

Contamination Notification Frequently Asked Questions

November 14, 2008

Question 1: What are the most significant changes between the new November 2008 and the prior December 2007 versions of the Contamination Notification Guidance?

Answer: The main changes are in section VI., VII. and VIII. of the guidance that address “Expanded Notification” beyond that required by statute and rule as follows.

- A. For State-funded cleanup sites where the Department is acting as the Person Responsible for Site Rehabilitation (PRSR):
1. Initial notification of discovery of contamination for sites “suspected” to be contaminated based on a plume map signed and sealed by a Florida licensed P.G. or P.E. has been expanded to include the residents and tenants of affected properties. Real property owners (RPOs) will continue to be noticed if their mailing address is different from that of the resident or tenant (i.e., non-occupant RPOs);
 2. Initial notification of discovery of contamination for sites “suspected” to be contaminated when a qualifying plume map has not yet been created has been expanded to include the residents, tenants and non-occupant RPOs of properties that are within a 250-foot radius of a confirmed contaminated sample location for groundwater and surface water samples only, but not soil and sediment samples;
 3. A requirement for updated notification based on the same procedures in the guidance has been added if five years has elapsed since the date of the initial notification and the State-funded cleanup site has not had a Temporary Point of Compliance (TPOC) established (with associated TPOC noticing) or received a Site Rehabilitation Completion Order (SRCO); and

- B. For sites managed by a non-Department PRSR:

If a site manager anticipates the need to provide expanded notice to a community that may have exceptional interest in contamination information, they may recommend that the non-Department PRSR provide expanded notice and if that PRSR does not do so, the Department’s District Director should be consulted about whether the Department should provide expanded notice in accordance with section VI of the guidance.

- C. For school sites:

Special notification to the school board when the contaminated property is the site of a school as defined in s. 1003.01, F.S., (this includes K-12 public schools, charter schools and schools that include McKay scholarship students) has been expanded to include private schools serving grades K-12. This notice will also be sent based on a signed and sealed plume map.

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Question 2: Who is responsible for submitting the Initial Notice of Contamination Beyond Property Boundaries for those sites at which the State or State-funded cleanup contractor is conducting the site rehabilitation activities?

Answer: The Department will perform the noticing functions of the PRSR for State-lead sites under active site rehabilitation using State funds, including expanded notice. Though some program areas may reserve this function for DEP staff only, the DEP site manager may negotiate reasonable compensation for the State Cleanup Contractor or designated Preapproval Contractor to compile the information and prepare the Initial Notice of Contamination Beyond Property Boundaries Form, provided the required timeframes are not exceeded. In such cases the DEP site manager should sign the Initial Notice of Contamination Beyond Property Boundaries Form. The Petroleum Cleanup Preapproval Program has created a template for this activity that may be authorized by verbal change order upon initial discovery of contamination beyond the boundaries of the property at which site rehabilitation was initiated.

However, if the eligible site is not currently funded due to low priority and the PRSR is voluntarily proceeding with site rehabilitation pursuant to the applicable cleanup criteria rule, then the PRSR would be responsible for any initial notifications to the Department, the county health department, and the tenants and lessees of the source property, as well as notifications to the owners of impacted property regarding the establishment of a TPOC as required by rule. The same would be true if a petroleum program site has exhausted the funding cap and the PRSR is required to proceed with cleanup at their own expense.

Question 3: How is noticing handled for sites that are eligible for State-funded cleanup, but currently not of sufficient priority for funding approval?

Answer: 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). Therefore, sites eligible for State-cleanup funding that are not within funding range or not otherwise approved for funding are not required to comply with the notification requirements until such funding becomes available. However, as stated above, if the responsible party for an eligible site below funding range chooses to voluntarily proceed with site rehabilitation, they will assume the PRSR role and will be subject to the notification requirements.

Question 4: Section 62-770.160(4), F.A.C., (petroleum) says that real property owners of sites where active remediation or monitoring are being performed in accordance with a Remedial Action Plan (RAP), Monitoring Only Plan (MOP), Natural Attenuation Monitoring Plan (NAMP) or Risk Assessment approval order may voluntarily elect to complete the cleanup based on the version of the rule in effect at the time the order was issued. In such a case, if the order was issued prior to the initial noticing requirements in the rule (effective April 17, 2005), would those requirements apply?

Answer: The Section 62-770.160(4), F.A.C., provision would not apply to provide an exemption from the notification requirements as it does to other rule requirements because section 376.30702, F.S., (effective September 1, 2005) does not contain such grandfathering

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provisions. Therefore, PRSRs for sites continuing with site rehabilitation initiated under a DEP Order issued prior to April 17, 2005, are subject to the noticing requirements.

Question 5: The revised noticing guidance includes two types of “expanded notification” for active State-funded cleanup sites suspected to have contamination. One of these includes properties within a 250-foot radius of a confirmed contaminated sample location. Is the site manager expected to identify these properties and the addresses of each resident or tenant?

Answer: No, while site managers will continue to identify the specific properties affected based on confirmed samples and qualifying plume maps when available, a decision has been made to have the Division of Waste Management Administrative Services Contractor identify the suspected properties within the 250-foot radius of confirmed groundwater and surface water sample locations, as well as the associated addresses for residents, tenants and non-occupant RPOs. The Administrative Services Contractor will provide this service for petroleum and non-petroleum sites.

Question 6: If contamination is documented at the edge of the boundary of the property at which site rehabilitation was initiated and it appears obvious that contamination exceeding Chapter 62-777, F.A.C., cleanup target levels (CTLs) is present on the adjacent property, but there is no analytical sample from that property or technical report which includes part of that property within the inferred boundary of the contaminant plume, should that adjacent property be included in the “Initial” notice of contamination submitted to the Department?

Answer: No.

Question 7: If part or all of a property is within the inferred boundary of a contaminant plume map showing exceedances of CTLs in a technical report signed and sealed by a Florida-licensed PG or PE, but there is no analytical sample from that property confirming the contamination, is that property required to be included in the “Initial” notice of contamination submitted to the Department?

Answer: There are two options:

- A. Active State-Funded Cleanups – Yes, if that property was not previously included in the expanded initial noticing based on a 250-foot radius to a confirmed sample location as described in the November 14, 2008 Guidance for Contamination Notification.
- B. Non-State-Funded Cleanups – No, the statutes and rules governing “Initial Notice of Contamination Beyond Property Boundaries” specify that such contamination be documented with laboratory analytical samples under appropriate quality assurance protocols. Therefore, such a “suspected” but not confirmed property is not required to be included. However, if the PRSR or their agent voluntarily includes information in their “initial” contamination noticing package regarding such “suspected” properties or for properties within a 250-foot radius of a confirmed sample location, then the properties will be included in the notification letters to the property owners with alternate “suspected” language after confirmation that the PRSR understands that they are not required to provide this notice by statute and rule, but wish to do so anyway.

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Question 8: As a licensed professional, I feel that I have a responsibility to notify the owner of “suspected” properties based on the evidence available. Why is the DEP not requiring notification for “suspected” sites?

Answer: The DEP is requiring that “suspected” properties be included in the initial contamination noticing for active State-funded cleanup sites (based on a signed and sealed plume map or if the “suspected” property is within a 250-foot radius of a confirmed groundwater or surface water sample location) where the DEP is acting as the PRSR. The DEP is also granting the option for other PRSRs to include suspected properties in their initial notice packages. However, the provisions for “Initial Notice of Contamination Beyond Property Boundaries” in the rule and statute only require noticing for properties with actual samples and laboratory analytical tests.

Question 9: Should an “initial” notice be submitted if the contaminated groundwater sample is taken from a temporary monitoring well or direct push sampler?

Answer: Yes, assuming all other criteria are met, the governing statute and rules do not make any distinction regarding the temporary or permanent status of the sample location.

Question 10: Can roadway and railroad right of ways (ROWs) be considered affected properties to be noticed, and how are they addressed for noticing?

Answer: Yes, virtually every public roadway is associated with a “right of way.” ROWs for public roads are typically owned by the state, county or local municipality, though in a few cases there may be a dedicated transportation easement rather than direct ownership. Railroad, electric and utility companies also own or hold easements upon properties along rails, high power transmission lines and gas pipelines. ROWs should be considered as separate properties and, for the purpose of initial and TPOC noticing, it is important to provide notice to the owner of the property.

The ROW boundaries and specific ownership records are not necessarily available on the county property appraiser’s web sites and it may be prudent to consult the specific State, county or municipal road department for confirmation. As a rule of thumb, for roadways, if the specific ROW boundary cannot otherwise be determined, it is presumed that the ROW property includes the area encompassed by the curb, gutter, sidewalk, utility poles, wires and pipes, as well as any storm water drains, manholes, swales and ponds and may be owned by the entity matching the road type (i.e. State for State roads and highways, county for county roads, and city or township for local roads within city limits).

Question 11: If a particular site at which site rehabilitation was initiated has already had an “Initial Notice of Contamination Beyond Property Boundaries” submitted to the Department or was included in the Department’s prior “Backlog” noticing efforts, would there ever be a need to submit additional “Initial” notifications for that site?

Answer: Yes. Notification must be submitted if a new property is discovered to be contaminated or if new contaminants are detected above CTLs that were not part of the previous notice for any property originally noticed. In addition, if the prior notice was for “suspected” contamination and “confirmed” data is now available for the same property, then an

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initial notice package should be submitted to the DEP. The DEP initial notice letters for these cases have special language referring to the fact that a previous notice was issued based on suspected data, which is now confirmed, or that a previous notice was for other contaminants at the same property.

In addition, the revised guidance for expanded noticing at active State-funded cleanup sites where the Department is acting as the PRSR requires additional updated notification within five years of the date of the initial notice if a TPOC has not been established for a site or a site has not received an SRCO.

Additional notification is not required for:

- A. A change in concentrations of previously noticed contaminants (up or down);
- B. A suspected property based on a signed and sealed plume map if previously noticed based on a 250-foot radius to a confirmed sample location;
- C. An expanded notice based on a 250-foot radius to a confirmed sample location if previously noticed based on a signed and sealed plume map; or
- D. A site that reaches site rehabilitation completion status.

Also, note that the TPOC notice may apply to a particular property even if that property was already the subject of an “initial” notice.

Question 12: Are the requirements different for the “Initial Notice of Contamination Beyond Property Boundaries” and “Subsequent Notice of Contamination Beyond Source Property Boundaries for Establishment of a Temporary Point of Compliance (TPOC)?”

Answer: Yes, with the exception for State-funded cleanup activities previously outlined in the answer to question #7, “Initial Notice of Contamination Beyond Property Boundaries” is only required by the governing statute and rule if contamination beyond the boundaries of the property at which site rehabilitation was initiated is documented with laboratory analytical samples under appropriate quality assurance protocols. However, notification for properties within the proposed TPOC should include all impacted properties located within the contaminant CTL plume maps included in the signed and sealed technical reports. We rely on the plume maps to determine who gets TPOC notice because at this stage, even if there are no analytical results from a sample taken on the specific property, the site assessment has been completed and the source(s) and extent of contamination have been confirmed with a greater degree of certainty.

Question 13: Who is required to prepare and send the “Initial” and “TPOC” notices to the affected property owners?

Answer: All “Initial” notice of contamination information packages should be submitted by the PRSRs or their agents to the DEP Division of Waste Management. All of these packages, including those submitted by the site manager for active State-funded sites, are currently being

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assigned to the Division's Administrative Services Contractor for verification of property ownership, processing and preparation of the actual notices for mail out by the DEP to the affected property owners following DEP staff review and approval.

However, the statutes and rules also require the PRSR or their agent to send a copy of the initial notice package to the applicable DEP District Office and County Health Department, as well as to the tenants and lessees of the property at which site rehabilitation was initiated. However, the latter notice does not include the list of owners and parcel numbers of all the properties at which contamination has been discovered. For State-funded cleanups, the DEP site manager will send these additional copies at the same time they submit the initial notice package to the DWM.

TPOC notices to affected property owners are to be sent by the PRSR's or their agents and a copy sent to the DEP prior to RAP or NAM approval. However, for active State-lead sites where the Department is performing this PRSR function, the site manager is responsible for ensuring that the TPOC notices are sent, though they may negotiate reasonable compensation for State Cleanup or Preapproval Contractor to compile the information and send the actual notices, provided the required timeframes are not exceeded.

Question 14: Would the PRSR ever have to send a notice to the school board for contaminated school sites or will the DEP handle all of the notices involving schools?

Answer: As stated above, for the "Initial" notices of contamination, the DEP Division of Waste Management will be the entity notifying the school board in accordance with the governing statute. However, for TPOC notices when the cleanup is not being handled by a State or Preapproval contractor, the PRSR would be required to send a TPOC notice to the school board if they were the record owner of an impacted property within the area covered by the TPOC.

Question 15: The cleanup criteria rules require that the school board continue to provide actual notice, updated as appropriate, regarding contamination at a school property to the teachers and parents or guardians of the students at least annually during the period of site rehabilitation. Does this mean that the DEP will be providing updated notices to the school board at least annually?

Answer: No, when DEP sends the initial notice of contamination to the school board, it will identify sources of additional information about the contamination and a telephone number to which further inquiries should be directed. It is the school board's responsibility to follow up on the status of the cleanup and most recent contamination data, though the DEP will provide information upon request.

Question 16: Which schools will be subject to special notice of initial discovery of contamination from the DEP?

Answer: There are three categories of special school notices that the DEP will send:

- A. Properties at which confirmed contamination is discovered that are the site of a school as defined in section 1003.01, F.S., will be subject to notice directing the school board to notify

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teachers and parents or guardians of students in accordance with the governing statute and cleanup criteria rule. The definition of a school in section 1003.01, F.S., includes K-12 public schools, charter schools and schools that include McKay scholarship students. These notices will be the same for all such school sites regardless of the PRSR or cleanup funding source;

- B. Properties at which confirmed contamination is discovered that are the site of private schools serving grades K-12 will be subject to modified notice recommending that the governing board, principal or owner notify teachers and parents or guardians of students in accordance with the governing statute and cleanup criteria rule;
- C. Properties at which contamination is suspected based on a signed and sealed plume map that are the site of a school as defined in section 1003.01, F.S, or a private school serving grades K-12 will be subject to modified notice recommending that the school board or, for private schools, the governing board, principal or owner notify teachers and parents or guardians of students of the suspected contamination.

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 may 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 registered professional.

Question 17: How is noticing affected in cases where the DEP approves a request for alternate procedures to implement remedial action prior to completion of the site assessment pursuant to section 62-770.890, F.A.C.?

Answer: Such a scenario would not change the standard procedure for the initial notice of contamination, which should occur upon first discovery of contamination beyond the boundaries of the property at which site rehabilitation was initiated regardless of the cleanup phase or activity. However, the timing of any subsequent TPOC noticing will depend on the circumstances and should be confirmed at the time of review of a request for approval of alternative procedures.

If limited interim remedial action is proposed as an alternative procedure and the proposed action will not require an NPDES discharge, underground injection control or air emissions permit, and there is an expectation that a RAP for additional remediation measures will be submitted at a later date, then the DEP will typically not require TPOC noticing prior to implementation of the approved interim remedial action. Any required TPOC noticing could be addressed at a later date prior to that RAP approval.

If the proposed interim remedial action does require an NPDES discharge, underground injection control or air emissions permit, the DEP will still require a RAP prior to implementation (in addition to the alternate procedures request) with sufficient information to support a formal RAP approval which will also satisfy the permitting requirements for these processes. In this case, any required TPOC noticing should be conducted prior to the RAP approval.

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If the remedial actions proposed in the alternate procedures request are intended to comprise the entire cleanup and there is not an expectation that a RAP for additional remediation measures will be submitted at a later date, then the DEP typically will require TPOC noticing prior to implementation of the approved interim remedial action.

In all of these scenarios, if additional properties are found to be contaminated at a later date but prior to completion of the cleanup or natural attenuation program, then initial notices of contamination and TPOC notices should be sent at the time that the contamination information becomes available.

Question 18: Is there an exemption from the noticing requirements for State-funded cleanup sites with a Performance Based Cleanup (PBC) Agreement?

Answer: No, PBC sites must adhere to all noticing requirements.

Question 19: Are there any exceptions to the 30-day comment period referenced in the TPOC notices?

Answer: All TPOC notices must include a reference to the 30-day comment period. However, for petroleum contaminated sites being cleaned up pursuant to Chapter 62-770, F.A.C., if the PRSR can provide to the DEP written evidence from the County Health Department and all property owners to which the TPOC notices were sent that they have no objections to the cleanup strategy proposed in the RAP (or RAP Modification), then the RAP or RAP Modification may be issued prior to the expiration of the 30-day period. For non-petroleum sites being cleaned up pursuant to Chapters 62-780, 62-782 or 62-785, F.A.C., there are additional constructive notice requirements for residents (if different from the RPO) and business tenants. The governing statute specifies constructive notice, and the referenced rules specify notice by newspaper; however, PRSRs may opt to go above and beyond the rule requirement by providing actual notice by letter mailed “Certified Mail, Return Receipt Requested.” If a PRSR elects this option and can provide to the DEP written evidence from the residents and business tenants to which the actual TPOC notice letters were sent, as well as the County Health Department and the property owners who also receive actual TPOC notice letters, that they have no objections to the cleanup strategy proposed in the RAP (or RAP Modification), then the RAP or RAP Modification may be issued prior to the expiration of the 30-day period. In either case, whether dealing with a petroleum or non-petroleum site, this would only be appropriate when there are just a few affected properties and when there is a compelling reason to initiate cleanup as soon as possible.