

Memorandum

Florida Department of Environmental Protection

To: Interested Parties

From: Mary Jean Yon, Director *MJY*
Division of Waste Management

Date: November 14, 2008

Subject: Guidance for Contamination Notification

Supersedes: December 21, 2007 Guidance and Procedures for Implementation of the
Statutory and Rule Notification Requirements for Discovery of Contamination
Beyond Property Boundaries

I. Introduction

There are three types of notification required by Florida statutes and Department rules to be performed by the Person Responsible for Site Rehabilitation (PRSR) or the School Board, as applicable:

- Initial Notice of Contamination Beyond Property Boundaries;
- Subsequent Notice of Contamination Beyond Source Property Boundaries for Establishment of a Temporary Point of Compliance (TPOC); and
- Notice of Requirements for Schools for discovery of contamination to teachers and parents or guardians of students by the district school board when contamination is discovered at certain school properties.

There are also two types of notification required by Florida statutes to be performed by the Department:

- Notice of Initial Discovery of Contamination to affected property owners; and
- Notice of Contamination at the Site of a School to the District School Board.

Section 376.30702, Florida Statutes (F.S.), and all of the Department's cleanup criteria rules (listed below with statutory references) require the PRSR to provide actual notice to the Department of Environmental Protection (Department) Division of Waste Management (DWM) within ten days of discovery of contamination beyond the boundaries of the property at which site rehabilitation was initiated. The PRSR is further required to provide copies of the initial notice to the appropriate Department District Office, the County Health Department, and to the lessees and tenants of the property at which site rehabilitation was initiated. The statute requires the Department to provide actual notice to the owners of properties at which contamination has been discovered and to the applicable District School Board if the property at which contamination was discovered is the site of a school as defined in section 1003.01, F.S., regardless of whether the school property is the site at which site rehabilitation was initiated.

This guidance details the actions that are necessary for a PRSR to take to comply with these statutory and rule requirements. It also outlines additional steps that the Department will take when it is acting as the PRSR at state-funded cleanup sites, including providing

notice of contamination to certain persons and government entities beyond what is statutorily required. This guidance also clarifies that the requirement for notification of property owners affected by establishment of a TPOC applies not only at contaminated sites undergoing natural attenuation monitoring, but also at sites undergoing active remediation authorized pursuant to any cleanup criteria rule.

Revisions that incorporate the latest statutory requirements into each of the four cleanup criteria rules became effective on December 27, 2007. The rules are listed below and copies are available on the DWM web site at http://www.dep.state.fl.us/waste/quick_topics/rules/default.htm.

- Chapter 62-770, F.A.C. - Petroleum Contamination Site Cleanup Criteria [s. 376.3071(5), F.S.]
- Chapter 62-780, F.A.C. - Contaminated Site Cleanup Criteria [s. 376.30701(2), F.S.]
- Chapter 62-782, F.A.C. - Drycleaning Solvent Cleanup Criteria [s. 376.3078(4), F.S.]
- Chapter 62-785, F.A.C. - Brownfields Cleanup Criteria [s. 376.81(1), F.S.]

Copies of this guidance document and a list of Department responses to frequently asked questions, as well as the templated contaminant data tables and the TPOC form letters referenced herein, are available at the Public Notification of the Discovery of Contamination section of the DWM web site at <http://www.dep.state.fl.us/waste/misc/notification/default.htm>.

II. Rule Requirements for Initial Notice of Contamination Beyond Property Boundaries with Additional Guidance for State-Funded Cleanups

A. Initial Notice of Contamination Beyond Property Boundaries

Contamination, as defined in section .200 of each cleanup criteria rule, may occur in any medium, including groundwater, surface water, soil and sediment. For discovery and initial notification purposes, evidence of contamination beyond property boundaries must be documented with laboratory analytical results that comply with appropriate quality assurance protocols for each property to be notified. Except as described in section VI.A. below for active State-funded cleanup sites, initial notification is not required for suspected contamination such as when a contaminant plume may be inferred to have crossed a property boundary by extrapolation of laboratory analytical results from a nearby property.

Notification of suspected contamination is not required for non-State-funded cleanup sites. However, the Department will issue notices for properties with suspected contamination if requested to do so by the PRSR or its agent based on the same criteria used for expanded noticing outlined in section VI.A. (either a plume map signed and sealed by a Florida-licensed P.G. or P.E. or within a 250 foot radius of a confirmed contaminated sample location).

Section .220 of each of the four Department cleanup criteria rules cited above includes similar provisions for "Initial Notice of Contamination Beyond Property Boundaries."

Each rule requires the PRSR, its agent or other representative to provide actual notice to the Department's DWM at the address listed below by "Certified Mail, Return Receipt Requested" within 10 days of discovery of contamination beyond the boundaries of the property at which site rehabilitation was initiated.

**Division of Waste Management
Florida Department of Environmental Protection
2600 Blair Stone Road, Mail Station 4500
Tallahassee, Florida 32399-2400**

The rules also require that a copy of the initial notice package containing the information required by section .220 or each cleanup criteria rule be simultaneously mailed (first-class US mail is acceptable) to the appropriate Department District Office, the County Health Department¹ and all known lessees and tenants of the property at which site rehabilitation was initiated. However, the copies sent to the lessees and tenants of the property at which site rehabilitation was initiated are not required to include the list of record owners of properties at which contamination has been discovered or the related contact and parcel information outlined in section II.A.2. below.

Notification must be provided using the "Initial Notice of Contamination Beyond Property Boundaries" Form listed in section .900 of each rule and include the following:

1. The location of the property at which site rehabilitation was initiated and contact information for the PRSR, its agents or representatives;
2. A list of all record owners of real properties (RPOs) at which contamination has been discovered, their address (as listed in the County Property Tax Office records) and phone number, and the property parcel identification number;
3. Separate tables by medium that list sample locations and dates; names of contaminants detected above cleanup target levels (CTLs) and their corresponding CTLs; contaminant concentrations; and whether the CTL is based on health, nuisance, organoleptic or aesthetic concerns. The Department has created two spreadsheet templates, one for petroleum contaminants and one for non-petroleum contaminants, which are available on the Public Notification of the Discovery of Contamination section of the DWM web site cited above. Each spreadsheet includes tables for properties with confirmed as well as suspected contamination. These spreadsheets should be used to satisfy the initial notification requirements for tabular data; and
4. A vicinity map that shows all of the sampling locations, the date of sample collection, the boundaries of the property at which site rehabilitation was initiated and the properties at which contamination has been discovered. Parcel maps showing property boundaries are available from most county property appraiser's web sites, a list of which can be found at <http://www.myflorida.com/dor/property/appraisers.html>.

¹ Information about County Health Departments is available at <http://www.doh.state.fl.us/chdsitelist.htm>

B. Additional Guidance Regarding State-Funded Cleanup Sites

1. Department site managers, when in the role of PRSR during active State-funded cleanup, must ensure that a copy of the initial notice package is mailed to the appropriate Department District Office and County Health Department, and to all known lessees and tenants of the property at which site rehabilitation was initiated. The copy to the lessees and tenants must exclude the information listed in section II.A.2. above [page two of the Initial Notice of Contamination Beyond Property Boundaries Form in section .900 of each cleanup criteria rule];
2. For active State-funded cleanup sites, the Department will perform notification as required of the PRSR. However, if a person conducts voluntary site rehabilitation ahead of the Department's priority funding authorization, or if the Department ceases to conduct the site rehabilitation because a Petroleum Cleanup Program funding cap is reached, then the Department is no longer the PRSR and all notification requirements shall be assumed by the new PRSR;
3. Although not required by statute or rule, for active State-funded cleanup sites, the Department will also perform expanded notice to nearby residents, tenants and non-occupant RPOs as described in section VI; and
4. Inactive eligible State-funded cleanup sites are not subject to the notification requirements while waiting for availability of State funding in priority order since these sites do not meet the applicability criteria found in s. 376.30702, F.S. (i.e., site rehabilitation is not currently being conducted at these sites pursuant to one of the four programs' cleanup criteria statutes).

III. Rule Requirements for Subsequent Notice of Contamination Beyond Source Property Boundaries for Establishment of a Temporary Point of Compliance (TPOC)

Sections .690 and .700 of each cleanup criteria rule require Department approval for establishment of a TPOC when contamination extends beyond the boundary of the source property during the course of natural attenuation monitoring or active remediation. At this stage in the cleanup, the extent of contamination has been well defined. Therefore, TPOC notices are sent for all properties into which contamination has migrated. The affected properties include those confirmed with laboratory data to be contaminated above CTLs as well as those suspected to be contaminated above CTLs based on a contaminant plume map from a technical report that has been signed and sealed by a Florida-licensed P.G. or P.E.

Prior to the Department approving a TPOC that extends beyond the source property boundary, the PRSR must provide actual notice to the County Health Department and all RPOs of any real property into which the point of compliance is allowed to extend, and the PRSR must provide copies of such notices to the Department as proof of compliance. These notices shall include the following information:

- A. The proposed agency action;

- B. The location of the subject site;
- C. The name and address of the PRSR;
- D. The location of relevant documents concerning the site and the proposed remedial strategy;
- E. The name and address of the Department or Contracted or Delegated Local Program Site Manager; and
- F. A paragraph including the statement: "Persons receiving this notice shall have the opportunity to comment on the Department's proposed action within 30 days of receipt of the notice."

Department staff and local government contractors or delegates responsible for review and approval of natural attenuation monitoring or remedial action plans for sites with contamination extending beyond the boundaries of the source property should remind the PRSRs and/or cleanup contractors of these TPOC notification requirements early in the process and require them to submit copies of the notices.

Note that the Bureau of Petroleum Storage Systems has created three sets of form letters that can be used for TPOC notification pertaining to petroleum contamination sites that are available on the Public Notification of the Discovery of Contamination section of the DWM web site. Each set (State-Funded Program Sites, District Lead Non-Program Sites, and Contracted Local Program Non-Program Sites) includes a standard TPOC notice format for a Remedial Action Plan (RAP), a Remedial Action Modification Plan (RAP Mod) and a Natural Attenuation Monitoring (NAM) Plan. These form letters may also be modified for non-petroleum contamination sites.

In addition to the actual notice requirements described above, there are also constructive notice requirements that apply to non-petroleum contaminated sites utilizing a TPOC². The PRSR must give constructive notice to residents (if different from the real property owners who receive actual notice) and business tenants of any real property into which the point of compliance is allowed to extend. The rule provisions describe the details of this type of notice, which is accomplished by a one-time newspaper publication, but it provides the same information as the actual notice including the 30-day comment period. The PRSR must also provide a copy of the notice to the Department as proof of compliance with this requirement.

Finally, there is a requirement in all four cleanup criteria rules for the PRSR to provide an additional notice associated with a TPOC once every five years concerning the status of site rehabilitation to the same classes of persons who received the first TPOC, unless in the intervening time such persons have been informed that the contamination no longer affects their property.

² This constructive notice requirement does not apply to petroleum sites and is not included in Chapter 62-770, F.A.C., because the cleanup criteria statute for petroleum sites does not contain this provision (see s. 376.3071, F.S.).

IV. Rule Requirements for Contaminated School Properties

If the property at which contamination has been discovered is the site of a school as defined in section 1003.01, F.S. (this includes K-12 public schools, charter schools and schools that include McKay scholarship students), regardless of whether the school property is where the contamination originated or contamination migrated to the school property from another property, then the Department will notify the chair of the school board of the district in which the property is located that the school board is required to take action. The school board must provide actual notice of the contamination to teachers and parents or guardians of students attending the school during the period of site rehabilitation. Such notice is due within 30 days of discovery or receipt of notification from the Department, whichever is earlier.

The notices from the school board to teachers and parents or guardians of students must include the same information as the "Initial Notice of the Discovery of Contamination". The school board of the district in which the property is located must continue to provide such actual notice of the contamination at least annually during the period of site rehabilitation to teachers and parents or guardians of students attending the school, updated as appropriate. A representative copy of all notices must be submitted to the Department at the time the notice is provided to the teachers and parents or guardians.

V. Department's Statutory Notice Responsibilities

Section 376.30702, F.S., (effective September 1, 2005) sets forth contamination notification requirements. These statutory requirements have been incorporated into the Department's cleanup criteria rules, with the exception of the "Department's Notice Responsibilities" outlined below:

- A. The Department must provide a copy (regular mail is acceptable) of the "Initial Notice of Contamination Beyond Property Boundaries," or an equivalent notification, to all RPOs of property at which contamination has been discovered within 30 days of receiving the actual notice from the PRSR;
- B. If the property at which contamination has been discovered is the site of a school as defined in section 1003.01, F.S., (this includes K-12 public schools, charter schools and schools that include McKay scholarship students) the Department shall also send a copy of the notice to the chair of the school board of the district in which the property is located and direct that school board to provide actual notice to teachers and parents or guardians of students attending the school during the period of site rehabilitation. The Department shall include with this notice a letter identifying sources of additional information about the contamination and a telephone number to which further inquiries should be directed; and
- C. The Department may collaborate with the Department of Health (DOH) to develop such sources of information and to establish procedures for responding to public inquiries about health risks associated with contaminated sites.

VI. Expanded Notification for State-Funded Sites When the Department Acts as PRSR

Current law and rule requirements for initial notification are limited to the RPO of the site where confirmed contamination is discovered and associated notification of the lessees and tenants of the property at which site rehabilitation was initiated. However, RPOs, lessees and tenants of properties with suspected but not confirmed contamination or properties that are close to the location of a confirmed contaminated sample are not required to be given notice.

In addition to notifying the RPO of a site where laboratory analytical results that comply with appropriate quality assurance protocols indicate the presence of contamination, the Department will provide expanded initial notice of contamination by first-class US mail or hand delivery to the "current resident or tenant and non-occupant RPO" of:

- A. All properties that are suspected to be contaminated above CTLs in any medium based on a contaminant plume map that has been signed and sealed by a Florida-licensed P.G. or P.E.; or
- B. If a contaminant plume map is not yet available, all properties within a 250-foot radius of the location of such analytical results for groundwater or surface water samples; but not for soil or sediment samples.

If expanded initial notice of contamination is being performed at a single property that comprises multiple buildings or units, such as an apartment complex, office complex or retail center, only the current residents or tenants and non-occupant RPOs of those buildings (or units within buildings) that fall within a 250-foot radius of the confirmed sample location must be provided expanded initial notice, unless the site manager determines that site-specific circumstances warrant providing notice to the entire complex.

It is preferred that expanded initial notice be provided for a site based on a plume map signed and sealed by a Florida-licensed P.G. or P.E. However, if no such plume map has yet been created for an active site, the Division Administrative Services Contractor will provide expanded notice for properties that are within a 250-foot radius of the confirmed sample location as described in the above paragraph on a "go forward" basis using current data for the site. Site managers are not required to revisit sites for which prior initial notice of discovery of contamination was performed unless additional confirmed contaminated properties or contaminants are discovered, or new suspected contaminated properties or contaminants are identified in a plume map. In those cases additional expanded initial noticing in accordance with this section would be warranted based on the new information only.

In most cases, no more than one "initial" notice per affected property should be necessary in association with a contaminated site. Additional notification should be provided in association with the establishment of a TPOC after completion of the site assessment. However, if for some reason a TPOC has not been established or a site

has not received an SRCO within five years of the date of the initial notice, then the Department acting as the PRSR on a state-funded site must update the notice in the same manner as required by this guidance.

VII. Expanded Notification for Sites Managed by a Non-Department PRSR

District and contracted or delegated local program staff are encouraged to be familiar with the communities around the contaminated sites that they manage at which a PRSR other than the Department is conducting site rehabilitation. If a site manager anticipates the need to provide expanded notice to a community that may have exceptional interest in contamination information, the site manager should recommend that the non-Department PRSR provide expanded notice. If the PRSR refuses to do so, the District Director should be consulted about whether the Department should provide expanded notice in accordance with the guidance in Section VI.

VIII. Additional Notice for Schools

Under current law, the Department's school notice requirements are triggered by confirmed contamination discovered on property that is the site of a school as defined in s. 1003.01, F.S. This definition includes public schools as discussed in Section IV. Under expanded notice, if the property at which confirmed contamination has been discovered is the site of a private school serving grades K-12, the Department will send a copy of the notice by first-class US mail to the governing board, principal or owner of the school and recommend that the entity provide notice to teachers and parents or guardians of students attending the school during the period of site rehabilitation.

In addition, for public and private schools, if contamination is not yet confirmed but is suspected to exist on the school property based on a signed and sealed plume map, the Department will send the information via first-class US mail to the chair of the school board of the district in which the public school is located or to the governing board, principal or owner of the private school and recommend that the entity provide notice to teachers and parents or guardians of students attending the school during the period of site rehabilitation.

The Department will not encourage that notice be provided to teachers and parents or guardians based on a school being within a 250-foot radius of a confirmed sample location. In such cases, further notice to teachers and parents or guardians will either be required after a confirmed sample is obtained from the school property or recommended after a signed and sealed plume map is produced by a Florida-licensed P.G. or P.E.

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For more information, please review the attached list of Frequently Asked Questions and the Department's responses. If you have additional questions, please contact either Charles Williams in the Bureau of Petroleum Storage Systems at 850/245-8863 or Brian Dougherty in the Bureau of Waste Cleanup at 850/245-7503.

MJY/cw

Attachment: Notification of the Discovery of Contamination - FAQ's

cc: DEP State Cleanup Contractors for the BPSS and BWC
DEP District Waste Management Staff
Contracted or Delegated Local Program Cleanup Staff