GUIDE FOR CONTRACTORS OBTAINING ACCESS TO PROPERTY

FOR THE PETROLEUM RESTORATION PROGRAM (PRP)

Due to the large number of access agreements being submitted to the PRP with inappropriate terms, the PRP is now requiring the use of a form entitled "**For Use by FL. DEPT. of ENVIRONMENTAL PROTECTION AGENCY TERM CONTRACTORS when working as an ATC"** found at this link http://www.floridadep.gov/waste/petroleum-restoration/content/templates-forms-tools-and-guidance .

The following lists the types of provisions that cannot be included in an access agreement for an ATC working in the PRP as well as some instructions to ATCs on how to fill in the blanks required in the form. Please contact the site manager or the Team Leader with questions prior to executing any access agreement that appears to contain problematic provisions.

The following terms must not be in any access agreement signed by an ATC:

1. **Payment** for access in any way, regardless of what the fee is called - "access fee," "surcharge," "permit review fee," or an "inspection fee." (The State does not pay to obtain access to property because access is a requirement to maintain eligibility in the PRP. For a contractor to pay for access violates statutory prohibition against remuneration.)
2. Contractor **indemnifying** the property owner. (AT contractor has already indemnified FDEP.)
3. Any limitation regarding the documents and records generated by the work conducted such as providing the documents to the owner prior to providing the document to PRP or marking any documents as "confidential." (This limitation violates the State's **Public Record** laws & the AT contract.)
4. Language indicating that the **Contractor will pay** for any expenses. (Such language gives the appearance of remuneration. Simply re-word such language to indicate that the Owner/Grantor will not be responsible, for example, for the cost of the remediation system, etc.)
5. Overly restrictive language regarding **activities allowed** on the property that requires future access agreements for the same contractor to continue work. (Do not limit the description to the SOW or PO. The "site activities" should normally include describing assessment and remediation activities.)
6. Any **site restoration** language beyond the statutory language: "State funding will pay the reasonable costs of restoring property as nearly as practicable to the conditions which existed before activities associated with contamination assessment or remedial action were taken." (Including different language or specific promises may conflict with how the PRP decides to restore the property.)

Possible Additions to Access Agreement if Specific Conditions Warrant But only with FDEP Prior Approval:

- Insurance requirements in excess of statutory requirements or requiring owner to be listed as an additional insured. There must be written justification for providing more than the standard practices. Get assistance from Team Leader.
- Additional health and safety requirements. There must be site specific circumstances and written justification for providing more than the standard practices. Get assistance from Team Leader.
- Access is limited to a specific time period. If the owner requests that the agreement be only effective for a period of time, most access agreements should allow for at least 5 years. However, if the cleanup is in the final stages of NAM, for example, and it is clear that the clean up will be completed very shortly an FDEP site manager, after conferring with the appropriate professional, can authorize a shorter period of time with time. Such time should include the submission of lab data, reports, FDEP review, well abandonment, SRCO review, issuance of SRCO and 30 days after SRCO issuance (see if any petitions for hearing are filed.