

	Petroleum Restoration Program Project Managers Guidance	Author: Wright/Coleman
	LOCAL GOV'T TRANSPORTATION FACILITY ICs	Updated: 12/15/2016

- 1. Purpose:** To describe to site managers (SMs) the process to close sites, including Low Score Site Initiative (LSSI) sites, where contamination still exists under a county or city (local government) transportation facility (which includes roads and rights-of way) road not under the jurisdiction of the Florida Department of Transportation (FDOT). Refer to the “FDOT/FDEP Memorandum of Understanding (MOU) for Petroleum Discharges In a FDOT Right of Way,” for site closures involving roads governed by FDOT. (http://www.dep.state.fl.us/waste/misc/dnd/DEP_DOT_MOU_01Aug14.pdf. For LSSI guidance refer to Section 376.3071(12)(b), F.S. and the Procedural and Technical Guidance for the Low-Scored Site Initiative for more information. (http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/screening/LSSI-Guidance_28Jun16.pdf. The site manager should also familiarize her/himself with the Institutional Controls Procedures Guidance (ICPG) prior to beginning the closure process. The ICPG can be downloaded at <http://www.dep.state.fl.us/waste/categories/brownfields/pages/ICR.htm>.
- 2. Background:** Soil and ground water contamination located under a road way or right of way is often difficult to access due to the location of utilities and other access restrictions. The FDOT and the FDEP have signed the MOU referenced above which outlines a process where a non-restrictive covenant institutional control is used to close the discharge, i.e., a note on the FDOT right-of-way map in conjunction with the FDOT permitting process serves to limit exposure to remaining contamination. The FDEP may also enter into MOUs with other government entities if their procedures are also adequate to prevent exposure to the contamination.
- 3. How It Works:** For the Department to issue an LSSI No Further Action (NFA) Order or a Conditional Site Rehabilitation Completion Order (SRCOC) under Risk Management Option III (RMO III) for discharges where the contaminant is located beneath a city or county transportation facility. An institutional control and possibly an engineering control, must be in place, as is the case with all SRCOC closures. If the government entity owning the road has agreed to institutional controls for its transportation facilities, one form of institutional control can be in the form similar to the FDEP/FDOT MOU. If there is currently no such MOU between FDEP and the local government the site manager must provide the following information to the supervisor and technical reviewer:

 - a) A legal description of the source and the non-source property (transportation facility). Please provide all of the names this facility is provided (i.e., county road name, county road number, etc.).
 - b) Information about status of the contamination (closing under LSSI NFA or Rule 62-780.680(3), Fla. Admin. Code.)
 - c) A map or diagram showing the extent of the plume under the transportation facility. A more specific survey (Rule 9J) or GIS shapefile may be required by the local government, however, at this first step, a plume map is sufficient.

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- d) A copy of the notice sent to the local government regarding the contamination on the transportation facility.

Once the supervisor and technical reviewer agree that the plume meets the appropriate closure criteria, the appropriate person responsible for site rehabilitation should be notified by using the Provisional Approval of SRCOC for non-Restrictive Covenants Institutional Control letter must be issued. (See NEW template.)

4. If There Is No MOU in Place with the Local Government:

- a) The FDEP or local program manager should contact the local government to determine if they have an interest in entering into a MOU with the FDEP. These MOUs are written to create a process where additional locations can be added should the local government agree.
- b) If the local government agrees, at least in principle, to enter into a MOU, the local government should be asked to identify the appropriate legal and GIS/mapping contacts to work with FDEP on an MOU. The site manager should ask for a description of their permitting process for their transportation facilities.
- c) The site manager completes the institutional control (IC) Checklist and Request for Legal Case Tracking (LCT) and Attorney Assignment forms and forwards them to Lea Crandall, Agency Clerk, FDEP OGC with a copy to the PRP program attorney. In addition, the site manager's memo to OGC must clearly indicate whether the closure is contingent only upon the one MOU or whether other institutional controls will be used in a layered approach. Both documents are found in the Institutional Control Procedures Guidance (ICPG). All technical documents provided to the supervisor above and information obtained from the local government must be provided. The assigned attorney will then work with the county directly regarding the MOU. OGC will work with the site manager and appropriate PRP technical reviewer regarding any necessary details such as obtaining from the local government the geographic information system data that it needs to map and track contamination under its transportation facility.
- d) Once the MOU is final and fully executed the site manager will be provided a copy of the MOU. The site manager and consultant need to comply with the provisions of the MOU to provide the site specific information the local government needs to put this information in its records. The cover letter, attached, can be used to begin that process.

5. If A MOU Is in Place: Complete everything in paragraph 3, then skip to 4.c. The difference is that instead of OGC working with the County to draft the MOU, the site manager attaches the MOU and explains to OGC how the MOU working alone or with other ICs is sufficient pursuant to the appropriate closure (LSSI NFA or RMO III). Each closure is

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factually based and it will not usually be the case that this MOU, alone, will be sufficient. The site manager and consultant need to comply with the provisions of the MOU to provide the site specific information the local government needs to put this information in its records. The cover letter, attached, can be used to begin that process.

Exhibit A

FDEP Request Letter to City/County for Sites with Petroleum Pollutants to be sent AFTER the MOU has been executed. This document may need to be modified based upon terms of the MOU.

[Date]

[if applicable](Sent via email only to addressee at [email address])

[Mr. or Ms. or . . .] [Enter Name of City or County Government MOU contact]
(if applicable)[City/County Name]
[Address]
[City, State Zip Code]

Subject: [Transportaion facility Name]
[Facility Name]
[Facility Street Address]
[City, xxx] County
FDEP Facility ID# [xxxxxxxxx]
EDI Eligible Discharge Date[s]: {Discharge Date[s]}
Priority Score: [Score]

Dear [Mr. or Ms. or . . .] [Contacts Last Name]:

The Florida Department of Environmental Protection ("FDEP") is following up with the [Memorandum of Understanding or Agreement] ("MOU") entered into by the FDEP and [city/county] on [date], 20____. See Attachment A copy of the MOU. This letter requests the [city/county] to add a _____ to its Right of Way ("ROW") map showing the location of

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contamination beneath or adjacent to its transportation facility located at [insert name and number of county or city road along with the addresses]. Please find attached the following information regarding this contamination as it relates to your transportation facility: *[[list whatever it is the MOU requires you to provide – be sure to provide it.]]* FDEP has determined the contamination within the transportation facility are not a risk to human health, public safety, the users or occupants of the transportation facility, or the environment and the requested _____ satisfies FDEP's institutional control requirements; thus, the discharger is eligible for low-scored site initiative no further action ("LSSI NFA") or a risk-based corrective action closure Site Rehabilitation Completion Order ("SRCO") ("closure").

Please contact the Department's site manager for this site, _____, at () _ _ or contact ???.

Sincerely,

[Preparer's Name]

[Preparer's Title]

Petroleum Restoration Section [x]

Petroleum Restoration Program