

Summary of Public Outreach Requirements for the New Jersey Site Remediation Program*

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	TIMING	REGULATORY REQUIREMENTS	OTHER REQUIREMENTS/COMMENTS
Checklist for Sensitive populations, Sensitive resources, and language requirements	<p>Two weeks prior to: (1) initiating field activities associated with a remedial investigation of a multiphase remediation; OR (2) initiating field activities associated with a single phase remediation.</p>	<p>Checklist Submittal: Submit to NJDEP, municipal clerk(s), and the designated local health official(s) a completed sensitive population and resource checklist including a: (1) map of sensitive populations; (2) determination of whether the site is located in a municipality containing a designated Environmental Justice Petition neighborhood; and (3) determination of whether a language besides English is predominantly spoken by property owners and tenants within 200' of the site. <u>N.J.A.C. 7:26E-1.4(f)</u>.</p>	<p>Sensitive populations and resources are defined to include: (1) residences; (2) potable wells; (3) schools teaching students in grades kindergarten through twelve; (4) child care facilities; (5) parks and playgrounds; (6) surface water; and (7) well-head protection areas. <u>N.J.A.C. 7:26E-1.4(f)1.</u></p>
Public Notification of Site Contamination	<p>Two weeks prior to initiating field activities: (1) associated with a remedial investigation of a multiphase remediation; or (2) associated with a single phase remediation.</p> <p>OR</p> <p>Phase-In Requirement: where above activities were initiated prior to 9/2/08, public notice is not required until</p>	<p>Post sign(s) visible to the public and meeting NJDEP requirements <u>N.J.A.C. 7:26E-1.4(g),(h)</u> OR Send notification letters to municipal clerk(s), designated local health officials, any property owners or tenants residing within 200' of the site, school/daycare administrators identified in the sensitive population list, and lead persons in an environmental justice petition area. <u>N.J.A.C. 7:26E-1.4(i)</u>.</p> <p><i>Note:</i> The person responsible for the remediation may change the form of public outreach (signage or notice letters) without NJDEP approval.</p> <p>Exceptions: exceptions to these notification requirements exist for: (1) remediation of underground storage tanks storing heating oil for on-site consumption in a one-to-four family residential unit, or (2) emergency response actions. In both</p>	<p>Signs must comply with all local signage requirements, be 2' x 3' in size, be readable from the street/sidewalk, and must contain language specified in the regulations. <u>N.J.A.C. 7:26E-1.4(h)</u>.</p> <p>Two weeks after posting, photographs of signs must be sent with the same site information required in notice letters (see below) to NJDEP, municipal clerk(s), and local health official(s). <u>N.J.A.C. 7:26E-1.4(h)5.</u></p> <p>Notice letters may be sent via certified mail or by using the certificate of mailing service option, may be addressed to "Current Occupant" or "Current Resident" (in the case of tenants per NJDEP's Response to Comments) and must contain the following information: (1) identification of the site; (2) statement that contamination has been identified; (3) description of the contamination, the</p>

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	9/2/09.	cases, notification is required only to NJDEP when a discharge occurs, contamination from a previously unknown discharge is identified, or an immediate environmental concern condition is identified. No public outreach is required absent off-site contamination migration. <u>N.J.A.C. 7:26E-1.4(e)</u> .	affected media and actions being taken; (4) NJDEP and responsible party contact information; and (5) statement that all environmental reports are available to municipality upon request. <u>N.J.A.C. 7:26E-1.4(i)4</u> . Updated letters must be sent every two years until a No Further Action letter and Covenant Not to Sue are issued. A copy of the notice letter and any updates must be sent to NJDEP, the municipality, and the local health officer. <u>N.J.A.C. 7:26E-1.4(i)2, 5</u> . Signs and notice letters shall be in English, or if another language is predominately spoken in 200' surrounding area (see sensitive population section of table above), they must also be posted/distributed in that language. <u>N.J.A.C. 7:26E-1.4(g)1</u> .
Alternative Public Notice of Site Contamination	N/A	Remediating party operating under NJDEP oversight may propose to NJDEP an alternative plan for public notice and outreach to supersede the requirements described above. <u>N.J.A.C. 7:26E-1.4(n)</u> .	Alternative plan must be submitted to the NJDEP. The Department will issue either written approval or a description of the alternative plan's deficiencies. <u>N.J.A.C. 7:26E-1.4(n)1-2</u> .
Additional Public Notification If/When Contamination Migrates Off-Site	Two weeks after the "determination" that contamination has migrated off site OR Phase-In Requirement: where contamination had migrated off-site prior to 9/2/08, the additional public notification requirements are not required until 9/2/09.	Fact Sheet Distribution: Where contamination has migrated from the boundary of the site a fact sheet must be prepared and distributed to property owners and tenants within 200' of the site boundary. <u>N.J.A.C. 7:26E-1.4(k)</u> . <i>Note:</i> this requirement is in addition to the other public notification of site contamination requirements that apply to every contaminated site as discussed above.	The Fact Sheet may be sent via certified mail or by using the certificate of mailing service option, may be addressed to "Current Occupant" or "Current Resident," and must contain the following information: (1) identification of the site; (2) description of the history of the site; (3) description of the contamination; (4) description of actions performed at the site; (5) the date the Fact Sheet was prepared; and (6) contact information for NJDEP and the person responsible for the remediation. The Fact Sheet shall be in English, or if another language is predominately spoken in 200' surrounding area, it must also be distributed in that language. <u>N.J.A.C. 7:26E-1.4(k)4-5</u> .

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	Within four weeks of the “discovery” of off-site contamination	Fact sheet publication: Prepare, Distribute, and Publish the fact sheet described above as a display advertisement in a daily or weekly local newspaper AND Submission: submit a copy of the fact sheet, a copy of the advertisement, and a list of persons receiving the fact sheet to: (1) NJDEP; (2) the municipal clerk(s) of the affected municipality(ies); and (3) the designated local health official. <u>N.J.A.C. 7:26E-1.4(k)6.</u>	The triggering event for fact sheet distribution is a “determination” of off-site migration whereas “discovery” of off-site migration triggers publication. It is not clear whether these are two different events, although NJDEP may have made an inadvertent oversight in the final rule when it changed “discovery” to “determination” in the publication provision but not in the advertisement provision.
	Within four weeks of the “determination” of the horizontal and vertical extent of contamination pursuant to <u>N.J.A.C. 7:26E-4.1</u>	Update, publish and redistribute fact sheet: The fact sheet described above shall be updated and published as a display advertisement in a daily or weekly local newspaper, AND Redistributed and resubmitted to surrounding property owners, tenants, NJDEP and local officials as described above. <u>N.J.A.C. 7:26E-1.4(k)7.</u>	A similar requirement applies upon completion of the remedial investigation (see below). Neither triggering event is clearly defined.
	Upon completion of the remedial investigation	Update and redistribute fact sheet: The fact sheet described above shall be updated and redistributed. <u>N.J.A.C. 7:26E-1.4(k)2.</u>	Updated fact sheet shall describe the extent of the contamination, may be sent via certified mail or by using the certificate of mailing service option, and may be addressed to “Current Occupant” or “Current Resident.” <u>N.J.A.C. 7:26E-1.4(k)2, 3.</u>
Exceptions to Notification Requirements Where Contamination Has Migrated Off-Site	Where the migrated contamination affects only the soil of one adjoining property owner , the person conducting the remediation is not subject to the otherwise applicable notification requirements for off-site contamination migration, and must only notify the adjoining property owner and/or tenant via a letter describing the nature and extent of the contamination. <u>N.J.A.C. 7:26E-1.4(l).</u>		
	Where the media affected by migrated contamination is limited to historic fill , the person conducting the remediation is exempt from all the applicable public outreach requirements for off-site contamination migration. <u>N.J.A.C. 7:26E-1.4(m).</u>		
Possible Additional Public Notification Requirements Triggered by Site-Specific Conditions or Public Interest	As required by NJDEP	Additional notification may be required if NJDEP determines it is needed due to: site-specific circumstances OR substantial public interest in the remediation activities. Required notification may include information sessions, public meetings, publication of notices in local papers, or establishment of a local information repository. <u>N.J.A.C. 7:26E-1.4(o).</u>	Substantial public interest may be determined by NJDEP through: (1) a petition signed by 25 or more people that live or work within 200’ of either the site (where there is no off-site contamination migration) or the extent of the contamination (where there is off-site migration); OR (2) a written request of a local official. <u>N.J.A.C. 7:26E-1.4(o)1.</u> (Note: the regulations may enable NJDEP to impose additional requirements in its own

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			discretion in the absence of (1) or (2) although this is not clear.)
Other Public Notification Requirements	Upon request by an affected municipality	Provide reports: Provide to the requesting municipality a copy of the remedial action workplan and any updates or status reports. <u>N.J.A.C. 7:26E-1.4(d).</u>	Note: while 7:26E-1.4(d) is limited to disclosure of the workplan, updates and status reports, 7:26E-1.4(i)vii requires notice letters to state that all environmental reports will be provided to the municipality upon request.
	Upon identification of: (1) contamination from a discharge unknown to NJDEP, OR (2) an immediate environmental concern condition	Notify NJDEP: “Immediately” notify NJDEP case manager or the NJDEP hotline if case manager unassigned or unavailable. <u>N.J.A.C. 7:26E-1.4(b)1, 2.</u>	These requirements apply to the “person responsible for conducting the remediation.” NJDEP’s Response to Comments clarifies that contractors are not responsible for notifying under the general discharge notification requirement of 7:26E-1.4(a). It is unclear, however, whether contractors must notify under 7:26E-1.4(b).
	Upon determination that contamination migrated onto the site from another site	Notify NJDEP: Notify NJDEP case manager or the NJDEP hotline if case manager unassigned or unavailable. <u>N.J.A.C. 7:26E-1.4(c)</u> <i>(Note: “immediate” notification not required here).</i>	See above relating to contractors.
	Prior to implementing a remedial action in the New Jersey Pinelands Commission Jurisdiction	Provide plans and seek approval from the Pinelands Commission: The person responsible for the remediation must submit to the Pinelands Commission for approval the remedial design and construction documents and a completed Pinelands application. <u>N.J.A.C. 7:26E-1.4(q).</u>	Construction activity may not be commenced prior to Pinelands Commission approval. <u>N.J.A.C. 7:26E-1.4(q)3.</u>
	When the proposed remediation will bring excess contaminated materials to the site	Distribute additional notification letters: Where the proposed remediation will bring an amount of contaminated material (e.g., fill) onto the site in excess of the amount needed to either complete the remediation or construct the approved engineering controls, then a notification letter must be sent to: (1) owners and tenants within 200’ of the site; (2) the Mayor of the municipality where the site is located; (3) the county solid waste coordinator; (4) the designated local health official; and (5) the NJDEP case manager.	The notification letter must include: (1) a description of the proposed use of contaminated material at the site; (2) the concentrations of contaminants in the material; (3) the amount of material proposed to be brought to the site; (4) the controls designed to reduce or eliminate exposure to the contaminant; and (5) a tentative schedule for the activity. <u>N.J.A.C.</u>

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		<u>N.J.A.C. 26E-1.4(j)</u> .	26E-1.4(j)2.
Penalties		Pursuant to Oversight Rules, <u>N.J.A.C. 7:26C-10.4(c)</u> , base penalties for notice failure range from \$3,000 to \$8,000	Typical penalties for notice violations are deemed minor and covered by the grace period regulations unless notification is not provided at all.

** This summary is intended as information for clients and other interested parties. It is not intended as legal advice. Readers should not act upon the information contained herein without individual legal counsel.*