



FLORIDA DEPARTMENT OF Environmental Protection

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PETROLEUM RESTORATION PROGRAM

INSTRUCTIONS FOR CONDITIONAL CLOSURE AGREEMENTS (CCA) (Revised 10/30/19) PURSUANT TO Rule 62-772.401(3), F.A.C.

A request for a Conditional Closure Agreement (CCA) in the Department's Petroleum Restoration Program (PRP) where the Applicant is requesting the ability to recommend a PRP Agency Term Contractor (Contractor) to conduct work must be submitted for each eligible facility (multiple discharges eligible for state-funding at a facility will be addressed under one CCA). The CCA is not effective and the Department will not authorize state-funded work until each of the following documents have been fully executed and submitted to the Department:

- a. Site Access agreement with the Department;
- b. Property Owner Conditional Closure Agreement;
- c. Declaration of Interim Restrictive Covenant must not only be executed but recorded in the County land records of the Property with evidence of the recording on file with the Department (Attachment A of the CCA);
- d. Conditional Closure Agreement Contractor Recommendation (Attachment B of the CCA).

For CSX owned property, see alternative instructions at the end of this document.

On all documents submitted to the Department, if the property owner or CCA Applicant is an LLC, corporation, partnership, or company (collectively referred to as the entity) the person signing the document on behalf of the entity must be authorized by that entity to sign the document. The Department will check the Department of State's website (sunbiz.org) for evidence of such authorization. If the person signing is not listed with the Department of State, the signatory must provide evidence of its authority to sign and legally bind the entity with its CCA application.

1. The first step is that the current property owner (and, when applicable, the tenant) must have granted the Department site access, though the site access agreement can be submitted with the Conditional Closure Agreement (CCA) request. Failure to submit a complete and effective site access agreement with the Department will result in rejection of the request for a CCA. R. 62-772.401(3), F.A.C.

2. The CCA Applicant can either:
 - a. Complete, properly sign, and submit to the PRP all three (3) documents - the "Property Owner Conditional Closure agreement" form (2 pages) with Attachment B – Conditional Closure Agreement Contractor Recommendation" form (1 page), and "Declaration of Interim Restrictive Covenant" (5 pages) at one time and the Department will respond (proceed to step 3); or
 - b. Complete, properly sign, and submit just the "Property Owner Conditional Closure agreement" form (2 pages) with "Attachment B - Conditional Closure Agreement Contractor Recommendation" (1 page) for initial processing by the Department (proceed to step 3).

3. The Department will provide the Applicant with a determination of completeness of the CCA and whether or not the Department accepts the Applicant's contractor recommendation pursuant to R. 62-772.401(3), F.A.C., and will do one of the following:
 - a. inform the CCA Applicant that the CCA is complete and the Department approves of the contractor recommendation (Applicant proceed to step 4),
 - b. inform the CCA Applicant that the CCA is not complete but, if the CCA is timely properly completed and re-submitted, the Department would approve of the contractor recommendation;
 - i. the CCA Applicant must submit the missing information or re-submit the CCA document, properly completed and signed **within 30 days** of receiving the Department's response, or
 - ii. the CCA Applicant must withdraw, in writing, its request for a CCA.
 - c. inform the CCA Applicant that the Department rejects the contractor recommendation and the reason(s) for the rejection at which time the CCA Applicant may either:
 - i. recommend another Contractor (which it may do one time per facility) by submitting another CCA Contractor Recommendation form (Attachment B) (return to beginning of step 3), or
 - ii. in writing, withdraw its request to participate in the CCA.

4. If the Applicant:
 - a. executed the Declaration of Interim Restrictive Covenant (under step 2.a. above), the Department will execute and record the covenant with the appropriate County land records and send a copy of the recorded covenant to the Owner.
 - b. has not already submitted the Declaration of Interim Restrictive Covenant (under step 2.b. above), the Owner must properly execute the covenant for each facility and submit to the Department within **30 days** of receipt the Department's notification. The Department will execute the covenant and

return to the Applicant to record with the appropriate County land records and send a copy of the recorded covenant to the Department.

5. The Department will then proceed with the state-funded work using the current PRP process which includes the Department's discretionary ability to bid work that exceeds the threshold for e-Quotes (\$325,000) if the Department believes it should do so to obtain the best value to the State. However, if the Department approved recommended contractor is meeting performance expectations and is otherwise in compliance with its contract with the PRP, the recommended contractor will continue to oversee the work even if a phase has been accepted by a winning bidder (similar to any PRP contractor overseeing subcontractors).

Upon the completion of work and the verification of achieving either an RMO-II or RMO-III, the property owner working with the Department will record a more permanent "Declaration of Restrictive Covenant" pursuant to the requirements of the then Chapter 62-780, F.A.C. and following the procedures contained in the then current Institutional Control Procedures Guidance Document. If at the completion of work, a Low-scored site initiative (LSSI) No Further Action (NFA) proposal is approved the LSSI NFA order will be issued and a "Termination and Release of Interim Declaration of Restrictive Covenant" will be executed by the Department and recorded with the appropriate County Clerk of Court.

The Department reserves the right to terminate negotiations if the Applicant does not respond to requests for additional supporting documentation within **30 days** of that person's receipt of such a written request, or if the CCA (including recording of the restrictive covenant) is not effective within 60 days of the Department informing Applicant of the approval of the recommended contractor (see step 3). The CCA does not change the requirement for cleanup funding based on the site priority ranking established pursuant to Section 376.3071(5)(a), F.S., except as otherwise provided for advanced cleanup sites under Section 376.30713, F.S.

CSX Owned Property Only

IF CCA Application is for CSX owned property, a Declaration of Interim Restrictive Covenant (DIRC) will not be required. In place of the DIRC, the applicant (CSX) must submit the institutional control it has agreed to use with the Department, the Memorandum of Understanding, Amended and Restated (MOU) and include documentation that CSX has created an Environmental Site and posted (recorded) it in Workbench deed record database and in GIS database mapping system. Documentation must include an exhibit showing boundaries of the Environmental Site, location of the contaminants (if known), and identifies the affected CSX parcel.

Once the site is approved under the Conditional Closure Agreement process, all the above documentation must be uploaded into OCULUS and entered into the Institutional Controls Registry.