

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 10 – Underground Storage Tanks – Technical Regulations

PROPOSED RULE

PURPOSE: This rule establishes procedures for public participation intended to allow parties affected by a petroleum tank release to provide comments to the department regarding the contamination and planned corrective action activities.

10 CSR 20-10.080 Public Participation and Notice

(1) The department will provide for public notice and participation when a release from a petroleum tank system requires a corrective action plan under 10 CSR 20-10.079. The department shall provide, or allow the remediating party to provide, public notice by means designed to reach those members of the public directly affected by the release and the planned corrective action.

(2) Public notice shall be provided to those members of the public directly affected by the release and the planned corrective action in the following circumstances.

(A) When contamination from petroleum released from a regulated UST system in any media at concentrations exceeding default target levels or target levels applicable to residential land use has migrated or is likely to migrate beyond one or more boundaries of the property on which the contamination originated and onto one or more adjacent or nearby properties.

(B) If the department determines that implementation of an approved corrective action plan has failed to achieve applicable target levels or otherwise successfully mitigate excessive risks associated with contamination, and the department is considering terminating the corrective action plan.

(3) Those members of the public directly affected shall include owners and occupants of adjacent and nearby property onto which contamination has migrated or is likely to migrate regardless of the media through which migration has occurred. When contamination has migrated or is likely to migrate onto multiple properties or affects, or potentially affects, groundwater that is or is likely to be used for domestic or other uses that will or could result in human exposure to groundwater, particularly when such groundwater is used as a public water supply, the department may consider other members of the public as being directly affected and require broad public notice. In determining whether multiple properties have been or are likely to be affected and the need for broad public notice, the department will consider the number, size and ownership of the properties.

(4) Public notice may be made via one or more of the following means or other means determined appropriate by the department:

(A) Notice in newspapers having circulation in the area in which the site is located;

(B) Block advertisements;

- (C) Public service announcements;
- (D) Publication in a state register;
- (E) Letters to individual households;
- (F) Letters to property owners;
- (G) Personal contacts by field staff.

(5) Public notice shall be made at least forty-five (45) days prior to the planned implementation of the corrective action plan and shall occur prior to the department's approval of the proposed corrective action plan so that the department can receive and consider public comment when determining whether to approve the corrective action plan.

(6) Each public notice occurrence shall allow for a minimum public comment period of at least thirty (30) days after notice has been made and shall specify how those wishing to comment may provide their comments to the department. The notice shall stipulate that all comments be directed to the department rather than to the remediating party.

(7) In each instance in which the department determines that public notice as per section (2) of this rule is required, before providing the public notice, the department will give the remediating party an opportunity to provide the required public notice in lieu of the department. If the remediating party declines, fails to meet notification deadlines as prescribed by the department, or provides notice the department believes to be inadequate, the department will provide the public notice.

(8) The department may undertake, or allow the remediating party to undertake, public participation activities beyond simple notification of owners and occupants of adjacent and nearby properties if, as determined by the department, contamination is widespread, sufficient public interest exists regarding the corrective action plan or risk assessment, or if deemed necessary by the department for other reasons. The department will gauge public interest based on the response it receives from the initial public notice.

(9) Limited public notice. Where members of the public directly affected is limited to owners and occupants of adjacent and nearby property the following provisions shall apply.

(A) Where public notice is required in accordance with subsection (2)(A) of this rule, owners and occupants of adjacent and nearby property shall be notified no later than 30 days after the department has determined that contamination has or is likely to migrate onto adjacent or nearby property.

1. The department, or the remediating party in lieu of the department, may provide notification by certified letter to the affected property owners and occupants. The letter shall include, at a minimum:

A. The name and address of the remediating party and the address of the source property.

B. If different from the remediating party, the name and address of the source property owner/operator.

- C. The name and mailing address of the affected property owner or occupant being notified and the physical address of their property.
 - D. The name, address, and telephone number of the department's project manager for the site.
 - E. A description of the contamination and an explanation of how migration onto the adjacent or nearby property is known, suspected, or anticipated.
 - F. A statement directing the owner or occupant to direct comments to the department's project manager and specifying a comment deadline as established in section (6) of this rule.
 - G. A statement that information pertaining to the release and the department's decisions regarding the corrective action plan and other matters is or will be available from the department upon request.
 - H. If available at the time, a description of the actions proposed in the remediating party's corrective action plan to mitigate excessive risks associated with the contamination. A copy of the corrective action plan shall be made available to the neighboring owner or occupant at his/her request.
 - I. If the corrective action plan has not yet been developed at the time notice is made, the letter must explain the expected scope and type of corrective action activities that will be used and provide a schedule for corrective action plan development
2. If the remediating party provides notification by certified letter to the affected property owners or occupants, a copy of each notification letter, including any enclosures or attachments, and a copy of the certified mail receipt or other documentation showing that the owner or occupant of the adjacent or nearby property received the letter shall be submitted to the department within fifteen (15) days of the date on which the letter was received by the affected property owner.
 3. If the corrective action plan has not yet been developed at the time the initial notice is made, a second letter shall be sent to each party initially notified once the corrective action plan has been developed. The second letter must explain the actual scope and type of corrective action activities to be used and include an implementation schedule. The second letter shall provide the affected owner or occupant a minimum of thirty (30) days from receipt of the letter in which to provide comments to the department regarding the proposed corrective action activities.
 4. The remediating party may provide notification to the affected property owner or occupant in person or by telephone, either in addition to or instead of notification by certified letter. The notice must include the information specified at section (9)(A)1.A through I but not including (9)(A)1.C. The remediating party shall provide the department with an affidavit documenting the notification. The affidavit shall be dated, submitted to the department within fifteen (15) days of the day on which notification was made, and include the following information:

- A. The name and address of the remediating party and the source property address.
 - B. If different from the remediating party, the name and address of the source property owner/operator.
 - C. The name, telephone number, and mailing address of the owner or occupant of the adjacent or nearby property being notified and the physical address of their property.
 - D. A summary of the in person or telephone discussion.
 - E. A statement that the owner or occupant of the adjacent or nearby property was provided a copy of the corrective action plan either by certified mail (a copy of the certified mail receipt must be provided to the department) or in person.
 - F. The outcome of the meeting or call and any issues raised by the person being notified that will or could hinder implementation of the corrective action plan.
 - G. The signature of the remediating party or authorized designee.
5. Documentation of response received. When the remediating party provides notification in lieu of the department, the remediating party shall inform each party being notified that the party's comments should be directed to the department. The remediating party shall provide the party being notified with a mailing address, electronic mail address, and fax and phone numbers for the department's project manager for the site. If the party being notified submits their comments to the remediating party, the remediating party must forward the comments to the department within fifteen (15) days of receipt as follows:
- A. If the response is in writing, a copy shall be submitted to the department.
 - B. If the response is in-person or by telephone, a dated affidavit fully explaining the notified party's response and bearing the signature of the remediating party or authorized representative must be submitted to the department.

(B) Where public notice is required in accordance with subsection (2)(B) of this rule, owners and occupants of adjacent and nearby property shall be notified by the department, or the remediating party in lieu of the department, in a manner consistent with subsection (A) of this section and with the following provisions.

1. The notice shall specifically pertain to implementation of the corrective action plan and the plan's failure to meet applicable target levels or otherwise successfully mitigate excessive risks associated with contamination.
2. The notice shall explain that, because implementation of the corrective action plan was not successful, the department is considering terminating the corrective action plan.

3. The notice shall explain that a new corrective action plan will be developed and that a copy of the new corrective action plan will be provided to the department and to each party previously notified.

4. Once a new corrective action plan has been developed, public notice as provided for in this rule shall be undertaken by the department or, in lieu of the department, by the remediating party.

(10) Notice other than by letter, in person, or by telephone – work plan required. Where public notice is required under section (2)(A) of this rule and the department or, in lieu of the department, the remediating party, provides notice by means other than certified letter, in person, or by telephone, the content of the notice must include the information specified at section (9)(A)1.A through I but not including (9)(A)1.C. If the notice is to be provided by the remediating party, the remediating party must first submit a work plan to the department explaining the means by which the notice will be provided, the content of the notice, and a schedule for providing such notice. The work plan shall not be implemented until approved in writing by the department.

(A) The remediating party shall, within fifteen (15) days of providing the notice under this section, submit documentation to the department that the notice has been adequately provided in accordance with the approved work plan.

(11) Broad public notice. Where the department determines that members of the public directly affected by a release or planned corrective action is not limited to owners and occupants of adjacent and nearby property, the department, or the remediating party in lieu of the department, shall provide broad public notice subject to the following provisions.

(A) The department will determine the means by which such notice is provided by considering site-specific demographics as well as locally available media by which notice might be provided, local government capabilities, and other considerations.

(B) Where public notice is required in accordance with subsection (2)(A) of this rule, the broad public notice shall be made no later than sixty (60) days after the department makes the determination under section (3) of this rule.

(C) If the remediating party chooses to provide broad public notice in lieu of the department, the remediating party shall consult with the department to determine the best means for providing such notice. After consultation with the department, the remediating party shall develop a public participation plan for the department's review explaining how and when the notice is to be provided. The remediating party shall submit the plan to the department within fifteen (15) days of the department determining as specified under section (3) of this rule that broad public notice is required. The remediating party shall not conduct broad public notice activities until the plan has been approved by the department. The department shall review the public participation plan and respond to the remediating party within fifteen (15) days of receipt. If the department rejects the public participation plan, the department will allow the remediating party fifteen (15) days in which to modify and resubmit the public participation plan to the department. The department shall review and either approve or reject the modified public participation plan within fifteen (15) days of

receipt. If the department rejects the modified public participation plan, the department will provide the broad public notice.

(12) Consideration and management of comments received. If the department receives comments from the public, either directly or through a remediating party, regarding the migration of contamination off a source property, proposed corrective action activities, the failure of a corrective action plan to achieve target levels or otherwise adequately mitigate risks associated with contamination, or other related matters, the department will:

- (A) Review each comment received;
- (B) Consider each comment when reviewing and either approving or rejecting the remediating party's proposed corrective action plan;
- (C) Respond to each comment as it determines appropriate; this does not necessarily mean that the department will accept or respond to each comment received;
- (D) Evaluate the comments as a whole in order to determine whether sufficient public interest exists regarding the contamination, the corrective action plan or the risk assessment such that the department should conduct further public participation activities; and
- (E) All comments received will be filed in the department's file for the subject site.