



# FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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## MEMORANDUM

**TO:** District Directors  
Divisional Program Administrators  
Contracted County Petroleum Programs  
Site Owners  
Interested Parties

**FROM:** Jorge R. Caspary, P.G.   
Director, Division of Waste Management

**SUBJECT:** Site Closure with Conditions

**DATE:** November 1, 2013

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This is written to address concerns expressed with regards to the “Site Rehabilitation Completion Order with Condition pursuant to Chapter 62-780, F.A.C. (contamination remains & a restrictive covenant must be recorded) or LSSI NFA or SRCO” option in the Low Scored Site initiative Closure Selection form. I wish to emphasize that site closure with conditions is codified in Chapter 62-780, F.A.C., and is a form of site closure strictly based on voluntary acceptance by the site owner. The Department cannot and will not obligate or force a site owner to close a site with conditions. In addition, I also want to clarify the circumstances whereby an owner may be able to close a site without a restrictive covenant which come by deed or title to the property.

Institutional Controls (ICs) are defined in Section 376.301(22) and 376.79(10), Florida Statutes as “the restriction on use of, or access to, a site to eliminate or minimize exposure to petroleum products chemicals or concern, drycleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants (RC) or conservation easements.” ICs are an essential component in the Department’s long-term strategy to close sites under managed risk because they reduce exposure to contamination by limiting land or resource use and guide human behavior at a site while allowing re-development and land transfer to proceed without a reduction in the levels of protection to human health and the environment.

Based on the applicable statute, and in order to achieve site closure with conditions, site owners have at their disposal several forms of ICs that are acceptable to prevent or reduce exposure to contamination. Examples of ICs are deed restrictions, restrictive covenants, and conservation easements. Likewise, examples of ICs that do not require a restrictive covenant are governmental controls that impose restrictions on land use or resource use. Typical examples of other forms of ICs for groundwater at a site include groundwater delineated areas under Chapter 62-524, F.A.C., county or municipal ordinances

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prohibiting the installation of potable water wells in urban areas or mandating that any new potable well be connected to the county or municipal water delivery system, groundwater classified as undrinkable, and prohibition on installation of wells in potable wellhead protection areas under Chapter 62-521, F.A.C. When using existing governmental controls to close a site, a site owner *is not required* to place a restrictive covenant by deed or title to the property if the governmental control achieves the necessary degree of restriction on access to contaminated media.

I encourage site owners and responsible parties considering closure of their sites with conditions to contact me at [Jorge.caspary@dep.state.fl.us](mailto:Jorge.caspary@dep.state.fl.us) with any questions or inquiries regarding site closure with or without conditions. I also hope that the above clarification provides site owners and interested parties our reassurances that the Department intends to work collaboratively and expeditiously in all matters related to achieving site closure with or without conditions.