**Guidance for Establishing a**

**Temporary Point of Compliance**

**Beyond the Source Property Boundary**

**Florida Department of Environmental Protection**

**District & Business Support Program**

**Tallahassee, FL**

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**Preface**

This document has been prepared as guidance for the Florida Department of Environmental Protection (FDEP), Division of Waste Management (DWM) Tallahassee staff and FDEP District Offices. **Nothing in this document should be construed as a uniform policy or rule** (except for those rules specifically enumerated as such). This document merely provides general information regarding notification of establishment of a Temporary Point of Compliance (TPOC) and characterizes the DWM’s and the FDEP Office of General Counsel’s (OGC) experiences thus far in this area. This guidance is provided in one document so that all FDEP staff has the same information upon which to base a decision. Agency staff shall not cite this document as authority for taking or refusing to take any agency action. It is anticipated that this document will also be used by those parties proposing a TPOC, including responsible parties and owners, and their consultants and lawyers, among others. Such use by those parties may facilitate an understanding of the rule requirements and FDEP’s interpretation of those requirements.

This document was prepared by the DWM and the OGC. If you have any questions regarding the information contained in this document, please contact the appropriate program attorney and/or the appropriate technical supervisor in your section. Likewise, if you have any insight or experience you believe should be included in a subsequent version of this document, please contact an attorney with the OGC, a Bureau Chief or a Waste Program Administrator.

1. **What is a Temporary Point of Compliance?**

Site cleanup under Active Remediation (62-780.700) and Natural Attenuation Monitoring (62-780.690) require the establishment of a Temporary Point of Compliance (TPOC) (see 62-780.700(1) and 62-780.690(2), respectively.) If the plume is known to extend off the source property, then public notice is required prior to approving the TPOC and associated Remedial Action Plan (RAP) or Natural Attenuation Monitoring Plan (NAMP). This guidance describes the standard procedures for ensuring such notice is properly made and documented.

Section 376.30701(2)(b), Florida Statutes (F.S.), establishes "the point of compliance at the source of contamination." In other words, the Person Responsible for Site Rehabilitation (PRSR) must meet the Groundwater Cleanup Target Levels (GCTLs) at the source of contamination. However, the statute authorizes the FDEP to extend the point of compliance beyond the source area *temporarily* while cleanup is underway. A TPOC is an “imaginary” line established to depict the maximum extent to which a contaminant plume is allowed to extend during site rehabilitation. The primary purpose of a TPOC is to provide notice to potentially affected parties of the extent of groundwater contamination at the time of the FDEP’s approval of a RAP or NAMP.

A TPOC is the location beyond which a site’s contaminants of concern (COCs) concentrations in groundwater do not exceed GCTLs. The TPOC is not drawn per constituent but is the outermost composite plume boundary. It is not a technical determination about a single point in the environment or on a map. A TPOC may be proposed in a RAP or NAMP and may be established in the respective approval order.

A TPOC may only be moved beyond the property boundary to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. A TPOC may not be extended further than the lateral extent of the plume, if known, at the time of execution of a cleanup agreement or the lateral extent of the plume as defined at the time site assessment is completed (i.e., the Site Assessment Report is approved).

Since it is impractical to establish the exact extent of contamination using sample points, plume contours are often drawn using a computer model or professional judgment to "fit" contours to the groundwater data. As long as a site assessment is complete and plume contours are drawn in a manner supported by the most recent, representative data, the GCTL contour may be used to determine a TPOC.

Section 376.301(47), F.S. defines a TPOC as “the boundary represented by one or more designated monitoring wells at which GCTLs may not be exceeded while site rehabilitation is proceeding.” Installation of additional monitoring wells beyond those necessary to delineate the extent of the contaminant plume should not be required by the FDEP simply to establish an ideal TPOC monitoring line. If monitoring wells are too distant from the TPOC to reasonably function as TPOC monitoring wells, then the same computer model or professional judgment used to establish the TPOC may be used to determine whether the TPOC has been violated.

Exceedance of a GCTL in a TPOC monitoring well should be evaluated as a possible violation of the TPOC. If the contaminant plume expands beyond the TPOC, the effectiveness of the remedial strategy should be evaluated and additional TPOC notices must be provided, if appropriate (see below).

1. **TPOC Notice and Approval Order Process**

Prior to FDEP authorizing a TPOC beyond the source property boundary (i.e., before FDEP issues a Remedial Action Plan Approval Order [RAPAO] or Natural Attenuation Monitoring Plan Approval Order [NAMPAO] designating a TPOC beyond the source property boundary), the PRSR must provide actual notice by certified mail with return receipt requested or other form of delivery that provides confirmation of receipt (certified/confirmed mail) to the appropriate County Health Department and the owners of any property into which the TPOC will be extended. Constructive notice[[1]](#footnote-1) (by publication) is provided for residents and business tenants of properties into which the TPOC will be extended. The notices provide 30-day comment periods (see subsection 62-780.220(3), F.A.C.). As long as contamination exists off-property, additional notices are required every 5 years.

Process Steps:

1. The PRSR submits a RAP or NAMP with a proposed TPOC.

A. FDEP reviews the RAP or NAMP and proposed TPOC. When both the plan and proposed TPOC are found to be acceptable, FDEP sends a letter to the PRSR notifying them that it intends to approve the RAP or NAMP after the PRSR completes the TPOC notice process per the requirements of Rule 62-780.220(3), F.A.C.

B. The PRSR sends the TPOC notice letters by certified/confirmed mail, to each real property owner (RPO) whose property is crossed by or lies within the boundary of the proposed TPOC and to the appropriate County Health Department. Real property owners are identified using current public property records such as the property appraiser’s web site. The Florida Department of Revenue maintains a link to all county property appraisers: <http://dor.myflorida.com/dor/property/appraisers.html>. The notice letter provides for a 30-day comment period. FDEP has developed a template letter for this purpose (see Attachment 1)[[2]](#footnote-2).

C. The PRSR publishes the TPOC constructive notice in a local newspaper1. FDEP has developed a template for the published notice (see Attachment 2).

D. Per Section III.3, the PRSR provides proof of notice to FDEP.

E. Comments will be submitted to FDEP, reviewed, and retained in the site file.

F. The 30-day comment period will end at the latest of:

• 30 days after the last mail delivery confirmation card (“green card” if sent by certified mail) is signed;

* 30 days after the last green card or other confirmation is returned as undeliverable, unclaimed, or refused; or,

• 30 days after the date of publication of the notice.

2. After the 30-day comment period is completed, FDEP and the PRSR should make any appropriate changes based upon the comments.

* If changes are made to the TPOC as a result of public comment, the PRSR must provide additional TPOC notice for all new properties included within the revised TPOC.

If a different remedy (e.g., active cleanup vs. natural attenuation monitoring, or air sparging vs. pump and treat) is selected, the PRSR must issue a new TPOC notice to all parties within the TPOC boundary.

3. Once any comments are addressed, FDEP issues the RAPAO or NAMPAO to the PRSR. The RAPAO or NAMPAO should state that the TPOC does not authorize further migration of the plume to areas not already contaminated.

* The RAPAO or NAMPAO is issued with (and the PRSR may choose to publish) a Chapter 120, F.S., notice of rights and a specified petition period.
* The FDEP project manager shall send a copy of the RAPAO or NAMPAO to everyone who commented on or expressed concerns about the notice.

Affected parties will have an additional opportunity to comment upon issuance of the RAPAO or NAMPAO by filing either a petition challenging the Order or by filing a Request for Extension of Time to File a Petition.

4. If no petitions or extensions requests are filed, the RAPAO or NAMPAO becomes effective after the petition period ends.

1. **Additional Guidance**

1. TPOC Notice Letter (Actual Notice)

A. The notice letter sent by the PRSR should follow FDEP's template. The notice letter provides a description of the site and a list of the categories of contaminants that have been identified as COCs for the site (e.g., petroleum, chlorinated solvents, polycyclic aromatic hydrocarbons, pesticides, metals, arsenic, etc.) and the affected media (soil, groundwater, surface water, sediment). A copy of the letter template is included in this guidance (see Attachment 1: Template for TPOC Actual Notice sent by the PRSR).

B. The notice letter is intended to give property owners general information along with contact information for the project manager, so they can request more information if they want to know exactly which COCs are affecting their property, and more precisely locate the contamination.

C. The notice letter should include a vicinity map (site plan) to satisfy the “description of site” requirement referenced in 1.A. above. The vicinity map should be of a legible scale and include identification of the proposed TPOC line as well as sufficient street names or area landmarks to allow the recipient to identify the area included in the proposed TPOC action. Notice letters do not need to include a list of all the properties that are listed in the published notice.

2. TPOC Published Notice (Constructive Notice)

1. The PRSR publishes the notice one time within 30 days of receipt of the FDEP’s "Intent to Approve" notice.

B. The published notice must include the same information as required in the actual notice. A copy of the notice template is included in this guidance (see Attachment 2: Template for Constructive Notice Publication).

C. The notice must be published per the following specifications to be valid:

• The notice must be at least two columns wide by 10 inches long.

• The headline must be in a type no smaller than 18-point font (font not specified).

• The body of the notice must be in a type no smaller than 10-point font (font not specified).

• The notice must be published in a standard-size newspaper of general circulation in the area where the site is located.

D. The newspaper notice will include a list of affected properties, by address.

E. A legible vicinity map should be included, that identifies the proposed TPOC line and contains street names or area landmarks that allow the recipient to identify the area included in the proposed TPOC action. The vicinity map should be legible enough for someone to see the area of contamination addressed by the TPOC, but not necessarily every detail of what part of every parcel is affected. A new vicinity map may need to be created to fit the appropriate medium and still be legible. The list of addresses ensures that adequate notice was provided if the vicinity map was not legible or because the reader could not interpret the map.

3. Proof of Notice

A. The PRSR shall provide FDEP with a copy of the notice letter that was sent to each property owner and local government. The PRSR can provide one copy of the “generic letter” that was sent, along with a list of addressees to whom it was sent via certified/confirmed mail and the date each addressee received the letter based on the green card/confirmation receipt. The current rule does not require that the PRSR provide FDEP with copies of the receipt, but if the PRSR would like to give FDEP copies as proof of mailing they can be added to the site file.

• If a notice letter is refused, that is noted on the green card/confirmation and it is returned to sender. If the PRSR is concerned about this and wants it noted in the file, they can give FDEP a copy as proof that they at least attempted to notify the affected parties.

• Per the United States Postal Service (USPS), if a letter sent certified mail with return receipt requested cannot be delivered because no one is home and no one comes to the post office to pick it up, then the letter is returned to sender after 15 days. The green card and returned letter would be endorsed as “Unclaimed”; and, again, the PRSR could voluntarily provide FDEP with a copy as proof that they attempted to provide notice to the property owner.

• If the notice letter is refused or unclaimed, and the PRSR wants to go above and beyond what is required and chooses to attempt “hand delivery,” they can also voluntarily provide FDEP with a list of addresses to which letters were hand delivered, but this is not required.

• If a PRSR documents the above efforts in a spreadsheet format, that would be sufficient to demonstrate compliance with the statute and rule.

B. Proof of notice publication should be sent to FDEP within 7 days after publication.

**CERTIFIED MAIL # {xxxx xxxx xxxx xxxx xxxx}**

**RETURN RECEIPT REQUESTED**

[Mr. or Ms….] {Off Property Owner’s Name}

{Off Property Owner’s Company (if applicable)}

{Off Property Owner’s Address}

{City, State Zip Code}

Parcel ID: {xxxxxxxxx}

Subject: **Establishing a Temporary Point of Compliance for:**

{Facility Name OR Contaminated Site Reference Name}

 Street Address

 City, County

 Site Facility ID #: {xxxxxxxxx}

 Parcel ID: {xxxxxxxxx}

{{ADJUST TEXT ON PAGES AS NEEDED TO AVOID SPLITTING SUBTITLES FROM TEXT}}

Dear {Mr. or Ms. or Appropriate Title} {Off Property Owner’s Last Name}:

This letter will serve as notice that the {Person Responsible for Site Rehabilitation} proposes to establish a Temporary Point of Compliance (TPOC) beyond the property boundary of the source for {classes of contaminants} in {contaminated media} from operations at the above-referenced site. A TPOC will be established at the known limit of the contamination at the time that the FDEP approves the remedial strategy for the contaminated site. The name and address of the Person Responsible for Site Rehabilitation (PRSR) for this site is as follows: {XXXXX}.

Based on the {Remedial Action Plan (RAP) or Natural Attenuation Monitoring Plan (NAMP)} {or addenda or modification} dated {date}, submitted by {Consultant/Representative’s Name}, pursuant to Rule 62‑780.{690 or 700}, Florida Administrative Code (F.A.C.), and other file information available to FDEP, it has been determined that active remediation is the best strategy for the rehabilitation of this site, and it requires the establishment of a TPOC beyond the facility property boundary. Prior to the FDEP authorizing a temporary extension of the point of compliance beyond the boundary of the source property with a {RAP Approval Order or a NAMP Approval Order} pursuant to Rule 62-780{.690 or .700}, F.A.C., {the PRSR} must demonstrate compliance with the notice and opportunity-to-comment requirements of subsection 62-780.220(3) F.A.C. Although this proposed TPOC has been determined to extend into, or beyond, the property which you own identified by the parcel number above, its establishment will not subject you to liability for the contamination which is the subject of this notice. {*If a map is proposed to be attached, the following sentence should be included:* “A copy of the site map showing the area of contamination and proposed TPOC on your property is attached”.}

If FDEP determines, after the review of the information utilized to select the TPOC, that human health, public safety and the environment are adequately protected, FDEP may authorize the establishment of a TPOC as part of the {Remedial Action Plan Approval Order or Natural Attenuation Monitoring Approval Order (NAMPAO} (“Order”) for this site. When the Order is approved, it will additionally require continued monitoring of the contamination to ensure that this protection is maintained during the course of site rehabilitation.

Persons receiving this notice shall have the opportunity to comment on FDEP’s proposed action (i.e., TPOC approval) within 30 days of receipt of this notice commencing on the delivery date stamped on the return receipt. Written comments should be sent to {FDEP Project Manager} at the address below.

{FDEP office address}

Comments may also be submitted via e-mail to {FDEP project manager email}. The FDEP will complete evaluation of the {RAP or NAMP} submittal after the end of the 30-day comment period.

Please feel free to contact the undersigned for further information about this notice letter. Copies of documents under review and copies of any relevant documents concerning the contamination site and the proposed remedial strategy, are available for public inspection during regular business hours at FDEP’s Tallahassee Office located at the address identified above for TPOC comments. Copies of documents are also available through the FDEP’s Oculus™ electronic filing system at <http://dwmedms.dep.state.fl.us/Oculus/servlet/login>. The FDEP Site ID Number for the contaminated site is {XXXX}.

Sincerely,

{PRSR Representative/FDEP Project Manager}

Title

Attachment: {map showing area of contamination and location of proposed TPOC **(write ‘TPOC’ on the map, in red, next to the location of proposed TPOC line)**}

cc: {FDEP Program Contact Name}

Notice of the Establishment of a Temporary Point of Compliance for a contaminated site, the source of which is located at {ADDRESS}, {CITY}, {COUNTY}, Florida

The Florida Department of Environmental Protection (FDEP) intends to approve the establishment of a Temporary Point of Compliance (TPOC). This TPOC is for {classes of contaminants} in {contaminated media} from operations that are located at {ADDRESS}, {CITY}, {COUNTY}, Florida. The contaminants migrated beyond the source property boundary onto the property(ies) at the addresses listed below and shown on the map.

{List of properties}

The Person Responsible for the Site Rehabilitation of this Contaminated Site is {NAME OF PRSR}, whose address is {ADDRESS}, {CITY}, FL {ZIP CODE} (“PRSR”). The entire contaminated area, which may include multiple properties, is called the “Contaminated Site.” FDEP is in the process of reviewing a {remedial action plan or natural attenuation monitoring plan} involving remediation of groundwater contamination that requires establishment of a temporary point of compliance extending onto the property(ies) listed above and shown on the map.

Copies of any relevant documents concerning the Contaminated Site and the proposed remedial strategy, including the establishment of a temporary point of compliance, are available for public inspection during regular business hours at FDEP’s {District} District Office located at {District address}. Copies of documents are also available through the FDEP’s Oculus™ electronic filing system at <http://dwmedms.dep.state.fl.us/Oculus/servlet/login>. The FDEP Site ID Number for the Contaminated Site is {XXXX}.

FDEP project manager for the site rehabilitation is {FDEP staff name} who may be contacted at {Address}. Please direct any written comments regarding this notice, the remedial strategy or requests for copies of FDEP’s actions regarding the Contaminated Site to the FDEP project manager or submit comments via e-mail to {FDEP project manager email address}. Persons receiving this notice shall have the opportunity to comment on the proposed action within 30 days of the date of the publication of this Notice.

1. There is no requirement for Constructive Notice for petroleum-contaminated sites, unless they are being cleaned up pursuant to a Brownfield Site Rehabilitation Agreement. [↑](#footnote-ref-1)
2. Because at this point in the process, FDEP has not taken an agency action, this notice does not create a “point of entry” or include a notice of rights pursuant to Chapter 120, F.S. [↑](#footnote-ref-2)