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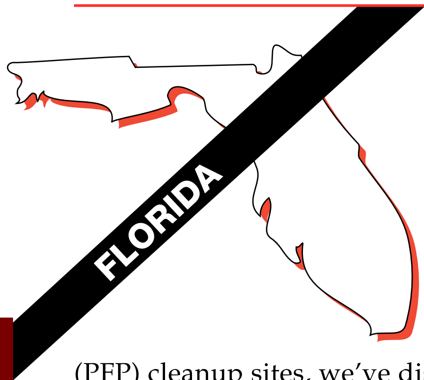

PFP's Emphasis on Success Helped Detect a Leak When All Else Failed

by Brian Dougherty

Based on an experience at one of our pay-for-performance (PFP) cleanup sites, we've discovered that PFP cleanups can unintentionally result in detection of UST leaks that would otherwise have gone undetected. The key to this story is that under PFP, the cleanup contractor gets paid as contamination levels decline and meet a series of "milestone" levels. If the contamination does not decline, the contractor does not get paid. So what happens if there is a leak from another UST at the site? Such a circumstance could prevent the cleanup contractor from reaching these milestones and getting paid.

That's what happened at one of our PFP cleanup sites. The cleanup system had worked great when first turned on, but then contamination levels stopped declining and even began to rise at some points. Meanwhile, none of the USTs at the site showed any evidence of a release, and they all tested tight. Furthermore, the responsible party was reluctant to double-check his leak-detection system results because a new release at his site at that time would require payment of a $10,000 deductible and a relatively low cap on state funding (the existing release had no deductible and no cap on state funding).

This situation put the PFP cleanup contractor between a rock and a hard place. He would take an indefinite loss on the cleanup work unless he could show that the failure of contamination levels to go down was not the result of unsuccessful cleanup work on his part.

The owner/operator remained reluctant to acknowledge the problem, and so the PFP contractor reported his suspicions to the state. The Florida Department of Environmental Protection authorized the contractor to look for leaks coming from the other parts of the system. This investigation was paid for by the state outside of the PFP agreement. Indeed, a fairly substantial leak with free product was discovered to be coming from one of the pipelines.

Had it not been for the incentive that PFP gave the contractor to find and report the new leak at the site, the leak would have gone undetected, and product would have continued to be release into the environment. If the cleanup had been undertaken on customary time-and-materials terms, it would have gone on for a very long time and cost a lot, without reducing the contamination to environmentally acceptable levels.

It's not fair to a PFP contractor to have to continue futile work (e.g., when there's been a new leak) within the fixed price and time limits that were set before a new leak has been discovered. Standard practice in such circumstances is to release the contractor from the PFP contract with no financial penalty. In this case, the contractor was released. Typically, the PFP will be renegotiated or rebid to take the new leak into account. In this case, a different contractor was hired to do the work and has not been willing to perform the work under PFP.

The message here is that thanks to the PFP cleanup contract, the state found a leak that would otherwise have gone undiscovered, and the cleanup contractor was treated fairly too. ■

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