

Florida Department of Environmental Protection

Memorandum

TO: Bureau of Petroleum Storage Systems Staff
Contracted Local Cleanup Programs
Petroleum Cleanup Preapproval Program Contractors
Petroleum Contaminated Facility Owners.

THROUGH: Robert C. Brown, Chief *RLB*
Bureau of Petroleum Storage Systems

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Petroleum Cleanup Section Three
Bureau of Petroleum Storage Systems

DATE: September 1, 2011

SUBJECT: Preapproval Program Allowable Costs Related to
Recommendation for No Further Action with Conditions

This document describes costs which are allowable for funding from the Inland Protection Trust Fund for eligible program discharges with priority for current funding when the responsible party for the discharge (and property owner if a different entity) agrees to a closure under the provisions of subsections 62-770.680(2) or (3), F.A.C., Risk Management Options Levels 2 or 3, also known as No Further Action with Conditions. Such closures will involve institutional controls and may also include engineering controls (together referred to as controls) related to the residual contamination that remains at the site. There are technical details and professional recommendations which are necessary to support such controls. Certain costs, primarily legal expenses for the preparation of the Declaration of Restrictive Covenants (aka institutional controls) document are not allowable costs. However other associated costs may be allowable. The following may be considered for FDEP funding to be evaluated with a no further action proposal:

1. Professional land survey - In some cases, if the circumstances of the extent and degree of contamination relative to the property boundaries warrant it, the property owner may request that the controls apply to a portion of the property. In such case it would be necessary to have a site-specific survey and legal description of the smaller area to which the controls will apply. If the FDEP agrees that the application of the controls to the smaller area conforms to the requirements for closure under Risk

Management Options Levels 2 or 3, then the cost for a professional land survey of the smaller area is an allowable cost. In a case in which the entire parcel will be subject to the institutional controls, the cost for obtaining a property survey in order to obtain an institutional control may not be necessary and under such circumstances would not be an allowable cost. However, if a PLS is necessary to aid in the location of existing stormwater facilities, utilities or other existing structures to determine whether controls interfere or conflict with these existing (and sometimes proprietary) uses, then a PLS for the entire property showing all recorded proprietary interests would be allowed.

2. Design and installation of an engineering control - In the case that the responsible party (and property owner if a different entity) has (have) agreed to a closure involving an engineering control to prevent exposure to contamination or migration of contamination, and the necessary engineering control does not already exist, then the cost for design and installation of the engineering control will be considered an allowable cost. However, inspection, maintenance, repair and replacement of the engineering control which may be necessary after the FDEP issues the Site Rehabilitation Completion Order is not an allowable cost.
3. Professional engineer certification of sufficiency of engineering control along with monitoring and maintenance recommendations - Closure options in subsections 62-770.680(2) and (3), F.A.C., related to engineering controls contain the following provision:

Prior to Department or FDEP local program approval of a No Further Action with engineering controls, the responsible party shall provide certification by a registered Professional Engineer that to the best of his or her knowledge the engineering control is consistent with commonly accepted engineering practices, is appropriately designed and constructed for its intended purpose, and has been implemented.

Additionally, in November of 2010 the FDEP's Institutional Controls Procedures Guidance (ICPG) was updated and the revised document includes a new Attachment 31 titled *Engineering Controls Reporting and Monitoring Requirements*. This attachment describes necessary details of

the professional recommendations for the engineering control in addition to the rule requirement indicated above. The following is an excerpt from that document describing, in part, the details that are necessary in addition to the rule-required statement:

For a newly constructed engineering control, the statement must be supported by an engineering control design document that contains the detailed design specifications for the engineering control. For an existing structure that will serve as an engineering control (e.g. a gas station driveway and parking lot), the statement must be supported by a detailed report of all measurements, testing, and other considerations that led the PE to certify the engineering control. The supporting information must include any engineering control maintenance requirements, including the frequency of inspections and monitoring, and the criteria for determining when an engineering control has failed.

It should be noted that in the case of cap-type engineering controls such as pavement the terms "monitoring" and "inspection" are synonymous and there should be no post-SRCO monitoring in the sense of collection of environmental samples such as monitoring well samples. The preparation of an engineering document containing the rule-required certification as well as the other detail indicated in Attachment 31 to the ICPG is an allowable cost. It has been determined that a reasonable compensation for this report for the most common circumstance of a surface cap such as pavement is the level of effort for a Level 1, Limited Scope RAP. For more complex engineering controls the compensation for the professional certification should be determined on a case by case basis.

4. Indigent Consent Order Cleanups - If you are a site manager for a discharges that is not eligible for an IPTF cleanup program but the State of Florida is abating the hazard or conducting some cleanup and attains RMO II or RMO III status, please contact the appropriate BPSS program attorney to discuss institutional controls.

If you have any questions, please contact me at (850)245-8899 or tom.conrardy@dep.state.fl.us