invoicing for the work just completed, this is sometimes referred to as "retainage." The retainage costs cannot be claimed for tax credit consideration until they are paid, as provided in paragraph 62-788.301(4)(f), F.A.C. Retainage costs withheld beyond the calendar year in which the work to which the retainage was tied and were originally incurred (i.e., "work conducted," per Section 376.30781(5)(a), F.S.) are not eligible for tax credits if they are claimed in an application for a subsequent year. Please also see #26(d), below.

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20. Can legal fees be included with costs claimed in a VCTC application?

In some cases, yes. Attorneys are involved in many aspects of cleanup and redevelopment of a site. Examples of legal fees that are directly related to either site rehabilitation or solid waste removal may include negotiation of a VCA or BSRA, drafting and negotiation of an institutional control as part of the final remedy for managing exposure to the contamination at a site, and assistance with rule and statutory interpretation as it relates directly to site rehabilitation or solid waste removal. Legal fees associated with administrative activities or attorney discussions related to property transactions (such as site redevelopment or negotiation of real estate transactions), contracts (such as redevelopment project planning and contract negotiation), and review of insurance options/policies are not eligible for tax credits. Any invoice for legal services that includes costs that are not integral to site rehabilitation or directly related to solid waste removal should be itemized and prorated to claim only appropriate costs for VCTC purposes. Additionally, Brownfield area designation costs and tax credit application preparation and submittal costs are not eligible for VCTC. (Section 376.30781(14)(d), F.S.; paragraphs 62-788.301(4)(a) and (j), F.A.C.)

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21. Are the tax credits transferable?

Yes, subject to the conditions in Section 220.1845(2)(g), F.S., including a one-time transfer limitation. The transfer request letter must include the name, address, telephone number, and FEID of each transferee, and it must indicate the portion (in whole or in units of no less than 25%) to be transferred. A copy of the tax credit certificate must be sent to the DEP along with the transfer request, and all credits must be transferred at the same time. Transferred credits may not be transferred again, although they may succeed to a surviving or acquiring entity after merger or acquisition. An applicant cannot transfer its right to apply for a tax credit. In other words, the application must be filed by the tax credit applicant(s) that incurred and paid the cleanup costs. (Section 376.30781(9)-(10), F.S.). Please also see #26(d), below.

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22. How can local governments without Florida corporate income tax liability benefit from the VCTC?

They can transfer their tax credit certificate to an entity that has Florida corporate income tax liability. See question #21 above.

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23. Does the transferee have to be connected to the site or the cleanup project in some way?

No. The transferee can be any entity that the transferor chooses, but that entity must have the requisite tax liability because the tax credits cannot be transferred a second time. (Section 220.1845(2)(g), F.S.)

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24. If my total tax credit amount exceeds my tax liability for the year, what happens to the remaining credit?

The unused amount of tax credits may be carried forward for a period not to exceed 5 years from the date the tax credit certificate was issued. The Department of Revenue (DOR) will track the carry-over credits; however, it is the certificate holder's responsibility to clearly represent the amount of tax credit being claimed in its tax credit return. Credits will not result in the payment of refunds by the DOR if the total credits exceed the amount of tax owed. (Section 220.1845(2)(c), F.S.) Please contact the DOR for further information about this issue.

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25. If I transfer the credit, does the transferee have to use it within the amount of time that is left on the original 5-year time period (i.e., from the issue date on the original certificate)?

No. When a transfer occurs, the 5-year clock restarts. The transferee will receive a certificate with a new issue date on it (i.e., the date of transfer), and the transferee will have 5 years from that date to use the certificate. (Section 220.1845(2)(c), F.S.) Please contact the DOR for further information about this issue.

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26. What are the common mistakes made in tax credit applications that result in either the tax credit being denied or the amount of the tax credit award being reduced?

a) **Submittal of an incomplete application.** "Complete" means that all required parts of the tax credit application form have been filled in, signed, and appropriately notarized or sealed, the nonrefundable review fee has been paid (see question #5), and all the supporting documentation has been submitted. Supporting documentation includes the BSRA or the VCA, contractual records, payment requests, payment records, cost-summary table, and the CPA report, all of which must support the claim for tax credits. Upon notification that the Department has determined an application incomplete, an applicant has a one-time opportunity to correct the deficiency. However, the additional information must be received by the Department within 30 days of the applicant's receipt of the deficiency notice; during this time, the application cannot be otherwise changed or supplemented. (Section 376.30781(8), F.S.; subsections 62-788.401(2) and (3), F.A.C.)

b) **Claiming ineligible costs.** One of the most common errors in tax credit applications that results in a denied or reduced tax credit award is the inclusion of redevelopment costs. VCTC is limited to the costs associated with activities that are "integral to site rehabilitation" and/or associated with solid waste removal. The term "integral to site rehabilitation" means work that is necessary to implement the requirements of Chapter 62-780 F.A.C. Examples of redevelopment costs that have been denied because they were neither integral to site rehabilitation nor for solid waste removal include: building demolition, storm water retention pond installation, land clearing and grubbing, site grading, and methane assessment and/or methane mitigation system installation. (Subsection 62-788.301(4), F.A.C.)

c) **Failure to prorate costs when appropriate.** There are some site activities that contain aspects of both site rehabilitation and site redevelopment. While all of those costs may be discussed in a Remedial Action Plan (RAP), the approval of that RAP does not mean all of those costs will be approved in a tax credit application. Such costs should be clearly prorated to reflect the proportion applicable to site rehabilitation only. Examples of costs that were reduced, and in some cases denied, because they were not appropriately prorated include: installation of an impermeable "cap" where a permeable cap was sufficient for site rehabilitation purposes; installation of a high-strength building slab or parking lot for redevelopment purposes when a less robust impermeable cap was sufficient for site rehabilitation purposes (paragraph 62-788.301(4)(m), F.A.C.); installation of a cap over an area that did not require site rehabilitation; removal of more soil than was documented as being contaminated; and delivery and placement of more clean fill than was required to replace the volume of contaminated soil that was removed from a site.

d) **Discrepancies between the applicant and the entity that incurred and paid for all costs and/or the entity that executed the BSRA or VCA.** In order to be eligible for the tax credit, the same entity must execute the VCA or BSRA, incur and pay the cleanup costs, and apply for the tax credit in accordance with subparagraph 62-788.301(2)(e)3

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27. How are engineering controls (caps, covers) evaluated for VCTC eligibility?

The technical specifications of a planned engineering control (EC) must meet the basic requirements of what is needed to limit migration of contamination or prevent access and exposure to contamination, including compliance with the Department's Institutional Control Procedure's Guidance. The VCTC program will evaluate site rehabilitation costs that are associated with implementing ECs. The most common EC that is evaluated under VCTC is a cap or cover that is designed to prevent direct exposure to contaminated soil/limit leachable soil contamination from further impacting groundwater. In some cases, only 2 feet of clean fill is needed to address direct-exposure concerns. However, more often, engineering controls are implemented using various forms of impermeable caps (e.g., building slabs, parking lots, and sidewalks). For these components, sites are generally prepared (graded) before bringing in foundation material necessary to support the impermeable cap.

These EC "caps" may serve as both an EC and a component of redevelopment (e.g. building slabs, parking lots, and sidewalks). However, there are some components of redevelopment that may be in excess of what is "required to be an effective control" (per paragraph 62-788.301(4)(m), F.A.C.), and the associated excess costs should not be included for VCTC eligibility.

For example, most foundations are made up of layers of crushed gravel and sand. The thickness of these layers may vary; however, if the total thickness of material underlying the impermeable layer is at least 2 feet, that constitutes a cap that could satisfy the EC requirements under Chapter 62-780, F.A.C., and costs for additional backfill or foundation thickness that may be required for redevelopment should be deducted or prorated. In addition, the impermeable cap layer is typically either asphalt (1.5 to 2 inches) or concrete. For consideration of VCTC, an effective impermeable cap should be no more than 4 inches and the costs for the additional thickness or fill should be deducted or prorated. Also, there are structural elements that may be required for building integrity rather than environmental site rehabilitation that must be deducted or prorated. These additional costs typically include rebar reinforcement, excess subbase material, building footers, or stem walls. Consideration of these costs should be evaluated by the applicant and appropriate deductions made such that the costs claimed are integral to site rehabilitation and not in excess of what is required for an effective control.

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28. What is the relationship between the rules originally adopted in March 2022 and the existing statute? How do the rules impact the VCTC program?

The VCTC statute (376.30781, F.S.) provides the overall framework for the VCTC program and provides that the Department may adopt rules to prescribe the necessary forms required to claim tax credits and to provide the administrative guidelines and procedures required to administer the VCTC program. In short, the VCTC statute and rules in Chapter 62-788, F.A.C., work in concert, with the rules describing the intricacies of the VCTC application submission and review process with underlying support from the statute.

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29. Where can I find the VCTC application form?

Please reference and use the most recent version of the application form located at:
https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit

In December 2021, DEP launched an electronic version of its application as part of the Business Portal (https://www.fldepportal.com/DepPortal/go/home; after signing in, select "Submit" then "Applications" and then "Tax Credits"; the VCTC hyperlink will be the only option). The portal walks users through the VCTC application, with prompts for information and backup material uploads depending on the type of application. There is also a streamlined option that allows upload of a single, completed application (as a PDF). Additionally, this method allows for electronic payment of the $250 review fee.

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30. Whom can I call if I have further questions about the VCTC?

At DEP, contact Courtney Johnstone at 850-245-8998 or Courtney.Johnstone@FloridaDEP.gov and visit our website at: https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit.

At the Florida Department of Revenue, call Jennifer Ensley at 850-717-7659.

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