



**THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

PCPP

PETROLEUM RESTORATION PROGRAM

GRACE RIVERA

2019 PRP Meeting



TOPICS

- General PCPP Overview
- Agreement Components
- Cost Estimate Breakdown



GENERAL PCPP OVERVIEW

Petroleum Cleanup Participation Program

- Is a cost-sharing clean-up program that provides rehabilitation funding assistance to owners/Responsible Parties (RPs), for property currently contaminated by a petroleum discharge from a storage system occurring before January 1, 1995.
- When funds are available, the DEP notifies owner.



GENERAL PCPP OVERVIEW (cont.)

- Owner/RP will provide a 25% copayment (unless financial inability to pay can be established).
- Owner/RP must pay for the LCAR which must be reviewed and approved by the Department.
- For Low Score sites the PCPP agreement is NOT required for the LSA work.



GENERAL PCPP OVERVIEW (cont.)

Limited Contamination Assessment Report (LCAR)

- High Score sites (Score 12+)
Owner or RP responsible for the LCAR.
- Springshed Low Score sites
LCAR not necessary, data from LSA, LSSI & SCS can be used.



GENERAL PCPP OVERVIEW (cont.)

25% CO-PAYMENT

- The owner/RP pays the ATC the 25% co-payment that is part of the PCPP agreement cleanup cost estimate.
- The 25% cost share can be reduced or eliminated based on the results of the Ability to Pay analysis (ATP).
- The SM needs to be sure to select the appropriate percentage for the SPI.



GENERAL PCPP OVERVIEW (cont.)

Florida Statute (FS) 376.3071(4)(q) - A state agency that would otherwise be required to pay for a PCPP LCAR or a PCPP copayment (state agency is the property owner or tenant, for example) **does not need to do so.** Please confer with Tallahassee and OGC regarding what is a “state agency” (not all quasi-gov’t units are state agencies).



GENERAL PCPP OVERVIEW (cont.)

FS 376.3071 (13)(c) Revisions Effective July 1, 2016

The Department may approve supplemental funding for the eligible discharge of up to \$100,000 for additional remediation and monitoring if such remediation and monitoring is necessary to achieve a determination of “No Further Action” (i.e. SRCO, conditional SRCO).



AGREEMENT COMPONENTS

- PCPP agreement with owner or RP
- Cleanup Cost Estimate to closure
- Co-Payment
- Cost Share Contractor Recommendation Sheet



AGREEMENT COMPONENTS (cont.)

PCPP AGREEMENT

[PCPP-Agreement](#)

AGREEMENT FOR PETROLEUM CLEANUP PARTICIPATION PROGRAM

This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter "Department"), whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida, and _____ (hereinafter "Participant"), whose address is _____ Florida _____, (collectively the "Parties") to perform certain site rehabilitation activities for contamination determined eligible for the Petroleum Cleanup Participation Program (hereinafter "PCPP") in accordance with Section 376.3071(13), Florida Statutes (F.S.). The contamination subject of this Agreement is the _____ discharge at the _____ facility located at _____, _____, _____ County, Florida, DEP Facility ID # _____.

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department is authorized to provide state funding assistance for petroleum discharges determined eligible for PCPP, based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S., and Chapter 62-771, Florida Administrative Code (F.A.C.); and

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department has determined the described contamination eligible and Participant has provided the required Limited Contamination Assessment Report (hereinafter "LCAR"); and

WHEREAS, based on the LCAR and the estimated costs of site rehabilitation the Participant is financially able to provide the required 25% copayment of the cost of cleanup.

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from, the Department and the Participant do hereby agree as follows:

GENERAL.

1. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapters 62-780, 62-771, and 62-772, F.A.C. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Chapter 287, F.S.
2. The Participant understands that during the course of site rehabilitation, the Department may, based on the statutes, rules and guidance of the Department, revise the site rehabilitation strategy – cost estimate, attached hereto as **Attachment A**, due to technical or cost considerations.

TERM OF AGREEMENT AND SPENDING LIMITS.

3. This Agreement is effective on the date of execution by the Parties until the earlier of: (1) the Department has determined that rehabilitation is complete pursuant to Chapter 62-780, F.A.C. and issues a Site Rehabilitation Completion Order (SRCO) or Conditional

Site Rehabilitation Completion Order (CSRCO); or (2) the funding limitations set forth in Section 376.3071(13)(b), F.S., are exhausted and site rehabilitation has not been achieved.

4. The Department's will not expend more than \$400,000 on site rehabilitation *[need to address/adjust if some of the cap was spent on a prior agreement]*. The Department and the Participant have estimated, based upon the LCAR, total costs under this Agreement by both parties for the remaining site rehabilitation activities for the eligible discharge to be approximately \$_____ (the "Estimated Cost"). **This value is for planning purposed only.** However, the Parties recognize that due to unforeseen circumstances which may exist or occur at the site during cleanup, actual site rehabilitation costs may either exceed or be less than this estimated amount. Any changes made by the Department to the site rehabilitation strategy which will not increase the Participant's share of total cleanup costs may be made unilaterally by the Department and will not require the Participant's consent. However, the Participant may elect, upon the Department's consent, to continue a more costly or aggressive site rehabilitation strategy at the Participant's sole cost and expense, and the Department's obligation to cost share under this Agreement shall be suspended until such time as the Parties can mutually agree upon the appropriate future site rehabilitation strategy and costs. Changes proposed by the Department to the site rehabilitation strategy which would increase the Participant's share of total cleanup costs in excess of the Estimated Cost will be made only after discussion with the Participant. If after discussion and agreement between the Parties that the site rehabilitation strategy cost will increase above the Estimated Cost the Department PCPP Coordinator will follow up with a letter confirming that cleanup is to continue under this PCPP Agreement in excess of the Estimated Cost.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

5. Based on the Participant's copayment obligation of 25% of the estimated cost of site rehabilitation, the Department's cost share is 75%. In accordance with Sections 376.3071, F.S., and rules adopted pursuant to that Section, the Department will prepare Work Assignments, and procure the work as appropriate with the contractor designated pursuant to paragraph 9 and will thereby be responsible to the contractor solely for the Department's percentage of its cost share.

Participant's Initials _____

6. The Department will review and approve site rehabilitation activities in accordance with the terms of the procurement orders and Chapter 62-780, F.A.C., and shall make copies of such documents available to the Participant. The Participant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or procurement documents under this Agreement.

7. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The Participant understands that this Agreement shall not result in the encumbering of State funds upon execution of the Agreement.

COVENANTS AND REPRESENTATIONS OF THE PARTICIPANT.

8. The Participant represents that [(if applicable) it is a {LLC, corporation, partnership}] in good standing in the State of Florida and] or [(if applicable) he or she] is qualified to enter into this Agreement and is able to fully perform its duties under this Agreement. Participant acknowledges that the responsibilities and obligations of this agreement survive the transfer of the above referenced facility/property.

9. Within 30 days of execution of this Agreement, Participant shall select a Petroleum Restoration Program (“PRP”) Agency Term Contractor (“Contractor”) in accordance with Chapter 62-772, F.A.C. The Participant shall provide a Cost Share Site Contractor Selection Sheet (CSS) to the Department designating the Contractor within 30 days of execution of this Agreement or the Department will designate a Contractor. The CSS form can be found on the PRP web site @ <http://www.dep.state.fl.us/waste/categories/pcp/pages/qualified.htm>.

10. Participant further agrees that [it or he or she] shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its share of costs from the Contractor, when such invoice is accompanied by a written approval by the Department of the work completed. Within 21 days of payment to the Contractor, the Participant shall provide to the Department proof of such payment, which shall include a copy of the Participant’s paid and canceled check to the Contractor. Alternatively, Participant can require the Contractor certify that the invoice amount specified in the certification was paid and indicate the date such payment was received by the Contractor from the Participant (**Sample FDEP Letter Requesting Confirmation of Payment of PCPP Cost Share – Attachment B**).

11. Participant has a copayment obligation to pay 25% of the cost of site rehabilitation. The Participant shall provide to the Department proof of payment of its copayment obligation to the Contractor, which must include a copy of the paid and canceled check (copy of both front and back of check) to the [Contractor] or certification by the [Contractor] that the invoice amount specified in the certification was paid and indicating the date such payment was received by the [Contractor] from the Participant. If a canceled check is provided as proof of payment, we recommend that you use a black marker to cross through the account number and bank’s routing number to make them illegible. Additionally, any proof of electronic funds transfer to the contractor for required co-payments must be provided and include the dollar amount, date of funds transfer from bank account to the contractor, etc. Redact any account numbers and bank’s routing number to make them illegible for any proof of electronic payments made to the contractor. Failure to timely and adequately pay the [Contractor] and provide proof of that payment to the Department within 21 days shall be considered a material breach of the PCPP Agreement pursuant to paragraph 14.

12. In accordance with Chapter 376, F.S., it is unlawful for the Participant to receive any remuneration, in cash or in kind, from a Contractor performing cleanup activities subject of this Agreement. The Participant is further prohibited from entering into any agreement

with a Contractor which would have the effect of reducing the Participant's copayment obligation under this Agreement, this would include an agreement whereby the Participant does not make timely payments.

13. The Participant shall maintain books, records, documents and other evidence pertaining to compensation and payments directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Department, the State of Florida or their authorized representatives shall have access, without cost, except reasonable costs associated with photocopying such records, to such records for audit purposes during the term of this Agreement and for five years following termination of this Agreement.

TERMINATION OF AGREEMENT AND REMEDIES FOR BREACH OF AGREEMENT.

14. This Agreement may be terminated for material breach of obligations by either Party. Material breach means substantial failure to comply with the terms and conditions of this Agreement. A Party terminating the Agreement shall give written notice of the breach to the other Party within 14 days of discovery of facts giving rise to the breach. Such notice shall be of sufficient detail so that the Party allegedly in breach can formulate a remedy. If the breach is remedied within 15 days of the notice, the Agreement shall remain in effect. If the breach is not remedied within 15 days of the notice, the Agreement may be terminated within 15 days of the close of the 15 day remedy period. Failure to timely pay the Participant's 25% co-payment is considered a material breach of this PCPP Agreement. In the event that the Department determines, in its sole discretion, that the Participant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity.

15. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Participant to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, F.S., and made or received by the Participant in conjunction with this Agreement. The Department may terminate this agreement without cause with notice to the Participant pursuant to paragraph 14.

16. The parties hereto agree to waive any right to jury trial under this Agreement.

NOTICES.

17. Any notice or written communication required or permitted hereunder between the Parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, delivered in person to or received electronically by e-mail by the appropriate Party Representative. The Department shall give reasonable notice (and not less than any notice specifically required under this Agreement) of its inspection of documents, conduct of audits, review of files, request for information, request for copies or otherwise relating to the exercise of such rights as referred to in this Agreement. Party Representatives are as follows:

For the Department:

Kenneth Busen, P.G.
PCPP Coordinator
Petroleum Restoration Program
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
Phone (850) 245-8745
E-mail: Kenneth.Busen@dep.state.fl.us

For the Participant:

{Title}
{Company, LLC, Corporation}
{Mailing Address}
{City, State, Zip}
Phone:XXX-XXX-XXXX
E-mail:

AMENDMENTS.

18. Any amendment to this Agreement must be in writing and signed by the Parties.

ASSIGNMENT.

19. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party. The Department will not accept assignment of this Agreement to any person or entity that, in the Department's determination, is unable to reliably comply with the 25% co-payment obligation.

CHOICE OF LAW/FORUM.

20. The parties hereby agree that any and all actions or disputes arising out of this Agreement shall be governed by the laws of the State of Florida; and any such actions shall be brought in Leon County, Florida.

RESPONSIBILITY FOR SITE REHABILITATION WHERE CLEANUP COSTS EXCEED SPENDING LIMITATIONS.

21. In accordance with Section 376.3071(13)(f), F.S., in the event that the funding limitations specified in Section 376.3071(13), F.S., are exhausted or exceeded prior to completion of site rehabilitation, the Participant shall be obligated to continue site rehabilitation activities in accordance with Section 376.3071(5), F.S., and Chapter 62-780, F.A.C. If the Participant fails to timely continue the site rehabilitation activities, the Department and its agent(s) are permitted to continue performing assessment and remedial activities that the Department, at its sole discretion, deems appropriate. The Department may designate its own contractor(s) to undertake site rehabilitation actions without the approval of the Participant or any other party. The Department or its agent(s) will perform any assessment and remedial activities that the Department, at its sole discretion, deems appropriate to address the remaining petroleum contamination. As such, the Department, at its sole discretion, may choose to undertake assessment or cleanup activities that are less stringent than the requirements of Chapters 62-780 and 62-777, F.A.C., and which may not result in the issuance of a Site Rehabilitation Completion Order. Pursuant to Section 376.3071(7)(b), F.S., the Department will seek recovery for

all sums expended by the Department for actions taken pursuant to this paragraph. Therefore, the Department explicitly reserves its right to seek recovery from the Participant or any other responsible party that amount which was expended by the Department in these matters.

ENTIRE AGREEMENT.

22. It is hereby understood and agreed that this Agreement states the entire agreement and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement. This agreement is binding upon and is for the benefit of the Parties and to no other entities or persons not signatories to this Agreement.

FOR THE DEPARTMENT:

FOR THE PARTICIPANT:

Natasha Lampkin
Program Administrator
Petroleum Restoration Program

Print Name: _____

Title: _____

Date: _____

Date: _____

Attachment A: Cleanup Strategy - Cost Estimate

Attachment B: Sample FDEP Letter Requesting Confirmation of Payment of PCPP Cost Share

Electronic copy to: _____, Site Manager *{e-mail if a site manager has already been assigned}*
Site File/Oculus



AGREEMENT COMPONENTS (cont.)

COST ESTIMATE FORM

[Cost Strategy Attachment A.pdf](#)

[Cost Strategy Attachment RAP example](#)

Attachment A

Site Rehabilitation Strategy – Cost Estimate

Site Name

Site Address County, Florida

FDEP Facility # _____

PCPP Eligible Discharge Dated XX-XX-XXXX

Based on the results of the (date) (Name of Report) Report submitted by (contractor) the estimated cost to complete cleanup (with or without) conditions is \$XXXXXXX. The breakdown of the cost is below:

	\$
	\$
Well abandonment	\$
10 % Contingency	\$
	Estimated total \$
Estimated DEP Future Cost to Closure at 75% Cost Share	\$
Estimated RP Future Cost to Closure at 25% Cost	\$

Attachment A

Site Rehabilitation Strategy – Cost Estimate

Zero Garage
501 E 30th Ave, Bradenton, Florida
FDEP Facility # 418511000
PCPP Eligible Discharge Dated 10-16-1998

Based on the results of the April 14, 2016 through January 12, 2017 PCPP LCAR & Addenda submitted by (**Mayne Environmental Consultants, Inc.**) the estimated cost to reach closure with conditions is \$295,000. The breakdown of the cost is below:

Remedial Action Plan (RAP) for Source Removal	\$15,000
Excavation & Thermal Treatment of Impacted Soil	\$150,000
Soil Manifesting, Soil Testing, & Reporting	\$45,000
Pavement Restoration	\$30,000
Installation of Replacement Wells for PARM	\$15,000
PARM	\$35,000
Well abandonment	\$5,000
	Estimated total \$295,000
Estimated DEP Future Cost to Closure with Conditions at 75% Cost Share	\$221,250
Estimated RP Future Cost to Closure with Conditions at 25% Cost	\$73,750



AGREEMENT COMPONENTS (cont.)

CO-PAYMENT LETTER TO OWNER

Attachment B



FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

ATTACHMENT B

[Date]

[Mr. or Ms. or . . .] [Responsible Party's Name]
(if applicable)[Responsible Party's Company]
[Responsible Party's Address]
[City, State Zip Code]

Subject: Request for Confirmation of Cost Share Payment
[Facility Name]
[Facility Street Address]
[City, xxx] County
FDEP Facility ID# [xxxxxxxxxx]

Dear [Mr. or Ms. or . . .] [Responsible Party's Last Name]:

The Department has approved site rehabilitation work under [Purchase Order # [insert purchase order number]] and the [Qualified Petroleum Contractor or Agency Term Contractor] has been notified that they can submit [an interim or a final] invoice to the Department for payment. Under the terms of the [AC or PCPP or SRFA] Agreement you will be required to pay the [Qualified Petroleum Contractor or Agency Term Contractor] your share of the approved task[s] of the [Purchase Order (including authorized Change Orders)], which is [\$ [amount of the RP share of the approved task[s] of the Contract work (including authorized Change Orders)]]. Within 21 days of payment to the [Qualified Petroleum Contractor or Agency Term Contractor], you must provide to the Department proof of such payment, which must include a copy of your paid and canceled check to the [Qualified Petroleum Contractor or Agency Term Contractor] or a certification by the [Qualified Petroleum Contractor or Agency Term Contractor] that the invoice amount specified in the certification was paid and indicating the date such payment was received by the [Qualified Petroleum Contractor or Agency Term Contractor] from you. If you provide a canceled check as proof of payment, we recommend that you use a black marker to cross through your account number and your bank's routing number to make them illegible. Failure to timely and adequately pay the [Qualified Petroleum Contractor or Agency Term Contractor] and provide proof of that payment to the Department shall be considered a material breach of the [AC or PCPP or SRFA] Agreement. Please provide the proof of payment to me at the letterhead address, Mail Station [xxxx]. If you should have any questions, please contact me at 850-245-[xxxx].

[Responsible Party's Name (same as in address)]

FDEP Facility ID# [xxxxxxxxx]

Page 2

[Date (same as on page 1)]

Sincerely,

[Site Manager's Name]

[Site Manager's Title]

Petroleum Restoration Section [x] or [local program]

Petroleum Restoration Program

/[site manager's initials (lower case)]

cc: [Consultant's Name, Consultant's Company – e-mail address]

File-Oculus



AGREEMENT COMPONENTS (cont.)

COST SHARE CONTRACTOR RECOMMENDATION SHEET

[Cost-Share-Contractor-Recommend-Sheet_012819.pdf](#)



PCPP CONTACTS

Grace Rivera, FCCM, FCCN

850-245-8882

Grace.Rivera@Floridadep.gov

Ken Busen, P.G.

850-245-8745

Kenneth.Busen@Floridadep.gov



Questions or Comments?

