

Meeting Date
May 03, 2016



AGENDA	
Section	Consent
Item No.	II.A.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	County-owned Petroleum Discharge Sites Listed by Florida Department of Environmental Protection (FDEP) for Low-Score Assessment
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board of County Commissioners consider allowing Florida Department of Environmental Protection (FDEP) to perform Low-Score Assessment on those County-owned properties which have low levels of petroleum discharges. It is also requested that the Board allow NRM to act as the intermediary for the County and FDEP for the four known sites and any future sites and authorize the NRM Director to execute a site access agreement with FDEP, subject to the approval of the County Attorney, Risk Management and the Department Director responsible for managing the site.

Summary Explanation & Background:

The FDEP recently sent four Site Access letters to Brevard County requesting permission to enter four (4) County-owned facilities (S Area Stores, Spessard Holland Golf Course, Lipscomb Park, and Central Area Inventory D) to perform Low-Score Assessments (LSA) on the petroleum discharge areas within these facilities. The sites in question are in State funded programs for the historic discharges. The purpose of these assessments is to determine if these sites qualify for Site Rehabilitative Discharge Orders (SRCO) or if further assessment and/or remediation is required. The issuance of a SRCO on a discharge site removes this site from the State's program and the site is considered free of any petroleum issues which may have hindered further development or sale of the property.

These assessments may include soil, surface, subsurface and groundwater sampling to determine the nature and extent of remaining petroleum constituents. All work is expected to be performed during business hours. There is no cost to the County for the LSA, at this time. If further work is required, costs will be on a site by site basis and may range from \$500 to \$10,000 per site.

NRM is willing to act as the intermediary for FDEP and the County since NRM has the expertise to address issues that may arise from the assessment. Departments owning the facilities under this program will be consulted by NRM prior to any direction given to FDEP regarding access and work beyond the LSA which may require the County to contribute a cost share.

Fiscal Impact: None to complete the LSA, potentially \$500 to \$10,000 where further assessment is necessary. Failure to participate in the state-funded program can result in the County being responsible for the entire cost of assessment and rehabilitation.

Staff: Sue Gosselin X52438 or Virginia Barker X52435

Clerk to the Board instruction:

Exhibits Attached: Sample FDEP Site Access Agreement

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager Stockton Whitten	Assistant County Manager	Department Director/Extension Virginia Barker/X52435
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Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 4, 2016

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item II.A.1., Florida Department of Environmental Protection (FDEP) to Perform Low-Score Assessment on County-owned Properties with Low Levels of Petroleum Discharge

The Board of County Commissioners, in regular session on May 3, 2016, approved allowing Florida Department of Environmental Protection (FDEP) to perform Low-Score Assessment on those County-owned properties which have low levels of petroleum discharges; allowed Natural Resources Management to act as the intermediary for the County and FDEP for the four known sites and any future site; authorized you to execute a site access agreement with FDEP, subject to the approval of the County Attorney and Risk Management; and approved for the Department Director to be responsible for managing the site.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/af

cc: County Attorney
Risk Management



Florida Department of Environmental Protection

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

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

12/22/2015

BREVARD COUNTY
700 PARK AVE S
TITUSVILLE, FL 32780

Subject: Notice of Funding Availability for Assessment

BREVARD CNTY-S AREA STORES
4690 N WICKHAM RD
MELBOURNE, BREVARD COUNTY
FDEP Facility ID#5 8626186
Eligible Discharge Date: 8/14/1987 (EDI)
Priority Score: 7

Dear Property Owner:

Funding is currently available from the Petroleum Restoration Program (PRP) to perform a Low-Score Assessment (LSA) to assess the extent of the petroleum discharge at your facility. Any co-payments or deductibles associated with this discharge will not be required at this time unless the data demonstrates the site qualifies for closure and is issued a Site Rehabilitation Completion Order (SRCO).

In order to participate in this program, a site access agreement must be signed and returned. Please execute and return the attached PERMISSION TO ENTER PROPERTY form as soon as possible using the enclosed self-addressed stamped envelope, but within 30 days of the date of this letter. Upon receipt of the completed form, the PRP will begin preparing a scope of work and assigning a competitively procured Agency Term Contractor to begin assessment activities at your site.

Recent legislation now requires the PRP to select contractors to perform assessment and remediation of state-funded petroleum contamination. As a result, the PRP selects contractors through a competitive procurement process that is outlined in Chapter 62-772, Florida Administrative Code.

BREVARD COUNTY
FDEP Facility ID# 8626186
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The PRP will consider any input you may want to provide with respect to the rehabilitation of this facility. If you would like to provide such input, or would like the opportunity to reject one agency term contractor prior to assignment, please check the appropriate box of the form and provide contact information as soon as possible using the enclosed self-addressed stamped envelope, again within 30 days of the date of this letter.

If you have any questions, please contact Rob Perlowski at 850-245-8917 or Robert.Perlowski@dep.state.fl.us. Thank you for your assistance.

Sincerely,



Alan Sakole
Environmental Supervisor
York Risk Services Group, Inc;
Administrative Services Contractor
Alan.Sakole@yorkrsg.com

Enclosure: Permission To Enter Property.

Note, this cover letter is for your records and should not be returned.

INSTRUCTIONS FOR COMPLETION OF SITE ACCESS AGREEMENT

This agreement is required to allow FDEP and the Agency Term Contractor (ATC) personnel to enter your property to perform remediation services. Upon issuance of a Closure Order, your site will be restored as nearly as practical to the conditions which existed before the activities, and the access agreement shall be terminated.

The Agreement includes 21 standard paragraphs. Alteration may not be made directly on the original agreement. In addition, there are four questions concerning owner access preference that must be answered by checking the corresponding boxes. Any additional requirements or agreements may not result in the FDEP incurring additional expenses. Please see the instructions following each question for more information.

- A. Are additional requirements attached to this agreement? Note: Additional requests must be on a separate page titled Exhibit B and include the facility ID#, owner signature and date on the page.

Some property owners require additional access conditions, such as those mandated in the *Jessica Lundsford Act* for school properties, or have specific requirements regarding notification of work. Additional requirements may be requested on a separate signed and dated page to this agreement, to be titled Exhibit B. Such requests are subject to evaluation and approval by the Department. You will be informed if the Department cannot accept your request. Any changes or alterations to the standard access agreement must be made in Exhibit B, and not on the original agreement.

- B. Do you wish to participate or provide input with respect to rehabilitation of this facility?

If you wish to be in close communication with the ATC and receive notifications of work, copies of reports and recommendations for the site, select "yes" for this option. If you prefer to be hands off and let the ATC conduct all work as directed by the FDEP, please select "no."

- C. Do you wish to exercise the option to reject one Agency Term Contractor prior to assignment of work?

As required by legislation outlined in Chapter 62-772 Florida Administrative Code, FDEP will use a competitive procurement process to select an ATC to conduct the assessment/remediation activities. Checking "yes" for the above option allows you to be informed by FDEP which ATC is selected before they are authorized to initiate activities, and reject one selected ATC, if you so choose.

- D. Do you want the Contractor to contact you to obtain a separate site access agreement? Note: Additional site access agreements between the owner and ATC must be completed within ninety (90) calendar days.

If "yes" is selected, you will be contacted by the ATC to discuss the terms of your additional site access agreement prior to beginning any work at your site. The State of Florida does not review or give advice regarding these separate agreements. If you choose to do this, the separate access agreement cannot contradict, and must be subservient to, the agreement between the owner and the FDEP.

SITE ACCESS AGREEMENT

1. The Parties. The undersigned real property owner, BREVARD COUNTY, ("**Owner**"), hereby give(s) permission to the State of Florida, Department of Environmental Protection ("**Department**") and its Agency Term Contractor, subcontractors, and vendors ("**Contractor**"), to enter the Owner's property ("the Property") located at 4690 N WICKHAM RD , MELBOURNE 32935, *FDEP Facility ID: 8626186.*

2. The Property. Owner owns the certain parcel(s): 2636360000001.0-0000.00 of real property located at 4690 N WICKHAM RD, MELBOURNE Florida 32935 (the "**Property**"), depicted on the attached legal description as Exhibit "A

3. Permissible Activities. This Site Access Agreement ("Agreement") is limited to activities which may be performed by the Department or its Contractors pursuant to Chapter 62-780, Florida Administrative Code (F.A.C.), without cost to the Owner (unless required in a separate agreement) to locate contamination, determine contamination levels and, when necessary, remove and remediate contamination which may be performed by the Department and its Contractor. This access is provided only for the contamination either eligible for a state-funded cleanup or is being investigated pursuant to a consent order with the Department. The following activities are included in this Agreement but are not limited to this list:

- conduct soil, surface, subsurface, and groundwater investigations, including but not limited to entry by a drill rig vehicle and/or support vehicles;
- install and remove groundwater monitoring wells;
- use geophysical equipment;
- use an auger for collecting soil and sediment samples;
- locate existing wells;
- collect waste, soil, and water samples;
- remove, treat and/or dispose of contaminated soils and water;
- remove contaminated soil by digging with backhoes, large diameter augers and similar equipment;
- install, operate, and remove remedial equipment;
- install and remove utility connections;
- trenching for connection of remediation wells to equipment; and
- conduct surveys, prepare site sketches, and take photographs.

4. Duration and Termination of Access. This Agreement is granted, without any fee or charge to the Department or Contractor, for so long as is necessary to assess, remove, monitor and remediate the contamination on the Property. Access shall be allowed for the Department (including its employees and contracted site managers with Teams 5 and 6 or local government, if applicable) immediately upon the execution of this Agreement. However, access for a Contractor can be contingent upon the Owner timely entering into a separate site access agreement with the Contractor (if the Owner wants a separate agreement with the Contractor please check the appropriate box at the end of this document). Such agreement with a Contractor is not binding upon the Department. This Agreement shall continue until the Department's entry of a site rehabilitation completion order pursuant to Rule 62-780.680, Florida Administrative

Code, or low-scored site initiative no further action order pursuant to Section 376.3071(12)(b), Florida Statutes ("Order"). At which time the Owner shall be provided a copy of the Order and this Agreement shall be automatically terminated.

5. Work Performed during Business Hours. The Department and Contractor may enter the Property during normal business hours and may also make arrangements to enter the Property at other times after agreement from the Owner.
6. Activities Comply with Applicable Laws. The Department and Contractor agree that any and all work performed on the Property and in association with this Agreement shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal and state statutes, rules and regulations.
7. Proper Disposal of Contaminated Media. The Department and Contractor shall ensure that soil cuttings, any work materials, and water generated shall be disposed of in accordance with Environmental Laws. All soil cuttings, waste materials and development water generated shall be promptly removed from the Property.
8. Property Restoration. The Department shall pay the reasonable costs of restoring the Property as nearly as practicable to the conditions which existed before activities associated with contamination assessment or remedial action were taken.
9. Owner's Non-Interference. The Owner shall not interfere with the Department or Contractor when performing the Permissible Activities. Owner shall not damage any equipment including wells, piping, and remediation system that may be located on the Property. Owner shall notify the Department 90 days prior to commencement of any construction, demolition or other work on the Property that may damage or destroy any part of the equipment installed under this Agreement. If the Department anticipates that the remediation equipment will not be used for over one calendar year, the Owner can request removal of the remediation equipment if it is interfering with the operation of the business or with planned construction activities.
10. Non-revocable. If Property is the source of the discharge that is eligible for State funded remediation pursuant to Chapter 376, Florida Statutes, access to the Property is required and Owner may not revoke this Agreement with the Department until the appropriate site rehabilitation completion order is issued under Chapter 62-780.680 or a low-scored site initiative order issued pursuant to Section 376.3071(12)(b), Florida Statutes, is final.
11. No Admission. The granting of this Agreement by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner for any contamination discovered on the Property.
12. Owner's Use of Property. The Owner retains the right to use the Property, and the Department and its Contractors will work with the Owner regarding minimizing activities that may interfere with the Owner's management and use of the Property. However, neither the Department nor the Contractor are responsible for any inconvenience, economic injury, or business damage that Owner may suffer due to the performance of any Permissible Activity. This agreement does not modify any legal right the parties may have regarding negligent acts.
13. Owner's Release of Claim. If Owner selected a qualified contractor (not an agency term contractor), the Owner hereby releases the Department from any and all claims against the

Department performed by the Owner's selected contractor arising from or by virtue of, the Permissible Activities.

14. Injury to Department. The Owner shall not be liable for any injury, damage or loss on the Property suffered by the Department, Department employees or Contractors not caused by the negligence or intentional acts of the Owner's agents or employees.

15. Indemnification. The Department does not indemnify the Owner, see paragraph 16. The Contractor has indemnified the Department. However, if the Owner chooses to enter into a separate access agreement with the Contractor, the Contractor is not prohibited from indemnifying Owner as long as such indemnification does not conflict with the Contractor's indemnification of the Department. Where no conflicts exist, any subsequent indemnification by the Contractor to any party associated with the Permissible Activities is subservient and subordinate to the Contractor's indemnification of the Department.

16. Sovereign Immunity. The Department acknowledges and accepts its responsibility under applicable law (Section 768.28, Florida Statutes) for damages caused by the acts of its employees while on the Property.

17. Public Records. All documents created or received associated with the Permissible activities are a public record pursuant to Chapter 119, Florida Statutes. The Owner may retrieve any documents or other information related to the Permissible Activities online using the facility number reference above. <http://depedms.dep.state.fl.us/Oculus/servlet/login?action=login>

18. Entire Agreement. This Agreement shall constitute the entire agreement between the Department and the Owner regarding this grant of access to the Department as stated herein. No modification, amendment or waiver of the terms and conditions of this Agreement shall be binding upon Department unless approved in writing by an authorized representative of Owner and Department.

19. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action or proceeding arising from or relating to this Agreement shall be in the appropriate Florida court having jurisdiction located in Leon County, Florida.

20. Severability. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

21. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.

A. Are additional requirements attached to this agreement? Note: Additional requirements must be on a separate page titled Exhibit B and include the facility ID#, owner signature and date on the page.

YES

NO

B. Do you wish to participate or provide input with respect to rehabilitation of this facility?

YES

NO

C. Do you wish to exercise the option to reject one Agency Term Contractor prior to assignment of work?

YES

NO

D. Do you want the Contractor to contact you to obtain a separate site access agreement?

Note: Additional site access agreements must be completed between the owner and ATC within ninety (90) calendar days.

YES

NO

Signature of each Property Owner

Signature of Witness

Print Name

Date

Print Name

Date

Property Owner Mailing Address

Property Owner Telephone or Cell Phone Number

Property Owner E-mail Address

Accepted by the State of Florida Department of Environmental Protection:

Diane D. Pickett, P.G.
Program Administrator
Petroleum Restoration Program

Signature of Witness

Date

Print Name

Date

Attachments: Exhibit A- Legal description of the Property.

FDEP Coordinates (Degrees Minutes Seconds) for Facility 8626186:

Attachment A

Short Legal Description: N 1/2 OF NE 1/4 OF NE 1/4 EX N RD R/W EXC ORB 4232 PG 116
PAR 3

FDEP Coordinates(Degrees Minutes Seconds) for Facility 5/ 8626186:

Latitude 28⁰ 11' 8.2896 "
Longitude 80⁰ 40' 24.7872"