



## Florida Department of Transportation

**RICK SCOTT**  
**GOVERNOR**

605 Suwannee Street  
Tallahassee, FL 32399-0450

**ANANTH PRASAD, P.E.**  
**SECRETARY**

May 2, 2011

Monica Gourdine  
Program Operations Engineer  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Re: Office of Design, Specifications  
Section 008  
Proposed Specification: 0080409 Prosecution and Progress – Contaminated Materials.

Dear Ms. Gourdine:

We are submitting, for your approval, two copies of the above referenced Supplemental Specification.

These changes are proposed by David Sadler of the State Construction Office to state the Department will indemnify the contractor if unforeseen contamination is discovered, provided the contractor immediately stops work in these areas and notifies the Department.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to SP965RP or rudy.powell@dot.state.fl.us.

If you have any questions relating to this specification change, please call Rudy Powell, State Specifications Engineer at 414-4280.

Sincerely,

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

RP/cah

Attachment

cc: Gregory Jones, Chief Civil Litigation  
Florida Transportation Builders' Assoc.  
State Construction Engineer

**PROSECUTION AND PROGRESS – CONTAMINATED MATERIALS.  
(REV 3-9-11)**

SUBARTICLE 8-4.9 (of the Supplemental Specification) is deleted and the following substituted:

**8-4.9 Contaminated Materials:** When the construction operations encounter or expose any abnormal condition that may indicate the presence of a 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; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any 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 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 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~~<sup>s</sup> to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters 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~~<sup>is</sup> only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem.

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

**PROSECUTION AND PROGRESS – CONTAMINATED MATERIALS.  
(REV 3-9-11)**

SUBARTICLE 8-4.9 (of the Supplemental Specification) is deleted and the following substituted:

**8-4.9 Contaminated Materials:** When the construction operations encounter or expose any abnormal condition that may indicate the presence of a 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; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any 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 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 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 agrees to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters 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 agreement is only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem.

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