

BROWARD ENVIRONMENTAL REMEDIATION TIMES



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SRCO DATABASE ISSUES

After a successful site cleanup, the way to formally memorialize the accomplishment is to prepare a Site Rehabilitation Completion Order (SRCO). That process entails the preparation of a SRCO package for review and process by the Florida Department of Environmental (FDEP) Tallahassee office.

We'll review some database issues that are commonly encountered while preparing the SRCO package for the FDEP.

The Petroleum Restoration Program (PRP) Project Manager (PM) needs to ensure that the facility street address and city in the Storage Tank Contamination Monitoring (STCM) database matches that of the County Property Appraisers Office to avoid delays in SRCO issuance. A common issue is associated with varying road names dependent on municipalities and boundaries.

For example, US Highway 441 is also known as North or South State Road 7, North or South Highway 7, and North or South 60th Avenue.

To aid clarity and increase efficiency site addresses can be formatted as follows:

- 24 NW 53rd Street (West Prospect Road)

- 2411 South Federal Highway (formerly 400 SE State Road 84)

If the project is funded by PRP, the Agency Term Contractor (ATC) should check the site address from the Property Appraisers Office against the address provided in the Purchase Order and advise the PRP PM if a discrepancy is noted. If there is a discrepancy, the PRP PM needs to investigate and initiate an appropriate follow-up. It's important to note that it is not always STCM that requires correction. There have been instances where an error in the Property Appraisers Office Records required correction. In these cases, more lead time may be needed for database updates.

There are times when STCM records do not match the Property Appraisers office data due to property transactions and/or re-development resulting in address changes or the re-platting of a facility and the surrounding area. The facility can either be subdivided or incorporated within a larger plat usually resulting in a change of address and folio number at the property appraiser's office. Note also that City names have been known to change over the years. For example, in Broward County, Hallandale became Hallandale Beach in 1999.

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SRCO DATABASE ISSUES

The STCM database can be updated by the owner/operator to update STCM records through the submission of a Storage Tank Registration Form 62-761.900(2), FAC. Once completed, the form is sent to: tankregistration@dep.state.fl.us. Greater detail regarding the Tank Registration update procedures is available in the Winter 2016 Remediation Times Issue titled, "Tank Registration Update Procedures to Facilitate SRCO Issuance." This article includes greater detail regarding the registration update procedure needed (owner, address, facility status, tank status, etc.) to update STCM records. Due to the ATC's site familiarity, they can (and in some cases have) provided swift assistance to the owner/operator in the completion of the registration form. The Tank Registration update procedure is relatively painless and the corrections/modifications to match the STCM database and the County Appraisers Office records can occur promptly.

If you have questions or need more information regarding this article, please contact John J. Gomolka, P.G., at (954) 519-1279 or jgomolka@broward.org.

This is the second article in a 3-part series about SRCO preparation.

FDEP DRAFT CHANGES TO THE INSTITUTIONAL CONTROL PROCEDURES GUIDANCE

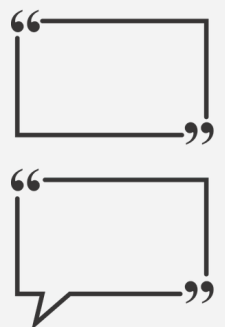
The Florida Department of Environmental Protection (FDEP) is in the process of evaluating several proposed changes to selective portions of the Institutional Control Procedures Guidance (IGPC). The draft changes can be found on the Division of Waste Management [website](#). The changes being evaluated by the FDEP not only include modifications to existing portions of the ICPG, but also some new guidance documents such as the "Certification of Restrictive Activities on Conditionally Closed Cleanup Sites".

The proposed changes are in draft form and the FDEP welcomes public and industry comment. The Broward County Cleanup and Waste Regulation Section encourages environmental communities to get involved in the revision process and submit any comments to the FDEP. Comments can then be evaluated on their appropriateness with conditional closure objectives and legality with relation to what is allowed by existing Florida Administrative Code rules and Florida Statutes.

At the time of the preparation of this article, the proposed draft changes can generally be grouped into four different areas:

- Amending and removing institutional control, including separate draft templates for amending and for terminating and releasing existing institutional controls.
- Additional guidance and clarification of Non-Declaration of Restrictive Covenant institutional controls, such as: memorandums of understanding, memorandums of agreement, local government Ordinances, and the like.
- Noticing procedures, for example: notices of intent and published notices, including draft templates for notices of intent to real property owners, residents, lessees, and encumbrance holders, as well as to non-source property owners.
- Miscellaneous others, such as a map showing Florida counties that are implementing water management district water well construction ePermitting system, Certification of Restricted Activities on Conditionally Closed Cleanup Sites, as well as templates reflecting proposed changes to the Conditional Site Rehabilitation Closure Order and to the Declaration of Restrictive Covenant (DRC) when any section of the of DRC encumbers the entire property subject to the DRC. These templates mainly incorporate the changes described in the other bullet points above.

Our readers are strongly **encouraged** to get involved in the comment process. As directed in the web link provided above, any comments can be sent to ICPG@FloridaDEP.gov.



EXPEDITING THE PROCESSING OF RESTRICTIVE COVENANTS FOR CONDITIONAL CLOSURE

Reference: Institutional Control Procedures Guidance Document (ICPG) <https://floridadep.gov/waste/waste/content/institutional-controls-procedures-guidance>.



Restrictive Covenants (RC) are a popular institutional control used by property owners of contaminated sites to obtain conditional closure in accordance with Chapter 62-780, F.A.C., Risk Management Option Level II or III, once a No Further Action with Conditions (NFAC) has been approved. The RC has restrictions on the use of the property that serve to eliminate or minimize exposure to remaining contaminants on site. The restrictions will limit the actions of current and future property owners and is enforceable by third party beneficiaries named in the RC (for example, the FDEP or Broward County).

The requirements for the owner to create and record the RC with the property deed is detailed in the agency's "Acknowledgment of Intent to Propose Conditional Closure letter" (Letter). The minimum

supporting documents for the RC package from the property owner to FDEP Office of General Counsel (OGC) listed in the Letter include: the draft RC, deed to property, legal description of property to be restricted, and survey of area of restriction (if different from whole property or if there are stormwater features that need to be maintained), title report, and mailed notice to holders of interest in the real property to be restricted. In some cases, the time elapsed between the Letter issue date and the RC recorded date could be several years due to issues with submitted RC packages. Below are some sources of RC processing delays after granting NFAC, with examples of cases where delays occurred, and related suggestions to avoid delays.

Agreement Letter

Example: The Person Responsible for Site Rehabilitation (PRSR) for a Margate site proposed NFAC on July 7th, 2015 and obtained an agreement letter from the property owner, but not from a contaminated offsite property owner. Now, ongoing negotiations with the contaminated offsite property owner for an agreement letter to obtain a Letter are delaying the start of RC processing.

Suggestion: The PRSR should obtain an agreement letter from the offsite property owner prior to proposing NFAC on behalf of the property owner, if the PRSR is not the property owner as well.

Technical Review

Example: A Pompano facility had an issue with providing complete soil analytical data to define the boundaries of their proposed engineering control (EC). This resulted

in an approximately year-long pause in the processing of the Declaration of Restrictive Covenant (DRC) while waiting for the owner to collect acceptable soil analytical data.

Suggestion: The PRSR should proactively provide complete evidence (soil and groundwater tables and maps, EC survey maps, etc.) to support the NFAC proposal, instead of waiting for an additional information request from the FDEP reviewer.

OGC Review

Example 1: RC processing for a Pompano Beach site was on hold when an updated Title Report (TR) indicated that the property was recently sold.

Suggestion 1: Make sure the TR (or Ownership and Encumbrance Report) meets the requirements detailed in the ICPG; there are several cases where the RC processing was put on hold pending resubmission of a TR meeting the requirements. Keep in mind OGC reviews the draft RC for completeness and reviews the TR (or Ownership and Encumbrance Report) to identify all parties that require notices.

Example 2: A Pompano facility RC had deviations from the FDEP RC template that incurred significant delay upon discovery by OGC, and currently the RC remains on hold pending submission of OGC requested additional information.

Suggestion 2: If the owner chooses to change the RC template language provided in the ICPG, the technical or legal justification for the changes should be detailed in a cover letter to the OGC to expedite the legal review.

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EXPEDITING THE PROCESSING OF RESTRICTIVE COVENANTS FOR CONDITIONAL CLOSURE (continued from Page 3)

Notices

The property owner is required to provide copies and dates of notices in the RC package sent to OGC. The property owner should use the notice template provided by ICPG in order to avoid having to resend the notices as well. Note, the first paragraph of each notice needs to correctly identify the relation between the recipient and the property. Moreover, RC processing will be on hold until all objections or concerns from parties receiving notices are resolved.

Example: An easement holder objected to a RC for a Dania site that had unacceptable restrictions that impacted their easement. The RC was on hold until the Dania site redefined the restrictive area to exclude the impacted easement.

Suggestion: Instead of waiting for OGC review, the property owner should preemptively identify all recipients and mail notices (sent to tenants, lessees, encumbrance holders, and the local government) within 30 days of receiving the Letter; the property owner is required to provide copies and dates of notices in the RC package sent to OGC. The property owner should use the notice template provided by ICPG in order to avoid having to resend the notices as well. Note, the first paragraph of each notice needs to correctly identify the relation between the recipient and the property. Moreover, RC processing will be on hold until all objections or concerns from parties receiving notices are resolved.

Be aware, failure to provide additional information for FDEP to approve the RC for recording after significant time has elapsed could potentially cause the Division to rescind the NFAC, depending on the nature of requested information. Remember, the Letter is a provisional approval pending recording of an approved RC.



ANNOUNCEMENTS

Conferences

[National Brownfields Conference 2021](#) (in-person) will be held in Oklahoma City, OK at the Oklahoma City Convention Center on **September 27th-30th** (registration opens May 3rd)

The conference features speakers, discussions, mobile workshops, films, and other learning formats that will provide case study examples, program updates, and useful strategies for meeting brownfield challenges.

Continuing Education



These short online courses highlight leading practitioners as they discuss the latest ideas for contaminant source area delineation, bioremediation, and sustainable remediation technologies: <https://remediationseminar.com/events/online>.