

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* _____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____		
	Object _____				
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*** There is no fiscal impact associated with this item.**

Petroleum cleanup activities are currently funded through yearly task assignment issued under DEP Contract No. GC629.

C. Department Fiscal Review:

[Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

[Signature]
 OFMB *[Signature]*
 5/22/09 CN 5/22/09

[Signature]
 Contract Development and Control
 6/10/09

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

Background and Policy Issues: (Continued from page 1)

62-770, F.A.C., under contract with DEP since 1988. The recalcitrant facilities that are in non-compliance status with discharges that have contaminated Palm Beach County's groundwater, some since the program was contracted by the County, are the primary concern. These facilities and facilities that have future discharges of petroleum products will be pursued through the County regulatory process. Since this program is completely funded by the State, there should be no expenditure of County funds on this program. DEP provides yearly task assignments and periodic contracts and contract amendments to the County for this program. Upon approval of the new Ordinance by the BCC, the County Attorney's Office will provide to the DEP a certified copy of the Ordinance and Resolution and the County Attorney's opinion that the Ordinance was adopted in accordance with Chapter 125, Florida Statutes (F.S.), the Ordinance does not modify DEP Rule, and the Ordinance was adopted pursuant to Chapter 376.317, F.S. Ordinance No. 2002-068 was approved by the BCC on October 22, 2002. Ordinance No. 2003-021 was approved on May 23, 2003.

ATTACHMENT # 1

ORDINANCE NO. 2009-_____

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A COUNTYWIDE ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO BE KNOWN AS THE PETROLEUM CONTAMINATION CLEANUP CRITERIA ORDINANCE; REPEALING PALM BEACH COUNTY CODE, SECTIONS 11-291 THROUGH 11-311 (ORDINANCE NO. 2003-021); PROVIDING FOR A SHORT TITLE AND APPLICABILITY; PROVIDING FOR AUTHORITY; PROVIDING FOR A PURPOSE; PROVIDING A SUPPLEMENT TO FEDERAL AND STATE LAW; PROVIDING FOR DEFINITIONS; PROVIDING FOR ADOPTION OF FLORIDA ADMINISTRATIVE CODE BY REFERENCE; PROVIDING FOR VIOLATIONS, ENFORCEMENT, PENALTIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, authorizes the Board of County Commissioners to enact ordinances and regulations necessary for the health, safety and welfare of the citizens and visitors of Palm Beach County; and

WHEREAS, the Legislature of the State of Florida has declared in Chapter 376, Florida Statutes, that the preservation of surface and ground water is a matter of the highest urgency and priority and that the storage, transportation, and disposal of petroleum products is a hazardous undertaking that poses a threat to the environment and water resources; and

WHEREAS, the Florida Department of Environmental Protection ("FDEP") adopted Petroleum Contamination Site Cleanup Criteria in 1986; and

WHEREAS, Palm Beach County has enforced State petroleum cleanup rules under contract with FDEP since 1988; and

WHEREAS, Palm Beach County, through its local enforcement procedures, has the ability to carefully monitor and quickly respond to petroleum contamination at the local level; and

WHEREAS, it is the intent and policy of the Palm Beach County Board of County Commissioners to ensure the continued health, safety, welfare, and quality of life for the existing and future residents of Palm Beach County by protecting its valuable and critical water resources; and

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1 **WHEREAS**, due to the sensitive nature of the drinking water supply, it is in the best
2 interest of Palm Beach County to monitor petroleum contaminated sites and sites with the potential
3 to produce petroleum contamination; and

4 **WHEREAS**, the Palm Beach County Board of County Commissioners finds that it is in the
5 best interest of the citizens of Palm Beach County to enact a countywide ordinance to provide for
6 local enforcement of petroleum cleanup standards and procedures; and

7 **WHEREAS**, the Palm Beach County Board of County Commissioners intends to repeal
8 Ordinance 2003-012 and to replace it with this Ordinance.

9 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
10 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

11

12 **Section 1. Short title and applicability.**

13 (a) This Ordinance is referred to as the "Palm Beach County Petroleum Contamination
14 Cleanup Criteria Ordinance."

15 (b) The provisions of this Ordinance shall be effective within the unincorporated and
16 incorporated areas of the County.

17

18 **Section 2. Authority.**

19 This Ordinance is adopted under the authority of Chapter 125, Florida Statutes, and Chapter
20 376, Florida Statutes.

21

22 **Section 3. Purpose.**

23 The purpose of this Ordinance is to provide standards for assessment and remediation of
24 soil and/or groundwater contaminated with petroleum or petroleum products in order to provide
25 protection to the County's groundwater resources.

26

27 **Section 4. Ordinance supplemental to federal and state law.**

28 (a) The provisions of this Ordinance are not intended to and shall not be construed as
29 changing, modifying, amending, repealing, superseding, conflicting with, or substituting any
30 provisions or sections of the Florida Statutes or Florida Administrative Code related to petroleum
31 contamination site cleanup but shall be construed as supplemental and additional thereto. This
32 Ordinance shall not be construed as impairing the jurisdiction of any court within the County. This

1 Ordinance shall be deemed to be an alternative or additional method for the County, its officers and
2 agents, to effect the purposes of each of the state statutes and rules adopted by reference in section
3 5 of this Ordinance.

4 (b) Persons or entities subject to this Ordinance must comply with applicable state and
5 federal regulations. Approvals received under this Ordinance do not qualify as local approval as
6 may be required under state and/or federal rules unless the approval is expressly designated as
7 approval for both this Ordinance and another applicable state or federal rule or regulation.

8
9 **Section 5. Definitions.**

10 The following terms when used in this Ordinance shall have the meanings ascribed to them
11 in this section. In addition, the definitions and terms contained in Section 376.301, Florida
12 Statutes, and Section 62-770.200, Florida Administrative Code, as amended from time to time, are
13 hereby adopted and incorporated herein by reference. When not inconsistent with the context,
14 words used in the present tense include the future, words in the plural number include the singular
15 number, words in the singular number include the plural number, and the use of any gender shall be
16 applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory,
17 and the word "may" is permissive. Words not defined shall be given their common and ordinary
18 meaning.

19 "County" means Palm Beach County.

20 "Director" means the director of the Palm Beach County Department of Environmental
21 Resources Management.

22 "ERM" means the Palm Beach County Department of Environmental Resources
23 Management.

24 "FDEP local program" means the Palm Beach County program established pursuant to a
25 contract pursuant to Section 376.3073, Florida Statutes, to assist the Florida Department of
26 Environmental Protection in the administration of the petroleum contamination site cleanup.

27

28 **Section 6. Adoption of Florida Administrative Code by reference.**

29 The following portions of the Florida Administrative Code, in their current form and as
30 subsequently amended, are hereby adopted and incorporated by reference and shall be part of this
31 Ordinance as if they were set out in their entirety:

4

1 (1) Chapter 62-770, Florida Administrative Code, as may be amended.

2 (2) Chapter 62-777, Florida Administrative Code, as may be amended.

3
4 **Section 7. Violations, enforcement; penalties.**

5 (a) Failure to comply with any requirement of this Ordinance shall constitute a violation of
6 this Ordinance punishable as provided herein.

7 (b) Each day a violation of the provisions of this Ordinance continues is a separate
8 violation.

9 (c) If a person or entity causing or responsible for any prohibited discharge fails to
10 immediately contain, remove, or abate the discharge to the satisfaction of the County, the County
11 may contain, remove, or abate the discharge and said responsible person or entity shall be liable for
12 all costs incurred by the County.

13 (d) If the owner of property that is subject to a violation of this Ordinance transfers the
14 ownership of such property between the time a notice of violation is served and the time of a
15 hearing involving a violation of this Ordinance and the alleged violator fails to disclose said
16 violation to the purchaser, the transfer creates a rebuttable presumption of fraud.

17 (e) Violations of the provisions of this Ordinance may be punished pursuant to ss. 403.121,
18 403.141, 403.161, Florida Statutes.

19 (f) Violations of the provisions of this Ordinance may be punished pursuant to Chapter
20 162, Florida Statutes, as a civil infraction with a maximum penalty as provided by law.

21 (g) The County may avail itself of any other legal or equitable remedy available to it,
22 including without limitation, injunctive relief or revocation of any permit involved, in the
23 enforcement of any provision of this Ordinance.

24 (h) Any person violating this Ordinance shall be liable for all costs incurred by the County
25 in connection with enforcing this Ordinance, including without limitation, attorneys' fees and
26 investigative and court costs.

27 (i) Violations of this Ordinance may be referred by ERM to the Groundwater and Natural
28 Resources Protection Board (GNRPB) for corrective actions and civil penalties. Any person who is
29 party to the proceeding before the GNRPB may appeal the Board's Order to the Circuit Court of
30 Palm Beach County in accordance with Florida Appellate Rules of Procedure. Funds collected
31 pursuant to administrative penalties levied by the GNRPB for violations of this Ordinance shall be

1 deposited in the Palm Beach County Pollution Recovery Trust Fund, or such other place as may be
2 designated by Resolution of the Board of County Commissioners.

3 (j) In order to provide an expeditious settlement that would be beneficial to the
4 enforcement of this Ordinance and be in the best interest of the citizens of the County, the Director
5 of ERM is authorized to enter into voluntary consent (settlement) agreements with alleged
6 violators. Any such agreement shall be a formal written consent agreement between ERM on
7 behalf of Palm Beach County, by and through its Director, and any such alleged violators, and shall
8 be approved as to form and legal sufficiency by the County Attorney's Office. The agreement can
9 be entered into at any time prior to the hearing before the GNRPB.

10 (1) Conditions. Such consent agreements may be conditioned upon a promise by
11 the alleged violator to:

12 (i) Bring the parcel into compliance with this Ordinance and maintain it in
13 that condition;

14 (ii) Remit payment of a monetary settlement amount not to exceed the
15 maximum amount allowed per violation, as set forth in this Ordinance;

16 (iii) Remit payment for costs and expenses of the County for
17 investigation and enforcement; and

18 (iv) Any other remedies and corrective action deemed necessary and
19 appropriate by the Director of ERM to ensure compliance with this

20 Ordinance.

21 (2) The consent agreement shall not serve as evidence of a violation of this
22 Ordinance and shall expressly state that the alleged violator neither admits nor
23 denies culpability for the alleged violations by entering into such agreement. In
24 addition, prior to entering into any such consent agreement, each alleged violator
25 shall be apprised of the right to have the matter heard by the GNRPB in accordance
26 with the provisions of this Ordinance and that execution of the agreement is not
27 required.

28 (3) The consent agreement shall be valid and enforceable in a court of competent
29 jurisdiction in Palm Beach County and shall abate any enforcement proceedings
30 available to ERM for so long as the terms and conditions of such agreement are

1 complied with. In the event the alleged violator fails to comply with the terms and
2 conditions set forth in the executed agreement, the Director of ERM may either:

- 3 (i) Consider the consent agreement void and pursue any remedies available
- 4 for enforcement of the applicable provisions of the Ordinance; or
- 5 (ii) Initiate legal proceedings for specific performance of the consent
- 6 agreement.

7 Funds collected pursuant to a consent agreement shall be deposited in the Palm Beach County
8 Pollution Recovery Trust Fund or such other place designated by Resolution of the Board of
9 County Commissioners.

10 (k) All remedies and penalties in this Ordinance are alternative and mutually exclusive.

11
12 **Section 8. Repeal of laws in conflict:**

13 Ordinance 2003-021 is hereby repealed as of the effective date of this Ordinance, and all
14 local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to
15 the extent of such conflict.

16
17 **Section 9. Savings clause:**

18 Notwithstanding anything to the contrary, all provisions of Palm Beach County Code
19 Section 11-291 through 11-311, codifying Palm Beach County Ordinance No. 2003-021, as
20 amended, are specifically preserved and remain in full force and effect for the limited purpose of
21 enforcing any alleged violations of said Code which occurred prior to its repeal or amendment.

22
23 **Section 10. Severability:**

24 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
25 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
26 holding shall not affect the remainder of this Ordinance.

27
28 **Section 11. Inclusion in the code of laws and ordinances and scrivener's errors:**

29 The provisions of this Ordinance shall become and be made a part of the Palm Beach
30 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,
31 and the word "ordinance" may be changed to "section", "article", or other appropriate word.

1 Correction of typographical errors that do not change the intent and meaning of the Ordinance may
2 be authorized by the County Administrator or his designee without the need of a public hearing by
3 filing a corrected or recodified copy of the same with the Clerk of Circuit Court.

4
5 **Section 12. CAPTIONS:**

6 The captions, section headings, and section designations used in this Ordinance are for
7 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

8
9 **Section 13. EFFECTIVE DATE:**

10 The provisions of this Ordinance shall become effective upon filing with the Department of
11 State.

12
13 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
14 County, Florida, on this the ____ day of _____, 2009.

15 **SHARON R. BOCK, CLERK**
16 **AND COMPTROLLER**

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

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19
20 **By: _____**
21 **Deputy Clerk**

By: _____
John F. Koons, Chairperson

22
23 **APPROVED AS TO FORM AND**
24 **LEGAL SUFFICIENCY**

25
26
27 **By: _____**
28 **County Attorney**
29

30
31 **EFFECTIVE DATE: Filed with the Department of State on the ____ day of**
32 **_____, 20__.**

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ORDINANCE NO. 2003-021

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A COUNTYWIDE ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO BE KNOWN AS THE PALM BEACH COUNTY PETROLEUM CONTAMINATION CLEANUP CRITERIA ORDINANCE; PROVIDING FOR A SHORT TITLE, APPLICABILITY AND AUTHORITY; PROVIDING FOR A PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REFERENCED GUIDELINES; PROVIDING FOR GENERAL CONDITIONS; PROVIDING FOR CONTAMINATION REPORTING; PROVIDING FOR SOURCE REMOVAL; PROVIDING FOR QUALITY ASSURANCE REQUIREMENTS; PROVIDING FOR PROFESSIONAL CERTIFICATIONS; PROVIDING FOR SITE ASSESSMENT; PROVIDING FOR FATE AND TRANSPORT MODEL REQUIREMENTS; PROVIDING FOR RISK ASSESSMENT; PROVIDING FOR NO FURTHER ACTION; PROVIDING FOR NATURAL ATTENUATION; PROVIDING FOR ACTIVE REMEDIATION; PROVIDING FOR POST ACTIVE REMEDIATION MONITORING; PROVIDING FOR TIME SCHEDULES; PROVIDING FOR NOTICES; PROVIDING FOR FORMS; PROVIDING FOR FEES; PROVIDING FOR VIOLATIONS, ENFORCEMENT, PENALTIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes authorizes the Board of County Commissioners to enact those regulations necessary for the health, safety and welfare of the citizens and visitors of Palm Beach County; and

WHEREAS, the State of Florida enacted the Petroleum Contamination Site Cleanup Criteria in 1986; and

WHEREAS, Palm Beach County has enforced the State Rules under contract with the Florida Department of Environmental Protection since 1988; and

WHEREAS, the State of Florida, through its Department of Environmental Protection, funds Palm Beach County's local Petroleum Cleanup program; and

WHEREAS, Palm Beach County, through its local enforcement procedures, has the ability to carefully monitor and quickly respond to petroleum contamination at the local level; and

WHEREAS, it is the intent and policy of the Board of County Commissioners to ensure the continued health, safety, welfare, and quality of life for the existing and future residents of Palm Beach County by protecting its valuable and critical water resources; and

WHEREAS, due to the sensitive nature of the drinking water supply, it is in the best interest of Palm Beach County for continued monitoring of petroleum contaminated sites; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds that it is in the best interests of the citizens of Palm Beach County to enact a countywide ordinance for local enforcement of petroleum cleanup standards and procedures; and

WHEREAS, Palm Beach County intends to amend its Petroleum Storage Systems Ordinance at such time as the State amends its Rules.

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NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

Section 1 SHORT TITLE, APPLICABILITY, AUTHORITY

1.01 This Ordinance shall be known as the "Palm Beach County Petroleum Contamination Cleanup Criteria Ordinance."

1.02 The cleanup criteria contained in this Ordinance, except as described in Section 17, shall apply to any cleanup of a site contaminated with petroleum or petroleum products. The cleanup criteria contained in this Ordinance shall not apply to the following:

- (a) Petroleum or petroleum products contaminated with significant quantities of other substances;
- (b) Any refined derivatives or by-products of crude oil, natural gas, or other naturally occurring hydrocarbons, except those defined as petroleum products in Section 376.301, F.S.; or
- (c) Any discharge of petroleum or petroleum products of less than 25 gallons onto a pervious surface, as long as the discharge is removed and properly treated or properly disposed, or otherwise remediated, so that no contamination from the discharge remains on-site.

1.03 Where a Consent Order has been entered into prior to the effective date of this Ordinance for assessment and rehabilitation of a site, compliance with terms of the Consent Order shall constitute compliance with the provisions of this Ordinance. Nothing in this Ordinance shall preclude entry of a Consent Order for the rehabilitation of a petroleum contamination site as long as the Consent Order adopts the cleanup criteria of Chapter 62-770, F.A.C. or this Ordinance as the Orders for Corrective Action.

1.04 ERM will accept Final Orders issued by the Department in accordance with Chapter 62-770, F.A.C., as conclusive on the propriety and sufficiency of plans, reports, or other materials.

1.05 All provisions of this Ordinance shall be effective within unincorporated and incorporated Palm Beach County and following Chapter 62-770, Florida Administrative Code (F.A.C.), which sets restrictions, conditions, constraints and prohibitions to help protect the water resources of Palm Beach County.

1.06 This Ordinance is adopted under the authority of Article VIII, Section 1, of the Florida Constitution, Chapter 125, Florida Statutes (F.S.), Sections 376.3073 and 376.317 F.S., and the Palm Beach County Charter.

1.07 This Ordinance is intended to be a supplement to existing state and federal petroleum cleanup criteria regulations. Responsible parties subject to this Ordinance must still comply with applicable state and federal regulations. Further, approvals received under this Ordinance do not qualify as local approval required under state and/or federal rules, unless the approval is expressly designated as approval for both this Ordinance and another applicable state or federal rule or regulation.

Section 2 PURPOSE

2.01 The purpose of this Ordinance is to provide standards for assessment and remediation of soil and/or groundwater contaminated with petroleum or petroleum products in order to provide protection to Palm Beach County's groundwater resources.

Section 3 DEFINITIONS

All words and phrases defined in Section 376.301, F.S., shall have the same meaning when used in this Ordinance unless the context clearly indicates otherwise. The following words and phrases used in this Ordinance shall, unless the context clearly indicates otherwise, have the following meanings:

- 3.01 "Action level" means a specified concentration of a petroleum product's contaminant of concern that, if exceeded during natural attenuation monitoring or post active remediation monitoring, may require initiation of additional site assessment or active remediation. Action levels are established during the approval process for Natural Attenuation Monitoring Plans pursuant to Section 14, and Post Active Remediation Monitoring Plans pursuant to Section 16, and are not equivalent to cleanup target levels.
- 3.02 "Additive effect" means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which an individual is exposed.
- 3.03 "Antagonistic effect" means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which an individual is exposed.
- 3.04 "Background concentrations" means concentrations of petroleum products' contaminants of concern that are naturally occurring in the groundwater, surface water, soil or sediment in the vicinity of the site.
- 3.05 "Contaminated" means the presence of petroleum or petroleum products or their chemical constituents in surface water, groundwater, soil, sediment, or upon the land, in quantities or concentrations that may result in exceedance of the applicable cleanup target levels specified in Chapter 62-777, F.A.C., or water quality standards in Chapters 62-3, 62-302, 62-520 or 62-530, F.A.C., or in quantities or concentrations that may result in contaminated sediment.
- 3.06 "Contaminated sediment" means sediment that is contaminated with petroleum or petroleum products or their chemical constituents to the extent that contamination may be harmful to human health or the environment as determined by the concentrations of the petroleum or petroleum products' contaminants of concern, actual circumstances of exposure, diversity studies, toxicity testing or other evidence of harmful effects, as applicable. (Refer to the Development and Evaluation of Sediment Quality Assessment Guidelines, Volumes 1-4, dated November 1994, for guidance on the evaluation of concentrations of petroleum products' contaminants of concern and sediment quality conditions.)
- 3.07 "Contaminated soil" means soil that is contaminated with petroleum or petroleum products or their chemical constituents to the extent that applicable soil cleanup target levels specified in Chapter 62-777, F.A.C., are exceeded.
- 3.08 "Contamination" refer to the definition for "contaminated."
- 3.09 "Department" refers to the State of Florida Department of Environmental Protection (FDEP).
- 3.10 "Discharger" means the person who has dominion or control over the petroleum or petroleum products at the time of the discharge into the environment.
- 3.11 "Discovery" means:

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- (a) Observance or detection of free product in boreholes, wells, open drainage ditches, open excavations or trenches or on nearby surface water, or petroleum or petroleum products in excess of 0.01 foot in thickness in sewer lines, subsurface utility conduits or vaults, unless the product has been removed and it was confirmed that a release into the environment did not occur;
 - (b) Observance of visually stained soil or odor of petroleum products resulting from a discharge of used oil equal to or exceeding 25 gallons on a pervious surface;
 - (c) Discharges of petroleum or petroleum products equal to or exceeding 25 gallons on a pervious surface;
 - (d) Results of analytical test on a groundwater sample that exceed the cleanup target levels referenced in Chapter 62-777, F.A.C., Table I, groundwater criteria column; or
 - (e) Results of analytical test on a soil sample that exceed the lower of the direct exposure residential cleanup target levels and leachability based on groundwater criteria cleanup target levels specified in Chapter 62-777, F.A.C., Table II.

21 3.12 "Engineering control" means a modification to a site to reduce or eliminate the potential
22 for migration of, and exposure to, petroleum products' contaminants of concern.
23 Examples of modifications include physical or hydraulic control measures, capping,
24 point-of-use treatments, or slurry walls.
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26 3.13 "ERM" refers to the Palm Beach County Department of Environmental Resources
27 Management.
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29 3.14 "Excessively contaminated soil" (unless laboratory results verify that the organic vapor
30 analysis data are not relevant), means soil saturated with petroleum or petroleum
31 products or soil that causes a total corrected hydrocarbon measurement of 500 parts per
32 million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for
33 Kerosene Analytical Group. Readings shall be obtained at the site on an organic vapor
34 analysis instrument with a flame ionization detector in the survey mode upon sampling
35 the headspace in half-filled, eight-ounce or 16-ounce jars. Each soil sample shall be
36 split into two jars, the two samples shall be brought to a temperature of between 20°C.
37 (68°F.) and 32°C. (90°F.) and the readings shall be obtained five minutes thereafter.
38 One of the readings shall be obtained with the use of an activated charcoal filter unless
39 the unfiltered reading is non-detect. The total corrected hydrocarbon measurement shall
40 be determined by subtracting the filtered reading from the unfiltered reading.
41 Instruments with a photo ionization detector may be used after a determination is made
42 of that instrument's equivalent response to an instrument with a flame ionization
43 detector. Photo ionization detectors shall not be used in situations where humidity will
44 interfere with the instruments' sensitivity (including periods of rain, measuring wet or
45 moist soil). Analytical instruments shall be calibrated in accordance with the
46 manufacturer's instructions.
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48 3.15 "Free product" means petroleum or petroleum product in excess of 0.01 foot in
49 thickness, measured at its thickest point, floating on surface water or groundwater.
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51 3.16 "Gasoline Analytical Group" means aviation gasoline, gasohol, and motor gasoline or
52 equivalent petroleum products.
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54 3.17 "Groundwater" means water beneath the surface of the ground within a zone of
55 saturation, whether or not flowing through known or definite channels.
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- 1 3.18 "Innovative technology" means a process that has been tested and used as a treatment
2 for contamination, but lacks an established history of full-scale use and information
3 about its cost and how well it works sufficient to support prediction of its performance
4 under a variety of operating conditions. An innovative technology is one that is
5 undergoing pilot-scale treatability studies, which usually are performed in the field or
6 the laboratory and require installation of the technology, and which provide
7 performance, cost, and design objectives for the technology prior to full scale use.
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- 9 3.19 "Institutional control" means a restriction on use of, or access to, a site to eliminate or
10 minimize exposure to petroleum products' contaminants of concern. Examples of
11 institutional controls include deed restrictions, use restrictions, or restrictive zoning.
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- 13 3.20 "Kerosene Analytical Group" means diesel, Jet-A, Jet-B, JP-4, JP-5, and kerosene or
14 equivalent petroleum products.
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- 16 3.21 "Monitoring well" means a well constructed with a surface seal and a sand filter pack in
17 accordance with accepted design practices in order to provide for the collection of
18 representative groundwater samples for laboratory analyses. Such wells may also be
19 used to detect the presence of free product or collect water-level elevation data to aid in
20 determining the direction of groundwater flow.
21
- 22 3.22 "Natural attenuation" means an approach to site rehabilitation that allows natural
23 processes to contain the spread of contamination and reduce the concentrations of
24 petroleum products' contaminants of concern in contaminated groundwater and soil.
25 Natural attenuation processes may include the following: sorption, biodegradation,
26 chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.
27
- 28 3.23 "Petroleum contamination site" means any contiguous land, surface water, and
29 groundwater areas upon or into which a discharge of petroleum or petroleum products
30 has occurred or for which evidence exists that such a discharge has occurred.
31
- 32 3.24 "Petroleum products' contaminants of concern" means the contaminants listed in Table
33 A in Chapter 62-770, F.A.C. and similar chemicals found in additives, provided the
34 contaminants are present as a result of a discharge of petroleum or petroleum products.
35
- 36 3.25 "Piezometer" means a permanent or temporary well that may be designed and
37 constructed without the surface sealing or sand filter pack requirements of a monitoring
38 well. This type of well is primarily used to detect the presence of free product or collect
39 water-level elevation data to aid in determining the direction of groundwater flow.
40
- 41 3.26 "Plume" means the portion of an aquifer or aquifers in which groundwater
42 contamination by petroleum products' contaminants of concern above applicable
43 cleanup target levels and background concentrations has been detected.
44
- 45 3.27 "Priority pollutant" means any compound listed in 40 CFR Part 122, Appendix D,
46 Tables II through IV.
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- 48 3.28 "Product recovery" means the removal of free product.
49
- 50 3.29 "Quiescent sampling technique" is a sampling method for groundwater that consists of a
51 low flow purge (less than or equal to one liter per minute) and collection of samples at
52 the same low flow within six hours of purging. The purging and sampling shall be
53 performed with pumps that cause the least disturbance to the groundwater during
54 installation, use and removal (for example, bladder pumps, peristaltic or variable speed
55 submersible pumps).
56
- 57 3.30 "Real property owner" means the person that is vested with ownership, dominion, or
58 legal or rightful title to the real property.
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- 1 3.31 "Reportable quantity" means a discharge of petroleum or petroleum products equal to or
2 exceeding 25 gallons on a pervious surface.
3
4 3.32 "Responsible party" means the facility owner, the facility operator or the discharger.
5
6 3.33 "Sediment" means the unconsolidated solid matrix occurring immediately beneath any
7 surface water body. The surface water body may be present part or all of the time.
8
9 3.34 "Site" refer to the definition for "petroleum contamination site."
10
11 3.35 "Site rehabilitation" means the assessment of site contamination and the remediation
12 activities that reduce the levels of contaminants of concern at a site through accepted
13 treatment methods to meet the cleanup target levels established for that site.
14
15 3.36 "Soil saturated with petroleum or petroleum products" means soil observed to contain
16 petroleum or petroleum products that drain from the soil when it is handled or squeezed,
17 or that create streaks of petroleum or petroleum products on excavation tools or on
18 plastic sheeting upon exposure to the soil.
19
20 3.37 "Surface water" includes rivers, lakes, streams, springs, impoundments, canals and all
21 other water upon the surface of the earth, whether contained in bounds created naturally
22 or artificially, or diffused. Stormwater and wastewater process water retention or
23 treatment facilities, and canals and trenches that are integral to such facilities, that are
24 not connected to other surface water, are not included in the definition of surface water.
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26 3.38 "Synergistic effect" means a scientific principle that the toxicity that occurs as a result of
27 exposure is more than the sum of the toxicities of the individual chemicals to which an
28 individual is exposed.
29
30 3.39 "Temporary point of compliance" is the boundary represented by one or more
31 designated monitoring wells at which groundwater cleanup target levels may not be
32 exceeded while site rehabilitation under an approved Natural Attenuation Monitoring
33 Plan is proceeding.
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35 3.40 "Total Volatile Organic Aromatics" means the sum of concentrations of Benzene,
36 Toluene, total Xylenes and Ethylbenzene.
37
38 3.41 "Used oil" means any lubricants for use in internal combustion engines that have been
39 refined from crude oil and, as a result of use, storage or handling, have become
40 unsuitable for their original purpose due to the presence of impurities or loss of
41 properties, but that may be suitable for further use as a fuel or are economically
42 recyclable for use as a fuel. "Used oil" shall not include any used oil that has been
43 mixed with any material that is a hazardous waste, unless the material is a hazardous
44 waste solely due to the characteristic of ignitability as defined in 40 CFR Part 261,
45 Subpart C.
46
47 3.42 "Waters" or "waters of the State" means waters as defined in Section 403.031, F.S.
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49

50 **Section 4 REFERENCED GUIDELINES**
51

52 Specific references to the guidelines listed below are made within this Ordinance. The
53 guidelines are not standards as defined in Section 403.803, F.S. Use of the guidelines is not
54 mandatory; the guidelines are included for informational purposes only.
55

- 56 4.01 Technical Report: Development of Soil Cleanup Target Levels (SCTLs) for Chapter
57 62-777, F.A.C., Final Report, dated May 26, 1999.
58
59 4.02 Development and Evaluation of Sediment Quality Assessment Guidelines, Volumes
60 1-4, dated November 1994.
- 16

1 4.03 RBCA Fate and Transport Models: Compendium and Selection Guidance, dated 1999.
2
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4 **Section 5 GENERAL CONDITIONS**
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6 5.01 ERM acknowledges, pursuant to Section 376.308(5), F.S., that site rehabilitation under
7 Chapter 376, F.S., cannot be compelled for a discharge that is eligible for state
8 restoration funding assistance, in advance of commitment of restoration funding in
9 accordance with a site's priority ranking or to pay for the costs of rehabilitation. Real
10 property owners of sites where active remediation or monitoring is being performed in
11 accordance with a Remedial Action Plan Approval Order, a Monitoring Only Plan
12 Approval Order or a Risk Assessment Approval Order by September 23, 1997, may
13 voluntarily elect to complete site rehabilitation using the appropriate provisions of the
14 Petroleum Contamination Site Cleanup Criteria in Florida Administrative Code that
15 were in effect on September 3, 1996, as long as the approved active remediation or
16 monitoring is continued to completion. If the option to complete the site rehabilitation
17 utilizing the provisions of Chapter 62-770 that were in effect on September 3, 1996 is
18 selected, all reports submitted to ERM shall include a statement to that effect.
19

20 5.02 None of the criteria adopted in this Ordinance shall be applied retroactively to any
21 pending reimbursement application for any program task.
22

23 5.03 Petroleum products' contaminants of concern are listed in Table A in Chapter 62-770,
24 F.A.C. Chapter 62-777, F.A.C., provides soil, surface water and groundwater cleanup
25 target levels, as well as natural attenuation default concentrations, a listing of soil
26 properties and test methods, a listing of site-specific conditions and geochemical
27 parameters, and default parameters and equations that may be used to establish
28 alternative soil and groundwater cleanup target levels for identified petroleum products'
29 contaminants of concern listed in Table A.
30

31 5.04 Cleanup target levels for petroleum products' contaminants of concern found in
32 groundwater, as specified in Chapter 62-777, F.A.C., Table I, or alternative cleanup
33 target levels that may be established pursuant to Chapter 62-770.650, F.A.C. or Section
34 13, are enforceable under this Ordinance and apply only in the rehabilitation of sites
35 contaminated with petroleum or petroleum products. Cleanup target levels for
36 petroleum products' contaminants of concern found in groundwater shall be the
37 applicable State water quality standards, except where alternative cleanup target levels
38 are established pursuant to this Ordinance. This Ordinance is not intended to create any
39 new water quality standards pursuant to Chapters 62-520 or 62-550, F.A.C.
40

41 5.05 Cleanup target levels for petroleum products' contaminants of concern found in soil, as
42 specified in Chapter 62-777, F.A.C., Table II, or alternative cleanup target levels that
43 may be established pursuant to Sections 12 or 13, are enforceable under this Ordinance
44 and apply only in the rehabilitation of sites contaminated with petroleum or petroleum
45 products. In establishing soil cleanup target levels, the methodology presented in the
46 Technical Report: Development of Soil Cleanup Target Levels (SCTLs) for Chapter
47 62-777, F.A.C., Final Report, dated May 26, 1999, was utilized. In establishing soil
48 cleanup target levels for human exposure to each petroleum products' contaminant of
49 concern found in soil, the following factors were considered: calculations using a
50 lifetime excess cancer risk level of 1.0E-6; a hazard quotient of 1 or less; and the best
51 achievable detection limits. Site-specific soil cleanup target levels may be justified
52 based on background concentrations. In establishing leachability-based soil cleanup
53 target levels for protection of the groundwater, the soil cleanup target levels shall be
54 based on the groundwater cleanup target levels or the alternative cleanup target levels
55 for groundwater established pursuant to Sections 12 or 13, as appropriate.
56

57 5.06 This Ordinance is established for the purposes of protecting the public health and the
58 environment and for determining, on a site-specific basis, the rehabilitation program
59 tasks that comprise a site rehabilitation program and the levels at which a rehabilitation
60 program task and site rehabilitation program may be deemed complete. In establishing

1 this Ordinance, risk-based corrective action principles were incorporated to the
2 maximum extent feasible, to achieve protection of human health, public safety and the
3 environment in a cost-effective manner. Therefore, this Ordinance references both
4 default cleanup target levels and a process for the derivation of site-specific alternative
5 cleanup target levels that are protective of human health, public safety and the
6 environment.
7

8 5.07 For sites where a Site Rehabilitation Completion Order was issued for every known
9 discharge prior to August 5, 1999, the cleanup target levels for petroleum products'
10 contaminants of concern shall be those that were in effect at the time of issuance of the
11 Order(s). If a subsequent discharge of petroleum or petroleum products occurs at the
12 site after issuance of the Order(s), site rehabilitation may be required under applicable
13 provisions of this Ordinance, to reduce concentrations of petroleum products'
14 contaminants of concern resulting from the subsequent discharge, to the cleanup target
15 levels specified in this Ordinance, subject to the provisions of Subsection 5.04.
16

17 5.08 Receipt of approval under this Ordinance does not relieve the responsible party from the
18 obligation to comply with other County Ordinances or Department rules (for example,
19 Chapters 62-701, 62-713, 62-730, 62-782 and 62-785, F.A.C.) regarding off-site
20 disposal, relocation or treatment of contaminated media. Responsible parties are
21 advised that other federal, state or local requirements may apply to these activities.
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24 **Section 6 CONTAMINATION REPORTING**

25

26 Upon discovery of contamination (unless the contamination is the result of a previously
27 reported discharge for which site rehabilitation completion has not been achieved or the
28 contamination is known to be from a non-petroleum product source) or upon a discharge of
29 petroleum or petroleum products, notification shall be submitted to ERM using the Discharge
30 Report Form [Form Number 62-761.900(1)].
31

32 6.01 If the discharge was from a storage tank system regulated pursuant to the Petroleum
33 Storage Systems Ordinance, the discharge must be reported by the facility owner or
34 operator pursuant to the applicable requirements of the Petroleum Storage Systems
35 Ordinance; or
36

37 6.02 For all other discharges of petroleum or petroleum products, the discharge must be
38 reported within one week of discovery. The discharge must be reported by:
39

40 (a) The discharger; or

41
42 (b) The owner or operator if the discharger is unknown or if the discovery was the
43 result of a previously unreported discharge.
44
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46 **Section 7 SOURCE REMOVAL**

47

48 7.01 Free Product Removal and Disposal.
49

50 (a) Except for those sites described in Subsection 7.01(g) of this Ordinance, within
51 three days of discovery of free product the responsible party shall take steps to
52 obtain cleanup services for product recovery or initiate product recovery. Product
53 recovery shall be performed in accordance with Subsection 7.01(b). The ERM
54 tank compliance program must be contacted by the responsible party within 24
55 hours of the discovery of free product from a new discharge. If state funding
56 assistance from the Inland Protection Trust Fund will be sought, product recovery
57 authorized under this paragraph and in accordance with the Department's
58 preapproval program procedures established pursuant to Section 376.30711, F.S.,
59 may only be performed for up to five days from the date of commencement of
60 product recovery of the new discharge. If product recovery is not complete

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pursuant to Subsection 7.01(d) at the end of five days, or the scope of activities specified in Subsection 7.01(b) will be exceeded, the responsible party shall request written authorization for additional product recovery from ERM. The responsible party is required to complete product recovery provided that:

- (1) The selected recovery method is in accordance with Subsection 7.01(b);
- (2) Product recovery does not spread contamination into previously uncontaminated or less contaminated areas through untreated discharges, improper treatment, improper disposal or improper storage;
- (3) Flammable products are handled in a safe manner, and
- (4) All sampling and analyses are performed in accordance with Section 8.

(b) The following passive and active methods of product recovery may be implemented without requesting approval from ERM:

- (1) Absorbent pads;
- (2) Skimmer pumps that include pumps with mechanical, electrical or hand-bailed purging operations;
- (3) Hand or mechanical bailing; and
- (4) Fluid vacuum techniques (for example, vacuum pump trucks) or total fluid displacement pumps, as long as:
 - a. The technique used does not smear or spread free product or result in contaminating previously uncontaminated media; and
 - b. The volume of groundwater recovered is not greater than two times the volume of free product recovered, except that the first 1,000 gallons of the total fluid recovered per discharge are exempt from meeting the required ratio of groundwater to free product.

(c) In addition to the recovery methods specified in Subsection 7.01(b), other product recovery methods may be evaluated, proposed and submitted by the responsible party to ERM for approval, prior to implementation. During the submittal and approval process, implementation of one or more of the collection methods specified in Subsection 7.01(b), is required. The submittal must include the results of the evaluation performed to determine the potential for product spreading or smearing, and the potential for air emissions, and a justification as to the environmental and economical benefits of the selected recovery method. The product recovery methods proposed may include:

- (1) excavation of soil saturated with petroleum or petroleum products' contaminants of concern into or below the water table;
- (2) dewatering or groundwater extraction that may influence the depth to the water table; or
- (3) air/fluid extraction.

(d) Product recovery shall be deemed complete when free product has been removed to the maximum extent practicable.

(e) Within 10 days after initiation of product recovery, written notification shall be provided by the responsible party to ERM on Form 62-770.900X(1).

1 (f) Unless a different reporting period is approved under the provisions of Subsection
2 17.05, an annual status report documenting the recovery progress and
3 summarizing all recovery activities shall be submitted by the responsible party to
4 ERM for review.
5

6 (g) At petroleum contamination sites eligible for state funding assistance under the
7 Inland Protection Trust Fund where the discharge occurred prior to March 29,
8 1995, product recovery shall commence in accordance with the ranking
9 established pursuant to Chapter 62-771, F.A.C., and shall be performed in
10 accordance with Subsections 7.01(b) and (c), and pursuant to Section 376.30711,
11 F.S.
12

13 7.02 Soil Removal, Treatment and Disposal.
14

15 (a) If contaminated soil exists at a site, excavation of contaminated soil for proper
16 treatment or proper disposal may be performed. Consistent with the goals set forth
17 in Section 403.061(34), F.S., ERM encourages treatment over disposal options to
18 address contaminated soil. Treatment or disposal of contaminated soil may be
19 performed prior to ERM approval of a Remedial Action Plan submitted under
20 Section 15, provided the following criteria are met:
21

- 22 (1) Contamination is not spread into previously uncontaminated or less
23 contaminated areas through untreated discharges, improper treatment,
24 improper disposal or improper storage;
25
26 (2) Flammable products are handled in a safe manner;
27
28 (3) When a soil vacuum extraction system is necessary to abate an imminent
29 threat to human life, health, safety or welfare within a structure or utility
30 conduit, then the vacuum extraction system must be designed and operated
31 only to abate the imminent threat. ERM must be notified, within 24 hours,
32 of the imminent threat and the intent to use a soil vacuum extraction system.
33 The air emissions monitoring and frequency of monitoring shall be
34 performed in accordance with Subsection 15.10(i);
35
36 (4) When excavated soil is temporarily stored or stockpiled on-site, the soil shall
37 be secured in a manner that prevents human exposure to contaminated soil
38 and prevents soil exposure to precipitation that may cause surface runoff,
39 and any excavation shall be secured to prevent accidental or intentional entry
40 by the public. Excavated contaminated soil (including excessively
41 contaminated soil) may be returned to the original excavation when
42 petroleum storage tank systems have been removed or replaced, or if
43 contaminated soil was encountered during construction activities; and
44
45 (5) Excavated contaminated soil (including excessively contaminated soil) is not
46 stored or stockpiled on-site for more than 60 days, unless it is stockpiled on a
47 right-of-way, in which case it must be removed for proper treatment or
48 proper disposal as soon as practical but no later than 30 days after
49 excavation, or unless it is being land farmed in accordance with Subsection
50 7.02(b), at which time the soil must be returned to the original excavation or
51 removed and properly treated or properly disposed. Contaminated soil
52 (including excessively contaminated soil) may be containerized in water
53 tight drums and stored on-site for 90 days, after which time proper treatment
54 or proper disposal of the contaminated soil shall occur, or may be land
55 farmed as specified in Subsection 7.02(b).
56

57 (b) Land farming of contaminated soil is allowed, provided the land farming operation
58 is located on the same site as the source of contaminated soil unless it is land
59 farmed at a permitted stationary facility. The following criteria must be met for
60 contaminated soil land farmed on the source site:

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- (14) A description of any geophysical methods used for the project;
- (15) A description of the site-specific stratigraphy, based on the lithologic logs prepared during monitoring well installation and during drilling of standard penetration test borings (including composition, thickness and continuity of various lithologic units);
- (16) At least one cross-section illustrating the site-specific stratigraphy and approximate concentrations of applicable petroleum products' contaminants of concern;
- (17) Details of any other assessment methodology used at the site, including any field screening techniques and measures of biological activity (for example, dissolved oxygen, nutrient levels);
- (18) A table summarizing the field soil screening results obtained at each sampling location and depth, as well as a summary of the results of any laboratory analyses performed and a listing of the date(s) the work was performed;
- (19) One or more site maps showing all soil sampling locations for field screening or laboratory analyses, in relation to the former and current petroleum or petroleum products tank systems, integral piping and dispensers and any excavated areas, and illustrating the horizontal and vertical extent of vadose zone soil contamination when soil contamination is detected;
- (20) Piezometer, monitoring well and recovery well construction details and construction diagrams, including methods and materials, field sampling data sheets, lithologic logs and volumes of groundwater removed during well development;
- (21) A table that is updated any time additional piezometers, monitoring wells or recovery wells are installed and that summarizes the well construction details (including the top-of-casing elevation, total depth, screen length, and depth of the top of the screen below land surface) of all monitoring wells (including compliance wells), piezometers and recovery wells;
- (22) A current table that summarizes free product thickness measured, volumes recovered and date(s) measurements were recorded, if applicable;
- (23) An estimate of the total mass and mass distribution of petroleum or petroleum products in the subsurface as product entrapped above the water table, free product, and product entrapped below the water table, and a site map showing the estimated horizontal extent of free product;
- (24) All information required by Section 8;
- (25) At least one table summarizing the groundwater and surface water analytical results (with the most recent sampling of representative monitoring wells having occurred within 270 days of Site Assessment Report submittal), detection limits used, and analyses performed (listing all contaminants of concern detected and their corresponding cleanup target levels); and
- (26) One or more site maps showing any areas excavated, and all groundwater and surface water sampling locations, and illustrating the degree and extent of groundwater and surface water contamination (separate maps for Benzene, for Total Volatile Organic Aromatics, and for all other significant/widespread petroleum products' contaminants of concern).

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- (b) Summarize conclusions regarding site assessment objectives outlined in Subsection 10.02(a)-(r), and include one of the following:
 - (1) A No Further Action Proposal without conditions shall be included if the site meets the applicable No Further Action criteria in Subsection 13.01, or a No Further Action Proposal with conditions such as institutional and engineering controls may be included if the site meets the applicable No Further Action criteria in Subsection 13.02;
 - (2) A Natural Attenuation Monitoring Plan may be included if the site meets the Natural Attenuation criteria in Section 14;
 - (3) A recommendation to prepare a risk assessment shall be included if the responsible party chooses to justify alternative cleanup target levels due to site-specific conditions. The recommendation shall include documentation adequate to support the request to do one or more of the task elements in Chapter 62-770.650(2), F.A.C., and shall specify the parameters or exposure assumptions that will be used to develop the alternative cleanup target levels pursuant to Chapter 62-770.650, F.A.C.; or
 - (4) A recommendation to prepare a Remedial Action Plan pursuant to Section 15, shall be included if the site does not meet the No Further Action criteria in Subsection 13.01, unless a proposal for a No Further Action with conditions such as institutional and engineering controls pursuant to Subsection 13.02, or a Natural Attenuation Monitoring Plan pursuant to Section 14, or a recommendation to prepare a risk assessment pursuant to Section 12, is included.

29 10.08 Within 60 days of receipt of a Site Assessment Report or of additional information
30 pursuant to Subsection 17.04, ERM shall:

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- (a) Provide the responsible party with written approval of the Site Assessment Report and the proposal or recommendation submitted pursuant to Subsection 10.07(b); or
 - (b) Notify the responsible party in writing, stating:
 - (1) The reason(s) why the Site Assessment Report does not contain information adequate to support the conclusions regarding the site assessment objectives outlined in Subsection 10.02(a)-(r); or
 - (2) The reason(s) why the proposal or recommendation submitted pursuant to Subsection 10.07(b), is not supported by the applicable criteria.
 - (c) Site assessment activities shall not be deemed complete until such time as a Site Assessment Report is approved.

49 **Section 11 FATE AND TRANSPORT MODEL REQUIREMENTS**

50
51 11.01 A model used to support an evaluation in accordance with the provisions of Sections 12,
52 13 or 14, must be a fate and transport model with the ability to adequately simulate
53 movement and degradation of petroleum products' contaminants of concern in the
54 aquifer over time and distance, taking into account attenuation mechanisms including
55 biological, physical, and chemical processes. The model must comply with the
56 provisions of Rule 62-770.610, F.A.C.
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1 **Section 12 RISK ASSESSMENT**

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3 12.01 Within 90 days after written Departmental approval of the recommendation to prepare a
4 risk assessment, the applicable risk assessment task elements shall be performed and
5 three copies of the Risk Assessment Report shall be submitted by the responsible party
6 to ERM for review. ERM will review the Risk Assessment Report and will forward
7 ERM's review comments along with the Risk Assessment Report to the Department for
8 subsequent Departmental review.
9

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11 **Section 13 NO FURTHER ACTION**

12
13 13.01 A No Further Action without conditions shall apply if:

- 14
15 (a) Free product does not exist in wells, boreholes, open drainage ditches, open
16 excavations or trenches or on nearby surface water, or petroleum or petroleum
17 products in excess of 0.01 foot in thickness are not present in sewer lines,
18 subsurface utility conduits or vaults, and no other fire or explosive hazard exists as
19 a result of a release of petroleum or petroleum products;
20
21 (b) For the purposes of Section 376.3071(11)(b)2., F.S., excessively contaminated soil
22 does not exist;
23
24 (c) Contaminated soil is not present in the unsaturated zone, as demonstrated by the
25 analyses of soil samples collected from representative sampling locations that
26 show that concentrations of all of the applicable petroleum products' contaminants
27 of concern do not exceed:
28
29 (1) The background concentrations; or
30
31 (2) The lower of the direct exposure residential cleanup target levels or the
32 applicable leachability cleanup target levels specified in Chapter 62-777,
33 F.A.C., Table II or, if only leachability cleanup target levels are exceeded,
34 then direct leachability testing results may be used to demonstrate that
35 leachate concentrations do not exceed the applicable groundwater cleanup
36 target levels. Leachability testing pursuant to USEPA Test Method 1312
37 (SPLP), or USEPA Test Method 1311 (TCLP) if the contamination is
38 derived from used oil or similar petroleum products, must be performed on a
39 minimum of three representative grab soil samples from each source area
40 that exceed leachability cleanup target levels specified in Chapter 62-777,
41 F.A.C., Table II, with the actual number of samples based on the horizontal
42 and vertical extent of contamination and the site-specific stratigraphy; or
43
44 (3) Alternative cleanup target levels for TRPHs established in accordance with
45 Chapter 62-770.650, F.A.C.; or
46
47 (4) Alternative cleanup target levels established using appropriate site-specific
48 parameters of the contaminated soil in accordance with Chapter 62-770.650,
49 F.A.C.;
50
51 (d) Concentrations of petroleum products' contaminants of concern in groundwater
52 samples do not exceed the higher of the background concentrations or the
53 applicable cleanup target levels referenced in Chapter 62-777, F.A.C., Table I,
54 groundwater criteria column, except that if the site's groundwater contamination is
55 affecting or may potentially affect a freshwater surface water body based on
56 monitoring well data, groundwater flow rate and direction, or fate and transport
57 modeling, then the cleanup target levels referenced in Chapter 62-777, F.A.C.,
58 Table I, freshwater surface water criteria column shall also apply to groundwater,
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(e) Concentrations of petroleum products' contaminants of concern in surface water samples do not exceed the higher of the background concentrations or the applicable cleanup target levels referenced in Chapter 62-777, F.A.C., Table I, freshwater surface water criteria column or marine surface water criteria column, as applicable.

13.02 A No Further Action with conditions such as institutional and engineering controls shall apply if the conditions are protective of human health, public safety and the environment in a cost-effective manner and are agreed to by the real property owner(s) of all affected properties. Fate and transport models as defined in Section 11, may be utilized to demonstrate that conditions are protective. The following conditions must be met:

(a) Free product does not exist in wells, boreholes, open drainage ditches, open excavations or trenches or on nearby surface water, or petroleum or petroleum products in excess of 0.01 foot in thickness are not present in sewer lines, subsurface utility conduits or vaults, and no other fire or explosive hazard exists as a result of a release of petroleum or petroleum products, or free product removal is not technologically feasible;

(b) For the purposes of Section 376.3071(11)(b)2., F.S., excessively contaminated soil does not exist;

(c) Alternative soil cleanup target levels have been established by the real property owner(s) by agreeing to:

(1) The enactment of an institutional control, in which case the concentrations of the petroleum products' contaminants of concern must not exceed the lower of the direct exposure commercial/industrial cleanup target levels or the applicable leachability cleanup target levels specified in Chapter 62-777, F.A.C., Table II, as applicable. The soil leachability cleanup target levels may be exceeded if it is demonstrated to ERM upon individual site characteristics and the restrictions specified in the institutional control, that petroleum products' contaminants of concern will not leach into the groundwater at concentrations that exceed applicable groundwater cleanup target levels referenced in Chapter 62-777, F.A.C., Table I. If soil that exceeds direct exposure residential cleanup target levels or applicable leachability cleanup target levels specified in Chapter 62-777, F.A.C., Table II is allowed to remain on-site, then soil removal, treatment and disposal criteria in Subsections 7.02 and 7.03, shall apply if the contaminated soil is later excavated;

(2) The enactment of an institutional control, in which case the concentrations of the petroleum products' contaminants of concern in soil below two feet below land surface may exceed the direct exposure residential cleanup target levels but may not exceed the applicable leachability cleanup target levels specified in Chapter 62-777, F.A.C., Table II. The leachability cleanup target levels may be exceeded if it is demonstrated to ERM, based upon individual site characteristics and the restrictions specified in the institutional control, that petroleum products' contaminants of concern will not leach into the groundwater at concentrations that exceed applicable groundwater cleanup target levels referenced in Chapter 62-777, F.A.C., Table I. If soil that exceeds direct exposure residential cleanup target levels or leachability cleanup target levels specified in Chapter 62-777, F.A.C., Table II is allowed to remain on-site, then soil removal, treatment and disposal criteria in Subsections 7.02 and 7.03, shall apply if the contaminated soil is later excavated, or exposed due to a change in site conditions;

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(3) The enactment of an institutional control, in which case the concentrations of the petroleum products' contaminants of concern must not exceed the alternative soil cleanup target levels justified pursuant to Chapter 62-770.650, F.A.C.. If soil that exceeds direct exposure residential cleanup target levels or leachability cleanup target levels specified in Chapter 62-777, F.A.C., Table II is allowed to remain on-site, then soil removal, treatment and disposal criteria in Subsections 7.02 and 7.03, shall apply if the contaminated soil is later excavated. The enactment of an institutional control is not necessary if the alternative soil cleanup target levels were justified solely using appropriate site-specific parameters of the contaminated soil in accordance with Chapter 62-770.650, F.A.C.; or

(4) The implementation of engineering controls, such as permanent cover material, that prevent human exposure and limit water infiltration, in conjunction with institutional controls. If soil that exceeds direct exposure residential cleanup target levels or leachability cleanup target levels specified in Chapter 62-777, F.A.C., Table II is allowed to remain on-site, then soil removal, treatment and disposal criteria in Subsections 7.02 and 7.03, shall apply if the contaminated soil is later excavated, or exposed due to a change in site conditions; and

(d) Alternative groundwater cleanup target levels have been established by the real property owner(s) depending on the current or projected use of groundwater and surface water in the vicinity of the site and by agreeing to:

(1) The enactment of an institutional control to ensure that the contaminated groundwater will not be utilized, in accordance with the following:

a. For contamination of groundwater of low yield (average hydraulic conductivity of less than one foot per day, determined by performing slug tests on a minimum of three monitoring wells; and a maximum yield of 80 gallons per day, determined by pumping a four inch well screened across the cross-section of the plume, for a minimum of two hours) or with background concentrations that exceed Florida's Primary and Secondary Drinking Water Standards, then the cleanup target levels referenced in Chapter 62-777, F.A.C., Table I, groundwater of low yield/poor quality criteria column shall apply to groundwater;

b. For groundwater contamination that is affecting or may potentially affect a marine surface water body with no other property or properties located between the source property boundary and the marine surface water body, then the applicable cleanup target levels referenced in Chapter 62-777, F.A.C., Table I, marine surface water criteria column shall apply to groundwater;

c. For groundwater contamination that is limited to the immediate vicinity of the source area and the area of groundwater contamination is less than 1/4 acre, where it has been demonstrated by a minimum of one year of groundwater monitoring that the groundwater contamination is not migrating away from such localized source area, then the alternative cleanup target levels shall be established through a scientific evaluation. The scientific evaluation (historical data or modeling results, as applicable) must demonstrate that the concentrations of petroleum products' contaminants of concern in groundwater at the property boundary of the real property on which the petroleum contamination originates shall not exceed the background concentrations or the applicable cleanup target levels specified in Chapter 62-777, F.A.C., Table I; or

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2 d. If alternative cleanup target levels have been justified pursuant to
3 Chapter 62-770.650, F.A.C., the concentrations of petroleum products'
4 contaminants of concern do not exceed those alternative cleanup target
5 levels; or

6 (2) The implementation of engineering controls, such as a permanent
7 containment (for example, a slurry wall), that prevent migration of the
8 plume, in conjunction with institutional controls.
9

10 13.03 Unless the No Further Action Proposal is included in a Site Assessment Report pursuant
11 to Subsection 10.07(b)1, two copies of the No Further Action Proposal shall be
12 submitted by the responsible party to ERM for review when the criteria for No Further
13 Action have been met. If applicable, documentation of the agreement with the real
14 property owner(s) for a No Further Action with conditions shall be attached. Applicable
15 portions of the No Further Action Proposal shall be signed and sealed by an appropriate
16 registered professional pursuant to Section 9.
17

18 13.04 Within 60 days of receipt of a No Further Action Proposal or of additional information
19 pursuant to Subsection 17.04, ERM shall:

- 20
21 (a) Provide the responsible party with notification that the No Further Action Proposal
22 was approved for the purpose of this Ordinance; or
23
24 (b) Notify the responsible party in writing, stating the reasons(s) why the No Further
25 Action Proposal does not contain information adequate to support the conclusion
26 that the applicable No Further Action criteria in Section 13, have been met.
27
28

29 **Section 14 NATURAL ATTENUATION**
30

31 14.01 Depending on the individual site characteristics, monitoring of natural attenuation is an
32 appropriate strategy for site rehabilitation, provided human health, public safety and the
33 environment are protected. The individual site characteristics may include the current
34 and projected use of the affected groundwater and surface water in the vicinity of the
35 site, the current and projected land use of the area affected by the contamination, the
36 exposed population, the location of the plume, the degree and extent of contamination,
37 the rate of migration of the plume, the apparent or potential rate of degradation of
38 petroleum products' contaminants of concern through natural attenuation, and the
39 potential for further migration in relation to the site's property boundary. Fate and
40 transport models as defined in Section 11, may be utilized to support the
41 appropriateness of natural attenuation monitoring. Monitoring of natural attenuation is
42 appropriate if the following criteria are met:
43

- 44 (a) Free product does not exist in wells, boreholes, open drainage ditches, open
45 excavations or trenches or on nearby surface water, or petroleum or petroleum
46 products in excess of 0.01 foot in thickness are not present in sewer lines,
47 subsurface utility conduits or vaults, and no other fire or explosive hazard exists as
48 a result of a release of petroleum or petroleum products;
49
50 (b) Contaminated soil is not present, except that applicable leachability cleanup target
51 levels specified in Chapter 62-777, F.A.C., Table II may be exceeded if it is
52 demonstrated to ERM that the soil does not constitute a continuing source of
53 contamination to the groundwater at concentrations that pose a threat to human
54 health, public safety or the environment, and it is demonstrated that the rate of
55 natural attenuation of contaminants of concern in the groundwater exceeds the rate
56 at which contaminants of concern are leaching from the soil, and that the presence
57 of contaminated soil will not result in increased cleanup cost. The determination
58 shall be based upon individual site characteristics and demonstrated by USEPA
59 Test Method 1312 (SPLP), or USEPA Test Method 1311 (TCLP) if the
60 contamination is derived from used oil or similar petroleum products, and based
61 upon groundwater modeling, site stratigraphy or site assessment results;
- 26

- 1 (c) Petroleum products' contaminants of concern present in the groundwater above
2 background concentrations or applicable cleanup target levels are not migrating
3 beyond the temporary point of compliance, or migrating vertically that may
4 contaminate other aquifers or surface water resources or result in increased
5 cleanup cost;
- 6
- 7 (d) The physical, chemical and biological characteristics of each petroleum products'
8 contaminant of concern are conducive to natural attenuation;
- 9
- 10 (e) If more than one sampling event has been performed, the available data show an
11 overall decrease in the mass of contamination; and
- 12
- 13 (f) The site is anticipated to meet the applicable No Further Action criteria in Section
14 13, as a result of natural attenuation in five years or less, the background
15 concentrations or the applicable cleanup target levels are not exceeded at the
16 temporary point of compliance as established pursuant to Subsections 14.02 or
17 14.03, and the concentrations of petroleum products' contaminants of concern do
18 not exceed the criteria specified in Chapter 62-777, F.A.C., Table V; or
- 19
- 20 (g) If the criteria in Subsection 14.01(f), are not met, the cost-effectiveness of natural
21 attenuation monitoring may be demonstrated, based on:
- 22
- 23 (1) A technical evaluation of groundwater and soil characteristics, chemistry,
24 and biological activity that verifies that the petroleum products'
25 contaminants of concern have the capacity to degrade under the site-specific
26 conditions;
- 27
- 28 (2) A scientific evaluation (historical data or modeling results, as appropriate) of
29 the plume migration in relation to the temporary point of compliance as
30 established pursuant to Subsections 14.02 or 14.03, an estimation of annual
31 milestone reductions of concentrations of petroleum products' contaminants
32 of concern in monitoring wells, and an estimation of the time required to
33 achieve the applicable No Further Action criteria in Section 13. Available
34 technical information (including historical water quality data) shall be used
35 for model calibration; and
- 36
- 37 (3) A life-cycle cost analysis of remedial alternatives.
- 38

39 14.02 Provided human health, public safety and the environment are protected, the point of
40 compliance may be temporarily moved to the property boundary, to the edge of the
41 plume when the plume is within the property boundary, or beyond the property
42 boundary if such extension is needed to facilitate monitoring of natural attenuation or to
43 address the current conditions of the plume. The responsible party shall identify to
44 ERM the owners of any property into which the point of compliance is allowed to
45 temporarily extend and any county or municipality having jurisdiction over the area.
46 Prior to extending the point of compliance beyond the property boundary, notice shall
47 be provided to the identified local governments and to the real property owners of any
48 property into which the point of compliance is allowed to extend. Such notice shall be
49 in the format specified in Rule 62-103.150(3), F.A.C. The location of the temporary
50 point of compliance shall be based on the individual site characteristics listed in
51 Subsection 14.01.

52

53 14.03 Where surface water is or may be exposed to groundwater contaminated with petroleum
54 products' contaminants of concern (based on monitoring well data, groundwater flow
55 rate and direction, or fate and transport modeling), the point of measuring compliance
56 with the surface water standards shall be in the groundwater from the landward side
57 immediately adjacent to the surface water body.

58

59 14.04 Unless the Natural Attenuation Monitoring Plan is included in a Site Assessment Report
60 pursuant to Subsection 10.07(b)2, two copies of the Natural Attenuation Monitoring
61 Plan shall be submitted by the responsible party to ERM for review when the criteria for

1 Natural Attenuation have been met. Applicable portions of the Natural Attenuation
2 Monitoring Plan shall be signed and sealed by an appropriate registered professional
3 pursuant to Section 9.
4

5 14.05 Within 60 days of receipt of a Natural Attenuation Monitoring Plan or of additional
6 information pursuant to Subsection 17.04, ERM shall:
7

- 8 (a) Provide the responsible party with written approval of the Natural Attenuation
9 Monitoring Plan or notification that the Natural Attenuation Monitoring Plan was
10 approved for the purpose of this Ordinance; or
11
12 (b) Notify the responsible party in writing, stating the reasons(s) why the Natural
13 Attenuation Monitoring Plan does not contain information adequate to support the
14 conclusion that the applicable Natural Attenuation criteria in Section 14, have
15 been met.
16

17 14.06 The objective of the monitoring program shall be to meet the applicable No Further
18 Action criteria in Section 13.
19

20 14.07 The monitoring program shall be performed as specified in the Natural Attenuation
21 Monitoring Plan approval, as follows:
22

- 23 (a) A minimum of two monitoring wells are required:
24
25 (1) At least one well shall be located at the downgradient edge of the plume; and
26
27 (2) At least one well shall be located in the area(s) of maximum concentrations
28 of petroleum products' contaminants of concern or directly adjacent to it if
29 the area of highest groundwater contamination is inaccessible (for example,
30 under a structure);
31
32 (b) The monitoring period shall be a minimum of one year, unless two consecutive
33 quarterly sampling events have indicated that applicable cleanup target levels have
34 been met, in which case the requirements of paragraph 14.08 shall apply;
35
36 (c) The designated monitoring wells shall be sampled for analyses of applicable
37 petroleum products' contaminants of concern at a frequency specified in the
38 Natural Attenuation Monitoring Plan approval;
39
40 (d) Water-level measurements in all designated wells shall be made immediately prior
41 to each sampling event;
42
43 (e) The analytical results (laboratory report), chain of custody record form [Form
44 62-770.900(2)], table summarizing the analytical results, site map(s) illustrating
45 the analytical results, and the water-level elevation information (summary table
46 and flow map), shall be reported by the responsible party to ERM in a Natural
47 Attenuation Monitoring Report within 60 days of sample collection;
48
49 (f) If analyses of groundwater samples indicate that concentrations of applicable
50 petroleum products' contaminants of concern exceed any action levels specified in
51 the Natural Attenuation Monitoring Plan approval, the well or wells shall be
52 resampled no later than 30 days after the initial positive result is known. If the
53 results of the resampling confirm the exceedance(s), then a proposal shall be
54 submitted by the responsible party to ERM to:
55
56 (1) Perform a supplemental site assessment and submit a supplemental Site
57 Assessment Report pursuant to Section 10;
58
59 (2) Perform additional monitoring; or
60
61 (3) Prepare and submit a Remedial Action Plan pursuant to Section 15; and

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(g) The annual milestone reductions of concentrations of petroleum products' contaminants of concern in monitoring wells, that shall be used to verify annual progress of site rehabilitation by natural attenuation, shall be achieved during the monitoring program. If the annual rate of expected cleanup progress is not achieved, then the Natural Attenuation Monitoring Report described in Subsection 14.07(e), shall include a proposal to:

- (1) Perform a supplemental site assessment and submit a supplemental Site Assessment Report pursuant to Section 10;
- (2) Perform additional monitoring; or
- (3) Prepare and submit a Remedial Action Plan pursuant to Section 15.

14.08 Following completion of natural attenuation monitoring, two copies of a Site Rehabilitation Completion Report shall be submitted by the responsible party to ERM for review when the criteria for No Further Action pursuant to Section 13, have been met. Applicable portions of the Site Rehabilitation Completion Report shall be signed and sealed by an appropriate registered professional pursuant to Section 9. The Site Rehabilitation Completion Report shall contain documentation adequate to support the opinion that site cleanup objectives have been achieved.

14.09 Within 60 days of receipt of the Site Rehabilitation Completion Report or of additional information pursuant to Subsection 17.04, ERM shall:

- (a) Provide the responsible party with notification that the Site Rehabilitation Completion Report was approved for the purpose of this Ordinance; or
- (b) Notify the responsible party in writing, stating the reasons(s) why the Site Rehabilitation Completion Report does not contain information adequate to support the opinion that cleanup objectives have been achieved.

Section 15 ACTIVE REMEDIATION

15.01 Within 90 days of approval of a Site Assessment Report (unless a No Further Action Proposal, a Natural Attenuation Monitoring Plan or a recommendation to prepare a risk assessment was approved), two copies of a Remedial Action Plan shall be submitted by the responsible party to ERM for review. Applicable portions of the Remedial Action Plan shall be signed and sealed by an appropriate registered professional pursuant to Section 9. The objective of the active remediation shall be to meet the applicable No Further Action criteria in Section 13, or the Natural Attenuation criteria in Section 14. The Remedial Action Plan must provide a design that addresses cleanup of all soil, sediment, groundwater or surface water found to be contaminated. If one or more of the contaminated media is not addressed, a recommendation and justification for that decision must be included.

15.02 Performance of a pilot study for bioremediation, biosparging, bioventing or any innovative technology shall be necessary prior to designing a treatment system that will incorporate any of these technologies. A pilot study for soil vapor extraction or in situ sparging is recommended if the suitability of the site conditions for soil vapor extraction and in situ sparging is marginal or if the performance of a pilot study will result in a more efficient design that would outweigh the additional cost of the pilot study. Prior to performing a pilot study, a proposal shall be submitted by the responsible party to ERM for review. If the size of the plume and knowledge of the site's stratigraphy do not warrant performance of a pilot study for soil vapor extraction or in situ sparging, a proposal explaining the rationale for the decision to not perform a pilot study shall be submitted by the responsible party to ERM for review. The date for preparation and submission of the Remedial Action Plan shall be extended until ERM has notified the responsible party to proceed with the pilot study or to prepare the Remedial Action Plan without performing the pilot study.

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15.03 The Remedial Action Plan shall:

- (a) Include all information required by Subsection 8.02;
- (b) Summarize the Site Assessment Report conclusions and any additional data obtained subsequent to Site Assessment Report approval;
- (c) If groundwater contamination is present, include results from a round of groundwater sampling and analyses from a number of monitoring wells adequate to determine the highest concentrations of petroleum products' contaminants of concern, to verify the horizontal and vertical extent of the plume and to provide design data for the Remedial Action Plan. The sampling and analyses shall be performed after approval of the Site Assessment Report, unless the most recent groundwater analytical results submitted in the complete Site Assessment Report are from a round of groundwater sampling and analyses performed less than 270 days before submittal of the Remedial Action Plan. If the results from the confirmatory round of sampling contradict earlier results, then supplemental site assessment shall be required;
- (d) Include an estimate of the total mass and mass distribution of petroleum or petroleum products in the subsurface as product entrapped above the water table, free product, and product entrapped below the water table, based on the most recent soil and groundwater analytical and field screening results. These estimates shall be revised if additional data become available that contradict or enhance the data used during the remedial design process;
- (e) Explain the rationale for the active remediation method selected, that shall include at a minimum:
 - (1) Results from any pilot studies or bench tests; and
 - (2) Results of an evaluation of remedial alternatives, and a discussion of why other remedial alternatives considered were rejected, based on the following criteria:
 - a. Long-term and short-term human health and environmental impacts;
 - b. Implementability, that may include ease of construction, site access, and necessity for permits;
 - c. Operation and maintenance requirements;
 - d. Reliability;
 - e. Feasibility;
 - f. Estimated time required to achieve cleanup; and
 - g. Cost-effectiveness of installation, and operation and maintenance, when compared to other site remediation alternatives;
- (f) Include the design and construction details for the equipment to be used during active remediation;
- (g) Summarize the operational details of the equipment to be used during active remediation, including:
 - (1) The disposition of any effluent;
 - (2) The expected concentrations of petroleum products' contaminants of concern in the effluent;

1 (3) The method of air emissions treatment and the expected quantities in pounds
2 per day of any petroleum products' contaminants of concern discharged into
3 air as a result of all on-site active remediation systems. A separate air permit
4 will not be required if the mass of total petroleum hydrocarbons in the air
5 emissions from all on-site remediation equipment system(s) does not exceed
6 13.7 pounds per day. For on-site remediation equipment system(s) located at
7 a facility that is a Title V source pursuant to Chapter 62-213, F.A.C., a
8 separate permit under that chapter may be required; and
9

10 (4) The schedule for maintenance and monitoring of the remediation system;

11
12 (h) If groundwater contamination is present, include a list of petroleum products'
13 contaminants of concern to be monitored in the recovery well(s) and in the effluent
14 from the treatment system (based on the type of treatment employed and
15 disposition of the effluent) or other chemical indicators to aid in the evaluation of
16 the appropriateness of natural attenuation monitoring pursuant to Subsection
17 14.01(g)1, or an in situ method of site rehabilitation. Contaminants of concern
18 that do not exceed the background concentrations or the applicable cleanup target
19 levels in samples from the recovery wells or monitoring wells for three
20 consecutive quarters may be excluded from subsequent monitoring events;

21
22 (i) If groundwater contamination is present, include the designation of a number of
23 monitoring wells and a proposal for their sampling frequency adequate to monitor
24 the cleanup progress during active remediation, and the description of the
25 methodology proposed to evaluate the effectiveness and efficiency of the
26 remediation system. The designated wells shall include at least one well located at
27 the downgradient edge of the plume and one well in the area(s) of maximum
28 concentrations of petroleum products' contaminants of concern or directly
29 adjacent to it if the area of highest groundwater contamination is inaccessible (for
30 example, under a structure). Consideration shall be given to the expected duration
31 of cleanup when specifying monitoring frequency. For cleanups expected to last
32 greater than two years, wells shall be sampled quarterly for the first year and
33 semiannually thereafter. For cleanups expected to last less than two years, wells
34 shall be sampled quarterly. A representative number of previously contaminated
35 monitoring wells shall be sampled once a year, and the samples analyzed for the
36 applicable petroleum products' contaminants of concern, in order to redefine the
37 plume and fully evaluate the effectiveness and efficiency of the remediation
38 system. The selection of the representative monitoring wells shall be included in
39 the Remedial Action Plan; and
40

41 (j) Provide the details of any proposed treatment or disposition of contaminated soil
42 or sediment. If contaminated soil exists at the site and active remediation does not
43 include treatment or removal of such soil, the basis for the decision to forego
44 treatment or removal shall be provided and the Remedial Action Plan shall include
45 a proposal to implement an institutional control, or both an institutional and an
46 engineering control, pursuant to Subsection 13.02.
47

48 15.04 The remedial action plan summary form [Form 62-770.900(4)], shall be completed and
49 submitted as part of the Remedial Action Plan. The information provided in the
50 remedial action plan summary form shall be resubmitted to be consistent with the final
51 approved Remedial Action Plan and any subsequent modifications to the approved
52 Remedial Action Plan.
53

54 15.05 Other requirements to be included in the Remedial Action Plan, if applicable, include
55 the following:
56

57 (a) Vacuum extraction systems shall be equipped with a means of air emissions
58 treatment for at least the first 30 days of system operation. Air emissions
59 treatment may be discontinued after the first 30 days of system operation if the
60 mass of total petroleum hydrocarbons in the emissions from all on-site
61 remediation equipment does not exceed 13.7 pounds per day;

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- (b) Bioventing systems shall be equipped with a means of air emissions treatment unless the Remedial Action Plan design is based on respiration rates and optimum air flow that result in soil remediation primarily by bioremediation with minimal volatilization of hydrocarbons. This objective shall be confirmed by a pilot study or by emissions sampling during startup;
 - (c) In situ air sparging systems shall be designed and operated in conjunction with air emissions treatment system(s) unless the Remedial Action Plan design is based on sparging rates and optimum air flow with minimal volatilization of hydrocarbons. This objective shall be confirmed by emissions sampling during startup. If a vacuum extraction system is used, the vacuum extraction system shall operate at an air flow rate at least 50% greater than the sparging air flow rate, and the vacuum extraction system shall be provided with air emissions control as described in Subsection 15.05(a);
 - (d) Biosparging systems shall be equipped with a means of air emissions control unless the Remedial Action Plan design is based on the optimum air sparging rates that promote biological activity with minimal volatilization of hydrocarbons. This objective shall be confirmed by a pilot study or by emissions sampling during startup;
 - (e) Multi-phase extraction systems shall be equipped with a means of air emissions treatment during system operation. Air emissions system operation may be discontinued if the mass of total petroleum hydrocarbons in the emissions from all on-site remediation equipment does not exceed 13.7 pounds per day;
 - (f) A sampling schedule shall be specified for monitoring vacuum extraction systems, in situ sparging, bioremediation, or other in situ means of remediation of soil and groundwater; and
 - (g) An identification shall be made of methods proposed to assess remediation effectiveness in terms of mass removal relative to the amount of mass estimated in accordance with Subsection 15.03(d).
- 15.06 The most cost-effective and appropriate strategy for some sites may be active remediation followed by the monitoring of natural attenuation. The active remediation may consist solely of soil remediation, short-term or intermittent groundwater remediation, or other remedial enhancements, or combinations of these. The discontinuation of active remediation may be appropriate at any time depending on the site-specific characteristics and conditions. The Remedial Action Plan shall include a discussion of when the active remediation will be discontinued. When the natural attenuation criteria in Section 14, have been met, natural attenuation monitoring shall be performed pursuant to Subsection 14.07.
- 15.07 The Remedial Action Plan may propose the use of new and innovative technologies or strategies that meet the criteria in Section 15, and that are cost-effective in meeting the No Further Action criteria in Section 13, or the Natural Attenuation criteria in Section 14. These technologies or strategies may include low-cost enhancements to natural attenuation.
- 15.08 Within 60 days of receipt of a Remedial Action Plan or of additional information pursuant to Subsection 17.04, ERM shall:
- (a) Provide the responsible party with written notification that the Remedial Action Plan was approved for the purpose of this Ordinance; or
 - (b) Notify the responsible party in writing, stating the reasons(s) why the Remedial Action Plan does not contain information adequate to support the conclusions that the active remediation will be cost-effective and will comply with all applicable requirements in Section 15.

1 15.09 Active remediation activities shall not be implemented until the Remedial Action Plan
2 is approved. Separate permits such as underground injection of treated water, National
3 Pollutant Discharge Elimination System or air emissions are required if not included in
4 the Remedial Action Plan approval.
5

6 15.10 Within 120 days of approval of the Remedial Action Plan, unless a modification is
7 obtained under the provisions of Subsection 17.05, the operation of the active
8 remediation system shall be initiated. The following data shall be collected during
9 active remediation, unless otherwise provided in the Remedial Action Plan:
10

- 11 (a) Water-level data collected each time monitoring wells and recovery wells are
12 sampled. If operational parameters remain unchanged, the responsible party may
13 propose, pursuant to Subsection 15.12, that the requirement be modified or
14 discontinued;
15
- 16 (b) Total volume of free product recovered and the thickness and horizontal extent of
17 free product during each month of the reporting period until free product is no
18 longer detected in monitoring wells or recovery wells;
19
- 20 (c) Total volume of groundwater recovered from each recovery well during each
21 month of the operating period for the first year, and quarterly thereafter;
22
- 23 (d) Concentrations of applicable petroleum products' contaminants of concern based
24 on analyses performed on the effluent from the treatment system, daily for the first
25 three days with a 24 hour turnaround on analytical results, monthly for the next
26 two months, and quarterly thereafter;
27
- 28 (e) Concentrations of applicable petroleum products' contaminants of concern based
29 upon analyses performed on the untreated groundwater from the individual
30 recovery well(s) as proposed in the approved Remedial Action Plan, daily for the
31 first three days, monthly for the next two months, and quarterly thereafter;
32
- 33 (f) Analytical data from all monitoring wells sampled during the remediation year to
34 monitor rehabilitation progress during active remediation, including all
35 information required by Subsection 8.02;
36
- 37 (g) Operational parameters for in situ sparging system(s), including measurements of
38 groundwater mounding, dissolved oxygen or other means that will verify radius of
39 influence at representative monitoring locations, weekly for the first month,
40 monthly for the next two months, and quarterly thereafter. If operational
41 parameters remain unchanged, the monitoring may be modified or discontinued if
42 a demonstration is provided to ERM;
43
- 44 (h) Operational parameters for bioremediation system(s), including measurements of
45 dissolved oxygen at representative monitoring locations, rates of nutrient addition,
46 and any other indicators of biological activity as proposed in the approved
47 Remedial Action Plan, weekly for the first month, monthly for the next two
48 months, and quarterly thereafter. If operational parameters remain unchanged, the
49 monitoring may be modified or discontinued if a demonstration is provided to
50 ERM;
51
- 52 (i) Concentrations of recovered vapors from a vacuum extraction system, and post-
53 treatment air emissions if air emissions treatment is provided, weekly for the first
54 month, monthly for the next two months, and quarterly thereafter (for activated
55 carbon off-gas treatment, additional sampling events may be performed based on
56 the estimated time of breakthrough), unless two consecutive monthly or quarterly
57 sampling events do not show exceedances of applicable air quality standards, as
58 follows:
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- (1) Concentrations of recovered vapors from individual wells shall be determined using an organic vapor analyzer with a flame ionization detector, or other applicable field detection device, in order to optimize the air flow rate and hydrocarbon recovery;
 - (2) The influent and effluent samples shall be analyzed for volatile organic aromatic hydrocarbons using a gas chromatograph equipped with a photo ionization detector for the analysis of gas, or adsorption tube samples. The protocols shall follow the analytical protocols specified in 40 CFR Part 60, Appendix A, Method 18, Section 7;
 - (3) The samples shall be collected using protocols outlined in 40 CFR Part 60, Appendix A, Method 18, Section 7.1, Section 7.4 or Method 0030/5040 of the Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW 846, 3rd Edition;
 - (4) All tedlar™ bag samples shall be analyzed within 72 hours of collection;
 - (5) All mylar™ bag samples shall be analyzed within 24 hours of collection; and
 - (6) All adsorption tube samples shall be analyzed within 72 hours of collection;
- (j) Percentage of system operation time and treatment efficiency for all operating treatment systems; and
- (k) Results of analyses of soil samples taken to verify that the applicable No Further Action criteria in Section 13, or the applicable Natural Attenuation criteria in Section 14, have been met, based on one of the following:
- (1) When both field screening and laboratory results using the most sensitive method for the constituent(s) being analyzed for vacuum extraction systems indicate no detectable concentrations of contaminants of concern in the recovered vapors;
 - (2) When the screening for bioventing parameters indicates that the bioventing is complete; or
 - (3) If alternative soil cleanup target levels were established pursuant to Chapter 62-770.650, F.A.C., when system performance or monitoring using the applicable analytical methods for the appropriate constituents indicate that the alternative soil cleanup target levels have been achieved.
- 15.11 Within 120 days of initiating operation of the active remediation system(s), engineering drawings ("as-built" drawings) shall be submitted by the responsible party to ERM. The engineering drawings shall include all construction and equipment design specifications of the installed active remediation system(s) and any operational parameters different from those in the approved Remedial Action Plan. A summary of the system(s) startup activities shall be attached to the engineering drawings.
- 15.12 During implementation of the Remedial Action Plan, status reports of remedial action shall be submitted by the responsible party to ERM, annually unless a greater frequency is specified in the approved Remedial Action Plan. The status reports shall be submitted within 60 days after the anniversary date of initiating operation of the active remediation system and shall contain the following information, as applicable:
- (a) A summary of the data requested in Subsection 15.10(a)-(k);
 - (b) Concentrations of petroleum products' contaminants of concern as specified in Subsection 15.16, if applicable;

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- (c) A summary of the estimated mass of petroleum hydrocarbons recovered in all phases, including free product, dissolved and vapors, by all on-site remediation equipment, and a comparison to the original estimate of mass of petroleum products' contaminants of concern on-site;
 - (d) Conclusions as to the effectiveness of the active remediation for the specified period covered in the status report;
 - (e) Recommendations to continue the operation of the treatment system(s) or to modify the site rehabilitation; and
 - (f) The annual status report information, summarized on Form 62-770.900(5).
- 15.13 If effluent concentrations or air emissions exceed those in the approved Remedial Action Plan, or excessive plume migration occurs during remediation system startup or during operation of the treatment system, corrective actions shall be taken and ERM shall be notified by the responsible party within seven days. If the condition may represent a threat to human health, public safety or the environment, ERM shall be notified within 24 hours. Details of all such incidents shall be included in the annual status report described in Subsection 15.12
- 15.14 During implementation of the Remedial Action Plan, the responsible party may propose:
- (a) Supplemental assessment to determine alternative cleanup target levels pursuant to Chapter 62-770.650, F.A.C. During the supplemental assessment, active remediation shall continue;
 - (b) Modifications to existing treatment or recovery system(s) pursuant to Subsection 15.12; or
 - (c) Alternative technologies pursuant to Section 15.
- 15.15 Active remediation shall be deemed complete when the No Further Action criteria in Section 13, or the Natural Attenuation criteria in Subsection 14.01, have been met.
- 15.16 If the site does not meet the No Further Action criteria in Section 13, or the Natural Attenuation criteria in Section 14, discontinuation of active groundwater remediation shall be based on the following demonstration and analyses:
- (a) Contaminated soil has been properly removed and disposed, or treated in situ, so that the applicable soil cleanup target levels are met or addressed by the enactment and implementation of institutional controls or both institutional and engineering controls.
 - (b) After a minimum of one year of groundwater treatment, concentrations of petroleum products' contaminants of concern in designated monitoring wells and recovery wells have leveled off. This demonstration must be based on subsequent monthly sampling results obtained for a minimum of 180 days, unless an alternative frequency has been approved. "Leveling off" shall mean that the graph of Total Volatile Organic Aromatics versus time generally fits a curve defined by the equation $C = C_r + C_0 e^{-kt}$, that the lower limb of the curve is substantially linear, and that the slope of the final portion of the curve approaches zero. If the petroleum contamination does not contain a representative amount of Total Volatile Organic Aromatics, then an alternative petroleum products' contaminant of concern shall be designated for application to the curve. Applicable statistical methods shall be applied to demonstrate this conclusion.
- (1) In the equation above, symbols are defined as follows:
 - a. C: concentration of the applicable petroleum products' contaminant of concern at time t;

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- b. C_f : coefficient representing final concentration that the curve approaches asymptotically;
- c. C_0 : coefficient representing concentration difference between the final concentration and the concentration at time zero;
- d. E: 2.718, the base of natural logarithms;
- e. K: coefficient representing the exponential factor that indicates how fast the concentration approaches C_f ;
- f. T: time in days from some fixed starting point.

(2) The one year minimum treatment period may be shortened if, based on the criteria in Section 376.3071, F.S., it is demonstrated to ERM that a shorter time period is appropriate.

(c) An analysis or demonstration has been made of:

- (1) The technical feasibility of other proven groundwater or soil treatment techniques to further reduce the concentrations of applicable petroleum products' contaminants of concern at the site;
- (2) The costs and time frames involved to further reduce the concentrations of applicable petroleum products' contaminants of concern employing the alternative method(s) proposed;
- (3) The effects on the designated or potential use of the water resource if petroleum products' contaminants of concern remain at existing concentrations;
- (4) The effect on, and any protection that may be required of, surface water resources;
- (5) The effect on human health, public safety and the environment if petroleum products' contaminants of concern remain at existing concentrations;
- (6) The extent and potential for further migration of contaminated groundwater above background concentrations or applicable cleanup target levels; and
- (7) Institutional controls or both institutional and engineering controls that may be necessary to ensure protection of the public and the environment from future use of contaminated groundwater.

(d) Post active remediation monitoring must validate the assumptions justifying the leveling off determination. If the justification for site rehabilitation is not validated during post active remediation monitoring, then the additional assessment or remediation described in Section 15, may be required.

15.17 The results of the demonstration and analyses described in Subsections 15.16(a), (b) and (c), shall be compiled in a report and submitted by the responsible party to ERM for review. ERM shall determine, using the criteria specified in Subsection 15.16(c), whether modifications to the Remedial Action Plan are required pursuant to paragraph 15.14 to effect further treatment; however, if alternative methods are not required, active remediation shall be deemed complete.

15.18 A Post Active Remediation Monitoring Plan shall be submitted by the responsible party to ERM pursuant to the Post Active Remediation Monitoring described in Section 16, when the No Further Action criteria in Section 13, or the leveling off criteria in Subsection 15.16, have been met.

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1 **Section 16 POST ACTIVE REMEDIATION MONITORING**

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3 16.01 Groundwater monitoring shall be performed following the completion of active
4 groundwater remediation or soil remediation as described in Section 15. When active
5 groundwater remediation has met the No Further Action criteria in Section 13, or the
6 leveling off criteria in Subsection 15.16, a Post Active Remediation Monitoring Plan
7 using the provisions of Subsection 16.04, and including analytical results demonstrating
8 this conclusion, shall be submitted by the responsible party to ERM for review.
9

10 16.02 Applicable portions of the Post Active Remediation Monitoring Plan shall be signed
11 and sealed by an appropriate registered professional pursuant to Section 9.
12

13 16.03 Within 60 days of receipt of a Post Active Remediation Monitoring Plan or of additional
14 information pursuant to Subsection 17.04, ERM shall:
15

16 (a) Provide the responsible party with written notification that the Post Active
17 Remediation Monitoring Plan was approved for the purpose of this Ordinance; or
18

19 (b) Notify the responsible party in writing, stating the reasons(s) why the Post Active
20 Remediation Monitoring Plan does not contain information adequate to support
21 the conclusion, pursuant to Section 15, that the applicable cleanup target levels
22 shall be achieved at the end of the monitoring period.
23

24 16.04 The monitoring program shall be performed as specified in the Post Active Remediation
25 Monitoring Plan approval, as follows:
26

27 (a) A minimum of two monitoring wells are required:
28

29 (1) At least one well shall be located at the downgradient edge of the plume; and
30

31 (2) At least one well shall be located in the area(s) of maximum concentrations
32 of petroleum products' contaminants of concern or directly adjacent to it if
33 the area of highest groundwater contamination is inaccessible (for example,
34 under a structure).
35

36 (b) The monitoring period shall be a minimum of one year. However, if
37 contamination was only present in the unsaturated zone during the site assessment
38 and active remediation tasks, only one round of groundwater sampling is required;
39

40 (c) The designated monitoring wells shall be sampled quarterly for analyses of
41 applicable petroleum products' contaminants of concern that were present prior to
42 the initiation of active remediation;
43

44 (d) The analytical results (laboratory report), chain of custody record form [Form
45 62-770.900(2)], table summarizing the analytical results and site map(s)
46 illustrating the analytical results shall be reported by the responsible party to ERM
47 in a Post Active Remediation Monitoring Report within 60 days of sample
48 collection; and
49

50 (e) If analyses of groundwater samples indicate that concentrations of applicable
51 petroleum products' contaminants of concern exceed any action levels specified in
52 the Post Active Remediation Monitoring Plan approval, the well or wells shall be
53 resampled no later than 30 days after the initial positive result is known. If the
54 results of the resampling confirm the exceedance(s), then a proposal shall be
55 submitted by the responsible party to ERM to:
56

57 (1) Perform a supplemental site assessment and submit a supplemental Site
58 Assessment Report pursuant to Section 10;
59

60 (2) Perform additional monitoring; or
61

1 (3) Implement additional active remediation pursuant to Section 15.
2

3 16.05 The remediation equipment shall be maintained in an inactive but operational status
4 during the duration of post active remediation monitoring.
5

6 16.06 Following completion of monitoring pursuant to Section 16, two copies of a Site
7 Rehabilitation Completion Report shall be submitted by the responsible party to ERM
8 for review when the criteria for No Further Action pursuant to Section 13, have been
9 met. Applicable portions of the Site Rehabilitation Completion Report shall be signed
10 and sealed by an appropriate registered professional pursuant to Section 9. The Site
11 Rehabilitation Completion Report shall contain documentation adequate to support the
12 opinion that site cleanup objectives have been achieved.
13

14 16.07 Within 60 days of receipt of a Site Rehabilitation Completion Report or of additional
15 information pursuant to Subsection 17.04, ERM shall:
16

17 (a) Provide the responsible party with notification that the Site Rehabilitation
18 Completion Order approving the Site Rehabilitation Completion Report was
19 approved for the purpose of this Ordinance; or
20

21 (b) Notify the responsible party in writing, stating the reasons(s) why the Site
22 Rehabilitation Completion Report does not contain information adequate to
23 support the opinion that the cleanup objectives have been achieved. Site
24 rehabilitation activities shall not be deemed complete until such time as a Site
25 Rehabilitation Completion Report is approved.
26
27

28 **Section 17 TIME SCHEDULES**
29

30 17.01 For site rehabilitation being performed at petroleum contamination sites eligible for
31 state funded assistance under the Inland Protection Trust Fund, the time frames
32 specified in this Ordinance do not apply.
33

34 17.02 If site rehabilitation is being performed by ERM through the Petroleum Cleanup
35 Preapproval Program or otherwise using funds provided by the Inland Protection Trust
36 Fund, the time frames specified in the contract between the Department and ERM shall
37 take precedence over the time frames set forth in this Ordinance.
38

39 17.03 If the responsible party has entered into a Consent Order with the Department for site
40 rehabilitation, the time frames and any alternative cleanup target levels set forth in the
41 Consent Order shall take precedence over the time frames and cleanup target levels set
42 forth in this Ordinance.
43

44 17.04 Within 60 days of receipt of a written notification from ERM that a plan or report does
45 not contain adequate information or that the information provided is not supported by
46 the applicable criteria, the requested information shall be submitted by the responsible
47 party to ERM.
48

49 17.05 A modification of the time frame may be obtained by the responsible party for any
50 action set forth in this Ordinance for good cause shown by requesting in writing that
51 ERM make such a modification. The request shall specify which time frame(s) is to be
52 modified, the amount of additional time required, and provide documentation
53 supporting the request. The request shall be received by ERM at least 20 days prior to
54 the time the action is to be initiated. If emergency situations at a site do not allow for a
55 full 20 days notice, the request shall detail such emergency situation. Within 20 days of
56 receipt of a request for modification, ERM shall notify the responsible party if
57 additional information regarding the request is needed. ERM shall notify the
58 responsible party in writing within 20 days of receipt of the request or of the additional
59 information as to whether modification of the time frame(s) will be allowed. For
60 purposes of this paragraph, good cause shall mean unanticipated events outside the
61 control of the responsible party.

38

1 17.06 The failure of ERM to meet any time frame herein shall entitle the responsible party to
2 compel compliance through the provisions of Section 403.412, F.S., or through such
3 remedies as may be available and appropriate in circuit court. In no circumstances shall
4 ERM's failure to meet any time frame herein be construed as approval of any plan or
5 action by ERM.
6

7
8 **Section 18 NOTICES**
9

10 When requested in writing by ERM, written notification shall be provided by the responsible
11 party to ERM at least three days prior to performing field activities such as installing
12 monitoring or recovery well(s), performing sampling, installing remediation equipment, or
13 performing soil source removal activities, except as provided in Section 7. Personnel from
14 ERM shall be allowed the opportunity to observe these field activities and to take split samples.
15 Raw data shall be exchanged as soon as data are available. If ERM chooses to be present when
16 the field activities are being performed, it shall be ERM's responsibility to confirm the field
17 activities are being performed in accordance with the written notification.
18

19
20 **Section 19 FORMS**
21

22 The forms used in the Petroleum Contamination Cleanup Program are incorporated by
23 reference in this Section. Each form is listed by rule number, which is also the form number,
24 and with the subject, title, and effective date. Copies of forms may be obtained by writing to
25 the State of Florida Department of Environmental Protection, Bureau of Petroleum Storage
26 Systems, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, FL 32399-2400.
27

- 28 19.01 Form 62-770.900(1), Free Product Removal Notification Form for Petroleum or
29 Petroleum Products (effective September 23, 1997).
30
31 19.02 Form 62-770.900(2), Chain of Custody Record (effective September 23, 1997).
32
33 19.03 Form 62-770.900(3), Petroleum or Petroleum Products Water Sampling Log (effective
34 September 23, 1997).
35
36 19.04 Form 62-770.900(4), Remedial Action Plan Summary (effective September 23, 1997).
37
38 19.05 Form 62-770.900(5), Active Remediation Annual Status Report Summary (effective
39 September 23, 1997).
40

41
42 **Section 20 FEES**
43

44 There are no fees required to be paid to ERM for the administration of this Ordinance.
45
46

47 **Section 21 VIOLATIONS: ENFORCEMENT: PENALTIES**
48

- 49 21.01 Failure to comply with the requirements of this Ordinance shall constitute a violation of
50 a County Ordinance, and may be punished as provided in Section 125.69, F.S.
51
52 21.02 Violations of the provisions of this Ordinance may also be punished, pursuant to Section
53 162.21, F.S., as a civil infraction with a maximum civil penalty not to exceed five
54 thousand dollars (\$5,000) per day, per violation.
55
56 21.03 Each day in violation of the provisions of this Ordinance is a separate violation.
57
58 21.04 In addition to the sanctions contained herein, the County may take any other appropriate
59 legal action, including but not limited to emergency injunctive action, to enforce the
60 provisions of this Ordinance.
61

1 21.05 If the owner of property which is subject to a violation of this Ordinance transfers the
2 ownership of such property between the time the notice of violation was served and the
3 time of the hearing and the alleged violator fails to make disclosure of said violation, the
4 transfer creates a rebuttable presumption of fraud.
5

6 21.06 Violations of this Ordinance may also be referred by ERM to the Groundwater and
7 Natural Resources Protection Board (GNRPB) for corrective actions and civil penalties.
8 Any person who is party to the proceeding before the GNRPB may appeal the Board's
9 Order to the Circuit Court of Palm Beach County in accordance with Florida Appellate
10 Rules. Funds collected pursuant to administrative penalties levied by the GNRPB for
11 violations of this Ordinance shall be deposited in the Palm Beach County Pollution
12 Recovery Trust Fund, or such other place as may be designated by Resolution of the
13 Board of County Commissioners.
14

15 21.07 In order to provide an expeditious settlement that would be beneficial to the
16 enforcement of this Ordinance and be in the best interest of the citizens of Palm Beach
17 County, the Director of ERM is authorized to enter into voluntary consent (settlement)
18 agreements with alleged violators. Any such agreement shall be a formal written
19 consent agreement between ERM on behalf of Palm Beach County, by and through its
20 Director, and any such alleged violators, and shall be approved as to form and legal
21 sufficiency by the County Attorney's Office. The agreement can be entered into at any
22 time prior to the hearing before the GNRPB.
23

24 (a) Conditions. Such consent agreements may be conditioned upon a promise by the
25 alleged violator to:

- 26
27 (1) Bring the parcel into compliance with this Ordinance and maintain it in that
28 condition;
29
30 (2) Remit payment of a monetary settlement not to exceed the maximum amount
31 allowed per violation, as set forth in this Ordinance;
32
33 (3) Remit payment for costs and expenses of the County for
34 investigation and enforcement; and
35
36 (4) Any other remedies and corrective action deemed necessary and
37 appropriate by the director of ERM to ensure compliance with this
38 Ordinance.
39

40 (b) The consent agreement shall not serve as evidence of a violation of this
41 Ordinance and shall expressly state that the alleged violator neither admits nor
42 denies culpability for the alleged violations by entering into such agreement. In
43 addition, prior into entering into any such consent agreement, each alleged violator
44 shall be apprised of the right to have the matter heard by the GNRPB in
45 accordance with the provisions of this Ordinance, and that execution of the
46 agreement is not required.
47

48 (c) The consent agreement shall be valid and enforceable in a court of competent
49 jurisdiction in Palm Beach County and shall abate any enforcement proceedings
50 available to ERM for so long as the terms and conditions of such agreement are
51 complied with. In the event the alleged violator fails to comply with the terms and
52 conditions set forth in the executed agreement, the Director of ERM may either:
53

- 54 (1) Consider the consent agreement void and pursue any remedies available for
55 enforcement of the applicable provisions of the Ordinance; or
56
57 (2) Initiate legal proceedings for specific performance of the consent agreement.
58

59 21.08 Funds collected pursuant to a consent agreement shall be deposited in the Palm
60 Beach County Pollution Recovery Trust Fund.
61

1 **Section 22 REPEAL OF LAWS IN CONFLICT**

2
3 All local laws and ordinances of Palm Beach County in conflict with any provisions of this
4 Ordinance are hereby repealed to the extent of such conflict.
5
6

7 **Section 23 SEVERABILITY**

8
9 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason
10 held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the
11 remainder of this Ordinance.
12
13

14 **Section 24 INCLUSION IN THE CODE OF LAWS AND ORDINANCES**

15
16 The provisions of the Ordinance shall become and be made part of the code of laws and
17 ordinances of Palm Beach County, Florida. The Sections of this Ordinance may be renumbered
18 or relettered to accomplish such, and the word "ordinance" may be changed to "section",
19 "article", or any other appropriate word.
20
21

22 **Section 25 EFFECTIVE DATE**

23
24 The provisions of this Ordinance shall become effective upon filing with the Department of
25 State.
26

27 APPROVED AND ADOPTED by the Board of County Commissioners of Palm
28 Beach County, Florida, on the 20 day of May, 2003.
29
30

31
32 ATTEST:

33 DOROTHY H. WILKEN, CLERK

34 PALM BEACH COUNTY, FLORIDA, BY ITS
35 BOARD OF COUNTY COMMISSIONERS

36
37 By: Dinda C. Hill
38 Deputy Clerk

39 [Signature]
40 Chairman

41
42 APPROVED AS TO FORM
43 AND LEGAL SUFFICIENCY

44
45 By: Nancy J. Dehn
46 County Attorney
47
48

49 EFFECTIVE DATE: Filed with the Department of State on the _____ day of
50 _____, 2003.
51

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners do hereby certify this to be a
true and correct copy of the original filed in my office
on May 20, 2003

DATED at West Palm Beach, FL on 5-22-03
DOROTHY H. WILKEN, Clerk

By: [Signature] D.G.

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