

ORIGINATION FORM

THE INFORMATION BELOW IS TO BE PROVIDED BY THE ORIGINATOR (The person who receives or originates the issue and needs to forward the issue for action.)

Specification: 8-4.9 , 6-5.3, 120-1.2

Subject: Hazardous or Toxic Waste

Origination date: 4-23-10

Originator: Catherine Bradley

Office/Phone: 850-414-4271

Problem statement: Specification **8-4.9** is intended to direct the Contractor when and if they encounter unusual conditions or materials that could indicate the presence of a health and safety concern, or a potential “hazard”. While the language incorporated in the body of the specification is good and usable, some of the terminology is too specific, thereby creating areas or situations that could easily be argued by a knowledgeable Contractor and/or Lawyer placing the Department in a non-defensible position in the event of delay claims or supplemental charges.

Proposed solution: Without going into too much detail the terms (and spec title) “*Hazardous or Toxic Waste*” should not be used in the spec and should be replaced by “*Contaminated or Potentially Contaminated Materials*” to simplify, this could be further reduced to “*Contaminated Materials*”.

Information source: Ben Burton, D4 Final Plans Engineer
954-777-4135

Recommended Usage Note: All Jobs

Estimated fiscal impact, if implemented: N/A

Implementation of these changes, if and when approved, will begin with the January 2011 letting.



Florida Department of Transportation

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M E M O R A N D U M

DATE: June 24, 2010

TO: Specification Review Distribution List

FROM: Rudy Powell, Jr., P.E., State Specifications Engineer

SUBJECT: Proposed Specification: 0080409 Prosecution and Progress – Contaminated Materials.

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change.

The changes are proposed by Vincent Fusconi to change the terminology for “hazardous or toxic waste” to “contaminated materials”.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or to my attention via e-mail at ST986RP or rudy.powell@dot.state.fl.us. Comments received after **July 22, 2010** may not be considered. Your input is encouraged.

RP/ft
Attachment

PROSECUTION AND PROGRESS – ~~HAZARDOUS OR TOXIC WASTE~~*CONTAMINATED MATERIALS*.
(REV 4-23-10)

SUBARTICLE 8-4.9 (Pages 84 – 89) is deleted and the following substituted:

8-4.9 ~~Hazardous or Toxic Waste~~*Contaminated Materials*: When the construction operations encounter or expose any abnormal condition that may indicate the presence of a ~~hazardous or toxic waste~~*contaminated material*, discontinue such operations in the vicinity of the abnormal condition and notify the Engineer immediately. Be alert for the presence of tanks or barrels; discolored *or stained* earth, metal, wood, ground water, ~~etc.~~; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of ~~hazardous or toxic waste~~*the presence of contaminated materials*. ~~s and T~~ Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any ~~hazardous or toxic waste~~*contaminated materials* into uncontaminated areas.

Do not resume the construction operations *in the vicinity of the abnormal conditions* until so directed by the Engineer.

Dispose of the ~~hazardous or toxic waste~~*contaminated material* in accordance with the requirements and regulations of any Local, State, or Federal agency having jurisdiction. Where the Contractor performs work necessary to dispose of ~~hazardous or toxic waste~~*contaminated material*, and the Contract does not include pay items for disposal, the Department will pay for this work as provided in 4-4.

The Department may agree to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters ~~hazardous~~*contaminated* materials or pollutants during the performance of services for the Department when the presence of such materials or pollutants were unknown or not reasonably discoverable. Such indemnification agreements are only effective if the Contractor immediately stops work and notifies the Department of the ~~hazardous~~*contaminated* material or pollutant problem.

Such indemnification agreements are not valid for damages resulting from the Contractor's willful, wanton, or intentional conduct or the operations of *Contaminated and Hazardous Material Contractors*.