

LOW SCORE SITE INITIATIVE

By Thomas E. Lewis, PG, MBA



In 2010, we reported on efforts taking place to provide revisions to the Florida Department of Environmental Protection's (DEP) petroleum contamination site selection and cleanup criteria known as the Low-Scored Site Initiative (LSSI). As it turns out, changes as required in Chapter 2010-278, Laws of Florida [to be codified in Section 376.3071(11), Florida Statutes (FS)] have been made.

On February 21, 2011, DEP issued a Procedural and Technical Guidance for LSSI to "establish procedures for sites with a priority score of 10 points or less to be issued a Site Rehabilitation Completion Order (SRCO), an LSSI No Further Action (LSSI NFA), or an LSSI No Further Action with Conditions Administrative Order (LSSI NFAC) if the requirements set forth in Chapter 2010-278 are met."

According to this guidance document, in order to participate in the LSSI, a facility must meet the following requirements:

- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 or less.
- No excessively contaminated soil, as defined by DEP rule, exists on-site as a result of a release of petroleum products.
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable.
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.
- The area of groundwater contamination containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property upon which the discharge originated.
- Soils onsite that are subject to human exposure found between land surface and two feet below land surface meet the soil cleanup target levels established by DEP rule or human exposure is limited by institutional controls and, if appropriate, engineering controls.

It should be noted that funding under LSSI is limited to only those sites with discharges eligible for an Inland Protection Trust petroleum cleanup program. Discharges covered by consent order and settlement agreements are to be handled on a case-by-case basis.

Under this program, there are three "Closure Options" for funded sites that meet the above-referenced criteria.

- If it is demonstrated that no petroleum contamination exists at the site, DEP may issue a SRCO pursuant to Chapter 62-770.
- If it is demonstrated that minimal contamination exists onsite and is not a threat to human health or the environment, and the criteria established in the statute and also listed in the above LSSI participation requirements are met, then a LSSI NFA acknowledging this shall be issued pursuant to Section 376.3071 (11), FS.
- If minimal soil contamination exists on-site (as outlined in the statute), but the top two feet of soil do not meet soil cleanup target levels and appropriate institutional controls and, if necessary, engineering controls limit human exposure, a LSSI NFAC shall be issued acknowledging this as required by statute.

Funding for any one facility is limited to \$30,000 and no more than 10 facilities in each fiscal year per responsible party (RP). The RP can choose to stop assessment activities (and the expenditure of state funds) and terminate participation in the LSSI if the initial assessment data demonstrates that the discharge will not satisfy the SRCO. However, if the RP continues to expend state funds and it later qualifies for LSSI NFAC, the RP must accept responsibility for all costs associated with the establishment of the required institutional and engineering controls.

So, what are the advantages of entering into the LSSI program? To begin with, based upon the scoring history of the program, and given that the current pre-approval funding score is 49, it is unlikely sites that scored 10 points or less will be authorized for normal pre-approval funding in the foreseeable future. Additionally, the LSSI provides a cost-effective streamlined process to potentially obtain closure via a SRCO, a LSSI NFA, or a LSSI NFAC. And, as already pointed out, the RP still has the ability to terminate participation as soon as enough data has been collected to demonstrate that the discharge would not qualify for a SRCO.

However, the LSSI procedures may require the RP to pay any deductible or co-pay prior to issuance of a SRCO, LSSI NFA, or LSSI NFAC. Additionally, the LSSI does not change the RP's Petroleum Cleanup Participation Program Limited Contamination Assessment Report or copayment requirements.

The funding will be available on a first-come, first-served basis. Chastain-Skillman can assist the property owner or the confirmed RP as the designated cleanup contractor for the respective site(s). This can be accomplished simply by signing DEP's Contractor Designation Form & Real Property Owner/Responsible Party Affidavit, which Chastain-Skillman can prepare and submit for the property owner or the confirmed RP.

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