

**INSTRUCTIONS FOR OBTAINING ACCESS TO NON-SOURCE
PROPERTIES WHEN STATE FUNDING IS USED FOR PETROLEUM
CONTAMINATION SITE REHABILITATION**

1. Either before or after their initial request for site access the contractor may ask the FDEP site manager to send the appropriately completed ‘adjacent owner’ information letter on FDEP (or contracted Local Program) letterhead to the non-source property owner if one has not been previously sent (see Preapproval SOP Section 7.9 and Appendix G.7). This document spells out the rights and responsibilities that non-source property owners have when their property is contaminated by contamination that is eligible for a state funded clean up. These documents are program specific.
2. Contractors may make a personal visit to obtain permission for site access or send a letter. An example initial site access request letter is available in the Preapproval SOP Appendix G.7. This is ONLY an example and the exact format is not mandatory, where the language does not meet the actual circumstances, contractors should adjust the language accordingly. When the Preapproval contractor or FDEP selected state clean-up contractor first approaches the non-source property owner with an appropriate agreement for site access the contractor should be prepared to fully explain:
 - Who the contractor represents (PREAPPROVAL CONTRACTORS DO NOT REPRESENT FDEP, PREAPPROVAL CONTRACTORS REPRESENT THE ENTITY THAT SELECTED THEM – to say otherwise may be considered mis-representation);
 - What activities will be performed on the property;
 - Where, generally, those activities will take place – bring a diagram or map;
 - Why access is necessary;
 - That restricting time frames for access is difficult considering the nature of assessment and remediation (longer time-frames are preferable);
 - Restoration – for %100 state funded – the FDEP is obligated only to pay the “reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action...” ss. 376.3071(4)(l), Fla. Stat.
 - Why it is important for the non-source property owner and/or operator to provide **prior** notification to the cleanup contractor (or the FDEP) before commencement of any construction or other site work that may damage or destroy any part of the cleanup related assets installed at the property (typically monitoring wells, but may also include recovery wells, piping, remediation system, etc.) so that the contractor has an opportunity to take necessary actions to remove, protect, properly abandon and/or repair or replace the asset, as applicable, at no cost to the non-source site property owner. Such actions are necessary to ensure that damaged wells or borings are not left to act as open conduits that may spread contamination from all sources and violate well permits, and are generally considered to be an eligible expense integral to site rehabilitation.
3. Separate sample ‘Permission to Enter Property’ forms for Preapproval Contractors and FDEP selected State Clean-up Contractor are available in Appendix G.7 of the Preapproval SOP. These forms are ONLY examples and the exact format is not mandatory, where the language does not meet the actual circumstances, contractors should adjust the language accordingly.
4. All contractors should work with non-source property owners’ reasonable requests for accommodations which might include: time of day limitations (after regular business hours if there is an operating business on the property), area limitations (installation away from major traffic or pedestrian area, if the necessary contamination data can be obtained elsewhere) or less

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intrusive type of installation (temporary vs. permanent wells, unless the contractor & FDEP are fairly convinced that the well will need to be monitored for a period of time).

5. Preapproval Contractors should work with their clients (the party that signed the CDF) regarding non-source property owners' requests for indemnification or payment for site access. Neither of these requests may be granted by FDEP, however, they are perfectly legitimate requests non-source owners may make of the source property owner or other responsible party. Additionally, owners' requests to see or obtain copies of any contractor's insurance information are also legitimate.

6. If all of the above information has been provided to the non-source property owner and all above attempts at negotiation have been made and failed, contractors should contact the site manager for further assistance (site manager can then contact the non-source property owner). If the site manager's attempts to gain site access are unsuccessful, contracted Local Program site managers should contact BPSS Team 2 and all other site managers should contact their Team Leader/Administrator and provide a complete written chronology of attempts by both the contractor and site manager to obtain access to the non-source property. If Team Leader/Administrator cannot resolve the issue, contact the program attorney and provide a written updated copy of the chronology of attempts to obtain access & copies of any documents provided to the non-source property owner.

7. If you are denied site access, **do not try to force entry** onto the property or make any type of statement to anyone that the non-source property owner will be forced to provide access. Contact the site manager immediately.