

Proposed Strategy for Public Participation in Site Remediation & Waste Management:

Public Participation Task Force Recommendations

September 15, 2005

I. Background

The Public Participation Task Force* convened in May 2003 at the request of the Assistant Commissioner for Site Remediation & Waste Management (SRWM) to examine current practices and possible new directions for public participation. The Task Force met regularly and developed the recommendations below in consultation with SRWM management and with input from external stakeholders.

II. Overview

The Task Force recommendations fall into two main categories; regulatory changes and internal policy changes. Regulatory changes would be implemented through amendments to New Jersey's Technical Requirements for Site Remediation (NJAC 7:26E). Policy changes can be implemented upon approval.

Technical Requirements for Site Remediation would be modified to include certain public involvement activities at all sites. Proposed exemptions will be homeowner tank cases, Clean Up Star cases, and emergency response actions.

At any site, the person responsible for conducting the remediation, including 'at risk' and DEP-lead work, will be responsible for all Public Involvement Activities pursuant to the recommended changes to the Technical Requirements for Site Remediation. These recommendations further acknowledge that the amendments concerning enhanced public involvement will apply only to those cases that have not yet reached the stage of remediation identified in any changes.

The proposed policy changes, by definition, can be implemented without regulatory action, allowing immediate application upon approval. Standard Operating Procedures (SOPs) for internal operations are being developed to clarify roles for all programs affected by the implementation of these recommendations. The Office of Community Relations will work with program managers to create these.

Two issues, Immediate Environmental Concerns (IECs) and Legislation, are not addressed in this document.

The Task Force found that drinking water and private well IECs have an effective outreach mechanism involving a case team from the Office of Wellfield Remediation and Community Relations, with other support as needed. This and other IEC issues are still under review by the Task Force. The Task Force will provide guidance and recommend changes as necessary.

There is ongoing public interest in pursuing both state Technical Assistance Grants (TAGs) and Enhanced Public Participation in remedy selection. These issues require legislative changes. These interests will be the subject of follow-up discussions.

* Task Force members include: Anthony Findley, Mark Herzberg, Jereme Johnson, Mindy Mumford, Joan Olwaski-Steiner, James Pagano, George Schlosser, Ann Wolf, and Judy Shaw, chair. Other support was provided by Olivia Carpenter, Haven Wojciak and Karen Kloo. Marlen Dooley and George Klein served as chair for interim periods.

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Finally, the Task Force acknowledges that nothing in these recommendations prohibits the Department from conducting Public Involvement Activities at any site where the Department deems it is appropriate.

III. Regulatory Changes: Notification

The Task Force recommends the following notification changes which would take effect upon adoption of new regulations.

A. Mandatory Notification at the Remedial Investigation (RI) Phase

1. Abutting Property Owners and Tenants

- a) At the onset of the RI phase, parties implementing the cleanup must notify abutting property owners and tenants (DEP will notify on publicly funded sites).
- b) Consistency will be assured through a Model Letter "this site may or may not contain contaminants. It is therefore being investigated . . . if you wish further information contact . . ."
- c) A copy of the letter and the list of recipients must be submitted to the Case Manager, with copies to the health officer holding jurisdiction over the subject community

2. Identification/Mandatory Notification of Sensitive Populations

- a) At onset of RI, a "Sensitive Population CheckList" will require all parties to advise DEP of sensitive populations These include, but are not limited to:
 - 1) Residences within 200 feet¹ of the site boundary
 - 2) Schools and daycare centers within 200 feet of the site boundary
 - 3) Parks within 200 feet of the site boundary
 - 4) Surface water bodies within 200 feet of the site boundary
 - 5) Residential Well use areas
 - 6) Tier One Well-head protection areas
 - 7) Environmental Justice Petition Neighborhoods
- b) Notification will be required to the following parties when they are identified as Sensitive Population on the checklist:
 - 1) lead party in an Environmental Justice petition neighborhood (see EJ website or call EJ Office)
 - 2) administrators of schools and daycare centers within 200 feet of the property line, and
 - 3) municipal officials where site boundaries are within 200 feet of a park or abut a surface water body
- c) The checklist will be submitted to the Case Manager, with a copy to the Office of Community Relations (OCR).

3. Mandatory Public Notice for Sites with Off-Site Impacts

- a) When off-site impacts have been identified: In addition to notifying abutters and sensitive populations, the person responsible for conducting the remediation with off-site impacts will also be required to do "two-out-of-

¹ This distance, 200 feet, is consistent with common local zoning language for notification.

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three" notification: 1) post a notice² in the local paper of record, 2) host a public information session, or 3) post a sign on the property. DEP may approve alternatives that meet the intention of this notice.

- b) A report on "public notice for off-site impacts" must be submitted to the Case Manager, with a copy to the assigned Community Relations Manager.
- c) An exception to this will apply in the event that the off-site extent of contamination is only soil contamination on one adjoining property. In such an instance, only the affected property owner needs to be notified.

B. Mandatory Notification Prior to Initiation of Remedial Action

- 1. Parties responsible for implementing clean-up will notify a) abutting property owners and tenants, b) designated Health Officers and c) Municipal Clerks 45 days prior to initiation of the remedial action.
- 2. A copy of the letter and the list of recipients must be submitted to the Case Manager.

C. Mandatory Notification for Long-term Remedial Action Cases

- 1. When cases are undergoing a long-term remedial action (in excess of two years) the person responsible for conducting the remediation will notify abutting property-owners and tenants on the progress of the remediation after the first two years and every two years thereafter until the cleanup is completed. The two-year condition will begin with commencement of the implementation of the remedial action.
- 2. A copy of this notification and the list of recipients must be submitted to the Case Manager.

NOTE: At any site, the person responsible for conducting the remediation will conduct all Public Involvement Activities pursuant to these proposed changes to New Jersey's Technical Requirements for Site Remediation (NJAC 7:26E). At any site where the Department is performing a remediation, the Department will be responsible for all Public Involvement Activities. These recommended regulations will apply to parties pursuing remediation 'at risk' without or with limited oversight from SRWM, commencing from the point of remediation at time of adoption.

D. Solid Waste Cases

- 1. For required solid waste public hearings, requests for reduced or extended landfill post-closure care, in addition to the listing of legal notice (in the classified section); a display ad must be provided, preferably in the local news section of the paper of record.
- 2. Notice for solid waste public hearings posted in the local paper of record will also be sent to Health Officers and Township Clerks.

NOTE: This change applies to the Solid Waste Regulations (NJAC 7:26-2.4-13) and shall apply from the point of adoption as specified in the regulation.

IV. Regulatory Change: Expanded Public Participation through SRWM Petition

The Task Force recommends the following changes. These changes must be

² In addition to any required legal notices [in the classified section of the paper], this notice must also include a 'display size' ad of sufficient size to draw public attention preferably in the local news section of the area paper of record.

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accomplished through rulemaking.

- A. SRWM will adopt a petitioner process that requires additional levels of public outreach as described below. These petitions may be initiated at any stage of remediation or for any site under DEP oversight. Petitions will be addressed to the person responsible for conducting the remediation, with copies to the Case Manager and OCR. This will apply in cases when the person responsible for conducting the remediation receives:
 - 1. a petition with signatures of twenty-five or more residents or people employed within 1000 feet of the site, or
 - 2. a written request by a municipal official or health officer
- B. Petitions will be acknowledged by DEP and listed on the web
- C. For petition sites, the following additional levels of public outreach shall be offered to the petitioners by the person responsible for conducting the Remediation:
 - 1. posting of notice of intent to remediate, as described in § II, in the local paper of record
 - 2. hosting of a public information session, and
 - 3. establishment of a local information repository
- D. DEP may approve a request from the person responsible for conducting the remediation for alternatives to the above public outreach when those alternatives can be shown to meet the intention of this notice.
- E. Citizens interested in continued notification of the availability of information or reports will be offered the option to subscribe to a distribution list that will be kept by the person responsible for conducting the remediation. In addition to supplying copies to the DEP Case Manager, copies shall also be submitted to the Community Relations Manager assigned to the case.

V. Policy Changes: Enhanced Outreach and Education

The Task Force recommends the following changes which can be accomplished through changes in internal policies:

- A. Enhanced Public Access to Information
 - 1. Make the inventory of Known Contaminated Sites (the KSCL) dynamic in order to provide continuous updates to the data
 - 2. Improve NJEMS Tracking System data input and applications with a goal of public access
 - 3. Enhance SRWM website and other links across the program: Community Relations updates, lists of Solid Waste facilities, monthly calendars of events, links to related programs, etc.
 - 4. Post cases with assigned Community Relations staff on the SRWM website at www.state.nj.us/dep/srp/community/sites. To the extent possible, posted cases shall list contaminants of concern, extent of contamination, stage of the remediation process and Community Relations Contact
 - 5. Promote availability of SRWM Petition Process and Promote availability of information and assistance from SRWM: OCR public information programs (including workshops and meetings), public presentations, and informational sessions from other SRWM elements (e.g., Triad, I-Map, etc)

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6. Mail information and updates on site remediation activities through website, regular distribution of general Department of Environmental Protection information to interested parties
7. Create a SRWM Community ListServ including: a) how to get information on sites in their community, and b) how to learn more about specific sites
8. Host a web-forum to foster dialogue on key site remediation issues
9. Develop SRWM fact sheets and answers to Frequently Asked Questions (FAQs)
10. Initial calls to DEP for additional outreach/meetings will be directed to the OCR
11. Case Managers will request additional outreach/meetings by Community Relations as needed
12. OCR will work with local contacts to ensure that site specific outreach is conducted in the language appropriate to the neighborhood
13. The OCR website will be included in the department's Spanish language website, "*DEP en Español*"

B. Enhanced Communication with Municipal Officials

1. Ensure that current SRWM practices for copying local officials on major milestones are thorough and consistent throughout the program. In particular, No Further Action Letters shall be copied to municipal clerks, health officers and tax assessors.
2. DEP shall notify health officers (copy on existing letter to RP) when cases are reassigned or transferred internally.
3. DEP will develop on-going communications with health officers to keep them updated on major policy changes.
4. DEP will encourage education of local officials (clerks, permitting authorities and health officers) to ensure understanding on DEP cases.

C. State-Lead RCRA Sites

1. Public notice for final remedies at NJDEP-lead facilities, (at both individual SWMUs/AOCs for contaminated media and site wide remedies) will be posted by NJDEP's Office of Community Relations.
2. In cooperation with the Bureau of Case Management and the Division of Solid Waste and Hazardous Waste, at remedy selection and at other times as needed, public information sessions on these cases will be arranged by OCR.

D. Support and Coordinate with the NJDEP Environmental Justice Program (EJP)

1. SRWM is committed to working in conjunction with EJP in Environmental Justice Petition communities. In these communities, enhanced public outreach will be developed to address impacts from these sites.
2. SRWM, through the Office of Community Relations, will initiate educational outreach to communities of color and low-income in cooperation with NJIT and Rutgers.

VI. Related Issues

Electronic Format: Continue discussion on requirements that all remediation reports be submitted to NJDEP electronically. Any changes to how submittals are provided would require a regulatory change.