

## **INSTRUCTIONS FOR THE USE OF THE ORDER FOR ACCESS FOR CONTAMINATION OR REMEDIAL ACTION**

1. This model order should only be used if:
  - a. The contamination involves a hazardous substance, a petroleum or petroleum product or a pollutant, as defined in section 376.301, Florida statutes; and,
  - b. The Department has been denied site access to undertake contamination assessment or remedial action activities; or
  - c. A Respondent, who has entered consent order or has been determined eligible for the Dry-Cleaning Solvent Cleanup Program (DCSCP) with the Department, has been denied site access to undertake contamination assessment or remedial action activities which are required pursuant to the consent order or DCSCP.
2. The denial of site access may include instances where unreasonable conditions have been placed on the grant of site access. For example, the property owner requires payment for the use of his property, or he requires the Department to indemnify him for his negligence. The determination of unreasonableness must be made by OGC.
3. This model order should be used only if all reasonable alternatives to site access have been considered and rejected. This includes a review of why the negotiations between the site owner/operator and the party seeking site access were unsuccessful. Are there options to reduce or minimize any inconvenience or impacts on the site or its owner/operator? Was the break down over something that could be overcome through reasonable accommodations to the site owner/operator or was the site owner/operator being unreasonable? An example to consider might be limiting site access to after regular business hours.
4. The description of activity authorized by the order should be limited to the minimum, least intrusive necessary for the investigation or remedial action. For example, in an investigation, consider temporary one-time only sampling techniques rather than more "permanent" wells. Use separate site access orders for assessment, and only if necessary, a follow-up site access order for remediation and additional monitoring.
5. Procedures for review and approval of the model order.
  - a. Once the District personnel determine that all of the criteria for use of the model order have been met, a draft of the order and an LCT cover memo should be prepared and sent to the Litigation Deputy for assignment.
  - b. If site access is required by site investigation or other group in Tallahassee, other than one of the Petroleum Restoration Programs (PRP has its own model Site Access Order, please see those instructions), the model order and LCT cover memo should be prepared by that group and sent to the Litigation Deputy.
  - c. The model order will be given an OGC case number and assigned to the appropriate OGC attorney for review and comment.
  - d. Once approved by OGC, the District Manager or Division Director will sign the model order and send it certified mail, return receipt requested.

6. The District or program can use the final order to try to gain site access. You may want to have a law enforcement officer accompany you.

7. If you are still denied site access, **do not** try to force entry onto the property. Contact the attorney assigned to the case immediately.