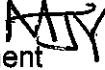


# Memorandum

# Florida Department of Environmental Protection

To: Interested Parties

From: Mary Jean Yon, Director   
Division of Waste Management

Date: December 21, 2007

Subject: Guidance and Procedures for Implementation of the Statutory and Rule  
Notification Requirements for Discovery of Contamination Beyond Property  
Boundaries

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## I. Introduction

Department rules require the Person Responsible for Site Rehabilitation (PRSR) to provide actual notice to the Department of Environmental Protection (DEP) and the Department of Health (DOH) upon 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 lessees and tenants of the property at which site rehabilitation was initiated. These rules require 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 site at which contamination was discovered is the site of a school as defined in section 1003.01, Florida Statutes (F.S.).

The purpose of this memo is to provide guidance and procedures that must be followed in order to comply with these rule requirements. This guidance also clarifies that the requirement for notification of off-site property owners affected by establishment of a temporary point of compliance (TPOC) applies not only at sites undergoing natural attenuation monitoring but also at sites undergoing active remediation authorized pursuant to Chapters 62-770, 62-780, 62-782 or 62-785, Florida Administrative Code (F.A.C.).

Revisions that incorporate the latest statutory requirements into each of the four contamination cleanup rules will become effective on December 27, 2007. The rules are listed below and copies of the current versions are available on the Division of Waste Management (DWM) web site at [http://www.dep.state.fl.us/waste/quick\\_topics/rules/default.htm](http://www.dep.state.fl.us/waste/quick_topics/rules/default.htm). The updated versions with the most recent changes will be available after the effective date.

- **Chapter 62-770, F.A.C. - Petroleum Contamination Site Cleanup Criteria;**
- **Chapter 62-780, F.A.C. - Contaminated Site Cleanup Criteria;**
- **Chapter 62-782, F.A.C. - Drycleaning Solvent Cleanup Criteria; and**
- **Chapter 62-785, F.A.C. - Brownfields Cleanup Criteria.**

There are two types of notification addressed in these DEP rules: "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)."

There are also a few special considerations for sites that are eligible for State-funded cleanup:

- A. For "active" State-funded cleanup sites, the Department shall perform notification actions required of the PRSR. However, if the Department ceases to conduct the site rehabilitation because the funding cap is reached, or if the responsible party conducts voluntary site rehabilitation ahead of the Department's priority funding authorization, then the notification requirements shall be assumed by the PRSR;
- B. Inactive eligible State-funded cleanup sites are not required to conduct notification while waiting for availability of State funding in priority order;
- C. Initial contamination notification for sites undergoing active State-funded cleanup must include properties that are "suspected" of having contamination above cleanup target levels if they are within the boundaries of a signed and sealed contaminant plume map. Notification for non-State-funded cleanup activities is not required to include "suspected" properties, but the Department will issue "suspected" notices for such properties if requested in the package submitted by the PRSR or its agent; and
- D. 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. This last copy must exclude the list of off-site property owners and related contact and parcel information.

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. Contamination Cleanup Rule Notification Provisions**

### **A. Initial Notice of Contamination Beyond Property Boundaries.**

Section 220 of each of the four Department cleanup rules cited above includes similar provisions for "Initial Notice of Contamination Beyond Property Boundaries." It requires the PRSR, its agent or other representative to provide actual notice to the Department's Division of Waste Management 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 a site investigation 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 be simultaneously mailed to the appropriate Department District Office, the County Health Department 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 impacted off-site properties or the related contact and parcel information outlined in paragraph II. A. 2. below.

Contamination, as defined in section 200 of each cleanup 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 samples taken from the property under appropriate quality assurance protocols. Except as described in section I.C. above for active State-funded cleanup sites, initial notification is not required for "suspected" contamination without analytical confirmation, as in the case where a contaminant plume may be inferred to have crossed a property boundary by extrapolation of data obtained outside that property.

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 impacted real properties, their address (as listed in the County Property Tax Office records) and phone number, and the impacted 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 Excel spreadsheet templates, one for petroleum contaminants and one for hazardous waste 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 confirmed as well as suspected properties. 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, and that identifies the boundaries of the property at which site rehabilitation was initiated and the other affected properties. 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>.

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

Sections 690 and 700 of each cleanup rule require Department approval for establishment of a TPOC beyond the boundary of the source property when that contamination is allowed to extend off-site 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 affected off-site properties. 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 off-site, the PRSR must provide actual notice to the County Health Department and all record owners of any real property into which the point of compliance is allowed to extend and provide copies of such notices to the Department as proof of compliance. These notices shall include the following information:

1. The proposed agency action;
2. The location of the subject site;
3. The name and address of the responsible party;
4. The location of relevant documents concerning the site and the proposed remedial strategy;
5. The name and address of the Department or Local Program Project Manager; and
6. 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 off-site contamination should remind the PRSRs and/or cleanup contractors of these TPOC notification requirements early in the process and encourage 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.

Finally, there is a requirement 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 temporary point of compliance notice, unless in the intervening time such persons have been informed that the contamination no longer affects their property.

C. Special Notification Requirements for 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., regardless of whether the school property is the site at which site rehabilitation was initiated or an affected property, then the school board of the district in which the property is located 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 notification, whichever is earlier. As explained in section III. B., the Department will provide notice and direction to the chair of the applicable school board when it discovers that a school property has been affected.

The notices from the school board to teachers and parents or guardians of students shall include the same information as the "Initial Notice of the Discovery of Contamination," with the exception that the list of record owners of impacted off-site properties and related information is not required. The school board of the district in which the property is located shall continue to provide such actual notice of the contamination at least annually during the period of site rehabilitation, updated as appropriate, to teachers and parents or guardians of students attending the school. A representative copy of all notices shall be submitted to the Department at the time the notice is provided to the teachers and parents or guardians.

**III. Section 376.30702, F.S. - Contamination Notification, Effective 9/1/05**

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

- A. The Department must provide a copy of the "Initial Notice of Contamination Beyond Property Boundaries" or an equivalent notification, to all record owners of affected property within 30 days of receiving the actual notice from the PRSR or within 30 days of the

effective date of the statute if the Department already possesses information equivalent to that required by the notice;

- B. If the property at which contamination has been discovered is the site of a school as defined in section 1003.01, F.S., 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 DOH to develop such sources of information and to establish procedures for responding to public inquiries about health risks associated with contaminated sites.

Please review the attached list of Frequently Asked Questions and the Department's responses for additional information. 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

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

Attachments: Notification of the Discovery of Contamination - FAQ's  
Contamination Notification Data Tables - Petroleum  
Contamination Notification Data Tables - HazWaste  
Petroleum TPOC Form Letter - RAP  
Petroleum TPOC Form Letter - RAPMod  
Petroleum TPOC Form Letter - NAM