Issues with Petroleum Contamination that has Migrated Off-Site

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Off-Site Petroleum Issues

• Risk Management Options for Closures in Chapter 62-780, F.A.C.
• Off-Site Property Access
• Noticing the Public of the Contamination
Risk Management Options

• RMO I – Meet all established Cleanup Target Levels all media
  • Cleanup Completed
  • No restrictions

• RMO II – Contamination remains on source property
  • Land use restriction to Commercial/Industrial
    • Engineering Controls can also be used
  • Limited groundwater plume
    • <1/4 acre, not beyond the property boundary

• RMO III – Contamination may remain on and off source property
  • All closure strategies available, includes risk assessment
  • All RMOs require proper management of risk
Site Closure Under 62-780, F.A.C.

• No Further Action and No Further Action with Controls
  • Risk Management Options I, II and III
  • DEP issues Site Rehabilitation Completion Order
    • With or without controls

• Ensure all media are addressed
  • Groundwater
  • Soil
  • Surface water
  • Sediment

• Potential risks to human health meet statutory criteria
  • No more than 1E-6 increase in cancer risk
Keys To Closure

• Decide What Controls Are Necessary:

• Groundwater
  • Potable use
  • Storm water features
  • Dewatering
  • Irrigation well use
  • Ground water use based on depth

• Soil
  • Commercial/industrial
  • Engineering controls
  • Digging restrictions
  • Land use restrictions
Special Closures

- FDOT Memorandum of Understanding (MOU) Closures
- Non-FDOT (City or County) MOUs
- CSX Railroad MOA
FDEP/FDOT MOU

• Allows Conditional Closures for Discharges with Contamination in the FDOT’s Right of Way (ROW)

• FDOT ROW “Map Note” used as an Institutional Control

• Takes advantage of the inherent “Barriers To Exposure” provided by the FDOT’s management of the ROW
  • Physical Barriers, i.e. road pavement, clean fill
  • Administrative Barriers, i.e. FDOT’s permitting process that is designed to control all activities in the ROW
  • No need for recording of Restrictive Covenant
Risk Management Options for Closures

1. Increase the number of options for risk based closures, including using non-recorded controls

2. Provisions to potentially leave product in-place under conditional closures

3. Expanded use of the organoleptic exemption to more sites

4. Noticing changes—mailed notice required in most cases
Non-FDOT ROW Closures

- Allows closures where contamination has migrated from source property to Transportation Facilities under responsibility of City or County Governments
- MOU w/Local Government developed on a case-by-case basis
Off-Site Access of Petroleum Contaminated Sites
Off-Site Access

- Site Access is required by Florida Statute for Contaminated Sites, but not for Off-Site Properties, however, DEP requires a Site Access Agreement (SAA) for all properties where we do work.
- The DEP Agency Contractor is charged with obtaining Off-Site Property Site Access Agreements.
- Obtaining Site Access is not always easy or successful.
- If we cannot obtain a SAA we move downgradient to the next property.
Off-Site Access

Site Access Agreements not acceptable by DEP.

- Any type of payment for access including access fees, surcharges, inspection fees, etc.
- No confidential agreements or documents – violates Sunshine Law.
- No wording which would give the appearance of remuneration.
- Access is for Assessment and Remediation Activities.
- Restoration of Property – State will pay (pictures taken at start of activities).
- Other requirements including additional insurance; additional H&S requirements; and access for only specific period of time.
NOTICE OF CONTAMINATION
Florida Statutes 376.3071, 376.30702– Inland Protection Trust Fund https://www.flsenate.gov/Laws/Statutes/2018?query=376.3071 authorizes the Department whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the public health, safety, or welfare, water resources, or the environment to assess and remediate contamination, and notify the affected parties.
Types of Notices

For Funded Sites, there are five types of notification required by Florida statutes and Department rules that are performed by the DEP or the School Board, as applicable:

- Initial Notice of Contamination Beyond Property Boundaries, Chapter 62-780.220(2), F.A.C.
- Subsequent Notice of Contamination Beyond Source Property Boundaries for Establishment of a Temporary Point of Compliance (TPOC) Chapter 62-780.220(3), F.A.C.
- Status update 5-Year noticing for INOC and TPOC, Chapter 62-780.220(4), F.A.C.
- Required Notice for schools to teachers and parents or guardians of students by the district school board when contamination is discovered at certain school properties, Chapter 62-780.220(6), F.A.C.
- Required Notice for conditional closure using institutional controls, engineering controls or alternative CTLs Chapter 62-780.220(7), F.A.C.
Initial Noticing Beyond Property Boundaries (INOC)

Initial Noticing Beyond Property Boundaries is a requirement set forth by the Legislature for DEP to notify the owners of all properties affected by petroleum contamination.

Initial Noticing is required for both soil and groundwater contamination.

Two types:
- Suspect
- Confirmed
Why do we do Initial Noticing?

1. It’s the law!
   
   Requirements are set forth in the Florida Statutes (F.S.) and the Florida Administrative Code (F.A.C.).
   
   - Section 376.30702, F.S.
   - Chapter 62-780.220(2), F.A.C.

2. In some cases, it may help to obtain off-site access.

3. It is the right thing to do. 😊
**When we do Initial Noticing?**

1. As soon as contamination is discovered outside of the source property. Per rules, a notice must be submitted to the DEP within 10 days of receiving the results.

2. As soon as new/different Contaminants of Concern (COCs) are discovered outside of the source property.

**Example 1:** Benzene was detected off-site in 2013 and proper noticing was completed, but a more recent sampling event also detected Toluene off-site. Now another, separate Initial Notice must be submitted for Toluene only.

**Example 2:** Benzene was detected at offsite “Property A” in 2013, but recently Benzene was also detected at off-site “Property B.” Now another, separate Initial Notice for Benzene must be submitted for Property B.
What about 5-year updates for INOC?

Chapter 62-780.220(4), F.A.C., requires us to send a status update to the off-site owners 5 years after Initial Noticing is done.

DEP will prepare and send a follow-up information letter to the associated property owners five years from the original notice unless there is already a TPOC notice in-place or the site has received an SRCO.
Temporary Point of Compliance (TPOC) for Noticing

TPOC is actually a composite line that represents the maximum extent of the GCTL for all contaminants of concern in all aquifer zones.
Establishing Temporary Point of Compliance (TPOC) and Noticing

Steps:

- RAP or NAMP with a proposed TPOC;
- Plan and proposed TPOC are found acceptable by the Department;
- PRSR sends the TPOC notice letters;
- 30-day comment period;
- RAP or NAMP with a TPOC issues an approval order or changes are made to the TPOC and the PRSR sends revised TPOC notice letter to new properties included within the revised TPOC.
- If a different remedy is selected, the PRSR must issue a new TPOC notice to all parties within the TPOC boundary.
Things to Remember

✓ A TPOC well does not need to be BDL. If it is clean enough to consider plume delineation complete (very low levels), then it is OK to use as a TPOC.

✓ Eligible state-funded cleanup sites are not subject to the notification requirements while waiting for the availability of state funding in priority order.

✓ Any person receiving a TPOC notice has the opportunity to comment on the Department’s proposed action within 30 days of receipt of the notice.
Follow-up for INOC and Status Update for TPOC

Follow-up for Initial Notice of Contamination

DEP will prepare and send a follow-up information letter to the same property owners five years from the original notice unless there is already a TPOC notice in place or the site has received an SRCO.

Status Update Notice for TPOC

Additional TPOC notices must be provided:

- Once every five years, updating the status of site rehabilitation to the same classes of persons who received the first TPOC notice, unless they have been informed that the contamination no longer affects their property.
If contamination is discovered at a school site (originated or migrated) as defined in Section 1003.10, F.S., DEP must send notice to the chair of the school board.
School Noticing

“School site” is defined as K-12 public schools, charter schools and private schools.

The Notice directs the school board to provide actual notice to teachers and parents or guardians of students attending school during the period of site rehabilitation.

The school board shall continue to provide actual notice annually, or more frequently as needed.

Notice from the school board to teachers and parents or guardians of students must include the same information as found in the “Initial Date of the Discovery of Contamination”.

Notice shall include sources of additional information and a phone number for inquiries.
Contact Information

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