

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 26 –Petroleum and Hazardous Substance Storage Tanks
Chapter 2 – Underground Storage Tanks – Technical Regulations

PROPOSED RULE

10 CSR 26-2.080 Public Participation and Notice

PURPOSE: This rule establishes procedures for public participation to inform off-site property owners about contamination that has migrated onto their property and to allow parties affected by a storage tank release to provide comments to the department regarding the contamination and planned corrective action activities.

(1) When chemicals of concern associated with a release from a storage tank or storage tank system have migrated off the site at which the release occurred and onto one or more off-site properties in any media at concentrations above the default target levels in 10 CSR 26-2.078 Table 1 or, if owners or operators have determined that the groundwater domestic use pathway is incomplete and the department has agreed with that determination, the residential target levels in 10 CSR 26-2.078 Tables 2 and 6 other than those applicable to the groundwater domestic use pathway, owners and operators shall notify the owner of each such affected off-site property.

(A) Owners and operators shall notify the owner of an affected off-site property within sixty (60) days of determining or learning that contamination has migrated onto the property. Notification may be by certified letter, in-person, or by telephone.

1. Notification by certified letter. If owners and operators notify off-site property owners by certified letter, the letter must include at least the information specified at subsection (9)(A)1 of this rule.

A. Owners and operators shall submit a copy of each notification letter, including any enclosures or attachments, and a copy of the certified mail receipt to the department within thirty (30) days of the date on which the letter was received by the off-site property owner.

2. Notification in-person or by telephone. If owners and operators notify off-site property owners in-person or by telephone, the notice shall be in accordance with subsection (9)(A)4 of this rule.

A. Owners and operators shall provide the department with an affidavit documenting the in-person or telephonic notification. The affidavit shall be dated, submitted to the department within thirty (30) days of the day on which notification was made, and include the information specified at section (9)(A)4.A of this rule.

(2) For each confirmed release that requires a corrective action plan, the department must provide notice to the public directly affected by the release or allow the owner or operator to provide such notice in lieu of the department, provided that the owner or operator agrees in writing to provide such notice and to do so in accordance with this rule.

(A) In every case, notice shall be by means designed to reach those members of the public directly affected by the release or the planned corrective action and may include,

but is not necessarily limited to, letters or personal contact with affected parties, public service announcements, notice in local newspapers, block advertisements, and publication in a state register.

(3) Public notice under section (2) of this rule shall be provided when:

(A) A corrective action plan is required and the corrective actions to be taken will or could affect parties other than the storage tank owner or operator or site owner; or

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

(4) When corrective actions will address a release that has or is likely to affect multiple properties and/or groundwater that is being used or is likely to be used for domestic or other uses, the department may conduct, or approve the owner or operator to conduct, broad public notice in accordance with section (10) of this rule.

(5) When possible, public notice shall be made at least forty-five (45) days prior to implementation of the corrective action plan and prior to the department's approval of the proposed corrective action plan.

(6) Each public notice occurrence shall allow for a public comment period of at least thirty (30) days after notice has been made and shall specify how those who wish to comment may provide their comments to the department.

(7) In each instance in which an owner or operator agrees to provide notice in lieu of the department, the department will provide such notice if owners or operators:

(A) Fail to meet the timeframes for public participation and notification activities specified by this rule, or

(B) Provide notice the department believes to be inadequate.

(8) The department may undertake, or approve owners and operators to undertake, public participation activities beyond the limited public notice specified at section (9) of this rule if the department determines that the contamination is widespread, sufficient public interest exists regarding the contamination, corrective action plan, or risk assessment, or is necessary for other reasons.

(9) Limited public notice. Where public notice is required under section (2) of this rule and those affected by the release or corrective actions are limited to owners and occupants of one or more immediately adjacent off-site properties, the following provisions shall apply:

(A) The owners and occupants of the immediately adjacent off-site properties shall be notified no later than sixty (60) days after storage tank owners or operators or the department have determined or learned that corrective actions will affect the property or properties. Notification may be by certified letter, in-person, or by telephone.

1. If notification is by certified letter, the letter shall include, at a minimum:

A. The name and address of the storage tank owner(s) and operator(s) and the site address;

B. If different from that of the storage tank owner(s) and operator(s), the name and address of the owner of the site;

C. The name and mailing address of the person being notified and the physical address of their property;

D. The name, physical and email addresses, 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;

F. A statement directing the person being notified to direct comments to the department's project manager and specifying a comment deadline per section (6) of this rule;

G. A statement that information pertaining to the release and the department's decisions regarding the corrective action plan is or will be available from the department upon request;

H. If available at the time, a description of the actions proposed in the corrective action plan to mitigate unacceptable risks associated with the contamination and an offer to provide a copy of the corrective action plan to the person being notified at his/her request; and

I. If the corrective action plan has not yet been developed at the time notice is made, an explanation of the expected scope and type of corrective action activities to be used and a schedule for corrective action plan development.

2. If owners and operators provide notification by certified letter, a copy of each notification letter, including any enclosures or attachments, and a copy of the certified mail receipt documenting the property owner's receipt of the letter shall be submitted to the department within thirty (30) days of the date on which the letter was received by the 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 shall:

A. Explain the scope and type of corrective action activities planned, include a schedule for all corrective action activities, and offer to provide a copy of the corrective action plan upon request; and

B. Provide the recipient 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. If notification is in person or by telephone, the notice must include the information specified at section (9)(A)1.A through I not including (9)(A)1.C.

A. If owners and operators provide notification in person or by telephone, owners and operators shall submit an affidavit documenting the notification to the department. The affidavit shall be dated, submitted to the department within thirty (30) days of the day on which notification was made, and include the following information:

(I) The name and address of the storage tank owner(s) and operator(s) and the site address;

(II) If different from that of the storage tank owner(s) and operator(s), the name and address of the owner of the site;

(III) The name, telephone number, and mailing address of the person notified and the physical address of their property;

(IV) A summary of the in-person or telephone discussion;

(V) 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; and

(VI) The signature of the storage tank owner(s) or operator(s) or authorized designee.

5. When owners and operators provide notification in lieu of the department, owners and operators shall inform each party being notified to direct their comments to the department and provide the party with a mailing address, electronic mail address, and fax and phone numbers for the department's project manager for the site. If the notified party submits comments to the owner or operator, the owner or operator must forward the comments to the department within fifteen (15) days of receipt as follows:

A. If the comments are in writing, a copy shall be submitted;

B. If the comments are in-person or by telephone, by submitting a dated affidavit fully explaining the notified party's comments and bearing the owner or operator's signature or that of their authorized representative.

(B) Where public notice is required in accordance with subsection (3)(B) and section (9) of this rule applies, owners and occupants of immediately adjacent property shall be notified by the department, or owners and operators in lieu of the department, in a manner consistent with section (9) of this rule and the notice shall:

1. Specifically pertain to the failure of the approved corrective action plan to meet applicable target levels or otherwise successfully mitigate unacceptable risks associated with the contamination;

2. Explain that the department has terminated or is considering terminating the approved corrective action plan;

3. Explain that a new corrective action plan will be developed and made available upon request; and

4. Explain that, once a new corrective action plan has been developed, public notice as provided for by this rule shall be undertaken by the department or, in lieu of the department, by owners and operators.

(10) Broad public notice. Where in accordance with section (4) of this rule the department determines that members of the public directly affected by a release or planned corrective action are not limited to only owners and occupants of immediately adjacent off-site property, the department, or owners and operators in lieu of the department, shall provide broad public notice in accordance with the following:

(A) The department will determine the means by which notice may be provided in consideration of site-specific demographics, locally available media, local government capabilities, and other considerations;

(B) Notice shall be made no later than one hundred and twenty (120) days after the department determines that broad public notice is warranted, at least forty-five (45) days prior to implementation of the corrective action plan, and before the plan has been approved by the department;

(C) Owners and operators choosing to provide broad public notice in lieu of the department shall consult with the department regarding the best means for providing such notice. After consultation with the department, owners and operators shall develop a public participation plan for department approval. The plan shall:

1. Explain how and when the notice is to be provided;
2. Allow for a public comment period of at least thirty (30) days; and
3. Be implemented only after it has been approved by the department.

A. The department shall respond to the owner and operator within thirty (30) days of receipt of the plan;

B. If the department approves the plan, it shall be implemented in accordance with the schedule therein;

C. If the department rejects the plan, owners and operators must modify and resubmit the plan within thirty (30) days of receiving the department's notice that the plan has been rejected.

(I) The department shall review and either approve or reject the modified public participation plan within thirty (30) days of receipt.

(II) If the department rejects the modified public participation plan, the department will provide the broad public notice.

(11) If the department receives comments from the public, either directly or through an owner or operator, the department shall:

(A) Review each comment received;

(B) Consider each comment in determining whether to approve or reject the proposed corrective action plan;

(C) Respond to comments as appropriate but need not necessarily accept or respond to each comment received;

(D) Evaluate the comments as a whole to gauge whether further public participation activities are warranted; and

(E) Keep a record or copy of each comment received in the department's file for the subject site.

AUTHORITY: Sections 319.109 and 319.137 RSMo Supp. 2007. Original rule filed February 13, 2009.*