



FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Alexis A. Lambert
Secretary

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

PETROLEUM RESTORATION PROGRAM PROPERTY OWNER CONDITIONAL CLOSURE AGREEMENT (Agreement)

{{Instructions and the process to completing and implementing this Agreement pursuant to Rule 62-772.401(3), F.A.C. are in a separate document and are not intended to modify the terms of this Agreement.}}

The **Real Property Owner (Owner)**, _____ and the **Responsible Party (RP)**, if applicable _____, and the Florida Department of Environmental Protection (FDEP) enter into this Conditional Closure Agreement pursuant to Rule 62-772.401(3), Florida Administrative Code (F.A.C.) to perform work for the facility located at _____, Florida, FDEP # _____ for discharge(s) _____. The Owner and, if applicable, RP, agree to a Conditional Closure (Site Rehabilitation Completion Order with Conditions) which uses appropriate controls to close the assessment and remediation of a contaminated site using either Risk Management Option II or III as described in Rule 62-780.680(2) or (3), Florida Administrative Code (F.A.C.), where alternative cleanup target levels above the levels in Chapter 62-777, F.A.C., are established for soil and ground water. These alternative cleanup target levels are based on site conditions and the establishment of an institutional and, if necessary, an engineering control. An example of an institutional control is a restrictive covenant with a ground water use prohibition. An example of an engineering control is an impervious surface or cap (such as a paved parking lot) which prevents exposure to contaminated soil and/or prevents ground or rain water from infiltrating into the soil. Nothing in this Agreement changes the eligibility requirements or priority scoring of the discharges eligible for FDEP funding under the Petroleum Restoration Program. The Owner must have already submitted or submitted with this agreement a site access agreement allowing the FDEP access to the Property, otherwise this request will be rejected.

Does the Owner/RP have a present or anticipated contractual or other business relationship with the recommended contractor? YES NO

If Yes, explain _____

Note: Contractor is deemed to have had a business relationship with one of the responsible parties for site contamination if it has had a relationship with a parent organization, or subsidiary, a predecessor or a successor of such party, or if it has been engaged by independent legal representatives on behalf of any such parties. In addition, Contractor will be conclusively determined to have a conflict of interest with regard to any site, if it has given or offered remuneration, in cash or in kind, directly or indirectly, to the site owner or operator, or his or her designee to obtain the work associated with such site.

The Owner, and if applicable RP, and the FDEP agree to the following:

1. The Owner must maintain the restrictions in the Interim Restrictive Covenant [or CSX Memorandum of Understanding (MOU) in the case of CSX owned property]. Please complete Attachment A. These restrictions and the covenant cannot be removed without express, written permission from the FDEP Petroleum Restoration Program. Upon recording of the covenant these restrictions will be listed in the FDEP's Institutional Control Registry.
2. Upon achieving the Conditional Closure requirements pursuant to RMO II or RMO III, per Chapter 62-780, F.A.C., the Owner and the FDEP will either amend or release the interim restrictive covenant [or CSX MOU] based upon the actual circumstances of the remaining contamination and risk.
3. The FDEP will provide funding for costs associated with obtaining a Professional Land Survey (PLS) or specific purpose survey, title report, and recording fees. No costs will be provided by the FDEP for the maintenance of engineering controls, if any, or attorney's fees (the assistance of an attorney is not required to implement this Agreement).
4. In exchange for executing and abiding by this Agreement the Owner may choose to recommend an FDEP Petroleum Restoration Program Agency Term Contractor (Contractor). Contractor Recommendation (Attachment B) is attached to this Agreement. The Owner may change its recommendation and later recommend another Contractor based on the Contractor's poor performance but this Conditional Closure Agreement and Interim Restrictive Covenant [or CSX MOU] will stay in place once executed. Property owner confirms that it has not been given or offered remuneration, in cash or in kind, directly or indirectly, from any FDEP Agency Term Contractor that Applicant may recommend to the FDEP as the contractor.
5. If a Contractor is recommended (see paragraph 4), and such Contractor will not provide the best value to the state for a particular scope of work, the FDEP reserves the right to competitively procure any proposed cleanup activity that meets and/or exceeds the current monetary threshold for e-Quotes in accordance with Section 287.057, F.S.

I, the Property Owner of the above facility, agree that the FDEP may perform assessment and cleanup activities to achieve a Conditional Closure (explained above). I understand that these closure options require that I execute a restrictive covenant (attached) now and may also require that I also maintain the restrictive covenant (or equivalent institutional control) and an engineering control after closure.

Property Owner Name & Title (if applicable)

Signature

Date

(If property is owned or the responsible party is an LLC, corporation, partnership or company, the person signing must be authorized by that entity to sign. The Department will check sunbiz.org for evidence of such authorization. If the person signing is not listed with the Department of State on sunbiz.org, the signatory will be asked to provide evidence of its authority to sign and bind the entity owner.)

I, the Responsible Party for the discharge(s) at the above referenced facility, agree that the FDEP may perform assessment and cleanup activities to achieve a Conditional Closure (explained above).

Responsible Party Name & Title (if applicable)

Signature

Date

Attachment B- Conditional Closure Agreement Contractor Recommendation

[This Attachment is not recorded in the county land records]

Site Name: _____ FDEP Facility ID#: _____

Site Address: _____ Parcel ID #: _____

Property Owner Name & Title: _____

Property Owner Representative Name & Title: _____

Property Owner (or Representative) Phone No. & Email: _____

IF APPLICABLE:

Responsible Party Name & Title: _____

Responsible Party Representative Name & Title: _____

Responsible Party (or RP Representative) Phone No. & Email: _____

Select one of the Contractor options listed below:

Allow the FDEP to select a competitively procured contractor for the next scope of work in accordance with s. 287.057, F. S.

Recommend an FDEP PRP Agency Term Contractor (ATC) from within the same region as the Facility listed in the Conditional Closure Agreement:

ATC Name: _____ FDEP Contractor ID#: _____

ATC Representative Name & Title: _____

ATC Representative Phone No. & Email: _____

Any recommendation to change the ATC will occur in a manner that allows any work scoped through a Purchase Order (PO) to be completed, unless the Property Owner or, if applicable, Responsible Party can provide evidence of poor performance, in which case the FDEP will determine whether or not to cancel the remaining work under that PO. Additionally, I understand that if a Conditional Closure Agreement has been executed, the Contractor may be changed but the Conditional Closure Agreement remains in place.

Print Property Owner Name & Title (if applicable) Signature Date

IF APPLICABLE:

Print Responsible Party Name & Title (if applicable) Signature Date

Completed Agreement including Attachment B and Attachment A (if applicable), should be sent to the letterhead address, Mail Station 4540, **Attention: Robert Perlowski**. Questions about Conditional Closure Contractor recommendations may be referred to Rob Perlowski at (850) 245-8917, or at Robert.Perlowski@dep.state.fl.us.