

Guidance for Notification and Public Outreach Requirements Triggered By Determination that Contamination Has Migrated Off-Site

N.J.A.C. 7:26E-1.4 (I)

In addition to the public notification requirements applicable prior to the initiation of a remedial investigation or remediation, the rules for notification and public outreach at contaminated sites also require the person responsible for conducting the remediation to conduct notification and public outreach activities upon determining that contamination has migrated off site and at the conclusion of the remedial investigation when the vertical and horizontal extent of off-site contamination has been determined. Contamination, for purposes of 7:26E-1.4(I) is assumed to be a contaminant detected above applicable remediation standards for the relevant medium.

The notification requirements effective prior to the initiation of a remedial investigation or remediation were designed to inform the local community about the nature and extent of work being conducted in their neighborhood. The Department believes notification about the work to be conducted and contact information to address questions that residents may have will help allay unjustified concerns, avoid the misinformation that often arises when a community is uninformed of local environmental work, and facilitate a more efficient investigation and/or remediation. The migration of contamination off site raises the possibility that the contamination could affect or be perceived as affecting members of the local community, and so the Department believes it is appropriate to require additional notification and outreach in the form of a fact sheet that is both distributed and published.

The Department recognizes that there is a trade-off in requiring the initial fact sheet and published notification upon a determination of off-site contamination rather than waiting until the full extent of the off-site contamination is delineated. The Department chose to opt for early communication based upon experience that indicates a delay in notification often gives rise to suspicion and mistrust. In notifying property owners and residents in the immediate area by mail, those most likely to be potentially affected by off-site contamination will receive direct notification. Requiring publication of the fact sheet will reach many in the larger community of area property owners, residents and workers many of whom may also be potentially affected by or perceive an effect from off-site contamination.

Triggers for Fact Sheet Requirements

Fact sheet requirements are triggered by a determination that contamination has migrated off site and the completion of a remedial investigation when the full extent of off-site contamination had been delineated. While the “determination that contamination has migrated off-site” standard for triggering a fact sheet requires data to confirm presumed off-site migration, the Department expects responsible parties to act expeditiously to confirm or rule out whether contamination has migrated off-site once there is a reasonable presumption that it has.

Within 14 days of a determination that contamination has migrated off site the person responsible for conducting a remediation must prepare and distribute a fact sheet. The person responsible for conducting a remediation must also prepare and distribute an updated fact sheet within four weeks after the vertical and horizontal extent of contamination has been determined/at the completion of the remedial investigation. These fact sheets must also be published as a display advertisement in a local newspaper within four weeks of both the determination of off-site contamination and the completion of the remedial investigation (see Distribution/Promulgation guidance below).

The only exceptions to the fact sheet requirements for off-site contamination are 1) when contamination results from an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential dwelling; 2) the contamination is subject to an emergency response action; or (3) the contamination has affected only one adjoining property and is limited to soil.

Fact Sheet Content

The content requirements for the fact sheet and fact sheet update outlined in N.J.A.C. 7:26-1.4 (l) are a combination of information readily available from previous documents and information about the contaminants identified as having migrated off site.

The Name and Address of Site, Tax Block(s) and Lot(s), ID number, and Site History should be information that was obtained during the Preliminary Assessment (PA) of the site. The Site History can summarize more extensive information contained in a PA. Should the PA not contain the ID number, it can be located using DEP's online Data Miner (see separate guidance on Data Miner).

The requirements for the description of contamination include information from the site investigation and the remedial investigation (contaminants of concern, affected environmental media, concentrations, extent of contamination, date contamination was identified and source of contamination). Given that the initial fact sheet is required immediately after off-site migration has been determined, the Department recognizes the complete set of data regarding the contamination may not be available but expects that all required information will be provided to the extent possible. Information on contaminant concentrations should be expressed as a range, where appropriate.

The remediation standards can be found on the Department's Site Remediation Program Web site at <http://www.nj.gov/dep/srp/regs/rs/> and (N.J.A.C. 7:26D) <http://www.nj.gov/dep/srp/regs/rs/>.

On-line resources for information about contaminants may include information from the U.S. Environmental Protection Agency available at <http://www.epa.gov/superfund/health/index.htm> and/or the U.S. Agency for Toxic Substances and Disease Registry at <http://www.atsdr.cdc.gov/toxfaq.html>. The fact sheet may also contain additional information to help the public understand the technical information being provided.

The fact sheet should also include the date it was prepared and, where applicable, actions taken to minimize the impact of the off-site contamination.

If the predominant language spoken by property owners and residents within 200' of the site boundary is not English, all fact sheets and updates must contain the required information in both English and the predominantly spoken language.

Distribution/Promulgation of Notifications

The fact sheet and updated fact sheet must be distributed by certified mail or by certificate of mailing service to each property owner and tenant within 200 feet of the site boundary. For schools within 200 feet of the site boundary, the Superintendent for the local school district should receive the mailings as the property owner and the Principal of the school as the tenant. The on-site administrator of any day care facility should receive the mailing as tenant and, if the day care facility is part of any larger corporation, the corporate headquarters should receive the mailings as owner. For schools and day care facilities on leased land, the property owner should also receive the mailings.

Within 30 days of a determination of off-site contamination and within 30 days of the completion of the vertical and horizontal delineation of off-site contamination/ the completion of the remedial investigation, the fact sheet or updated fact sheet also must be published as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site.

The person responsible for conducting the remediation is exempt from the requirement to publish the fact sheet in a newspaper, if they propose to establish a Classification Exception Area (CEA).

Within 30 days of a determination of off-site contamination and within 30 days of the completion of the vertical and horizontal delineation of off-site contamination/ the completion of the remedial investigation, the person responsible for conducting the remediation must submit the fact sheet or updated fact sheet, a list of people to whom the fact sheet or updated fact sheet was mailed, and a copy of the display advertisement to the case manager, the Department's Office of Community Relations, the municipal clerk for each municipality in which the site is located and the designated local health official for each municipality. If no case manager has been assigned, the required information should be submitted as part of the Remedial Investigation Report or Remedial Action Report.

Coordination and Consolidation of Various Public Notification Requirements

For sites where the person responsible for the public notification requirements chooses to notify property owners and tenants via periodic notification letters, the person may choose to combine the information required in update letters and the

information required under notification requirements for off-site contamination into one fact sheet, which will reset the clock for the update requirements outlined in 1.4 (j). The combined fact sheet and update must combine the information required for each and still must be published as per the requirements of 1.4(l).

With case manager approval, the Notification and Public Outreach requirements of N.J.A.C. 7:26E-1.4 (l) also may be coordinated and consolidated with the public notice requirements for a Permit By Rule (PBR) for discharge to groundwater (DGW) as described in N.J.A.C. 7:26E-6.3(c) when the timing and other requirements of each can be met with a consolidated document and published notice. All consolidated public notice documents and publications, however, must still meet the requirements in both sets of rules for timing, content and distribution/publication.