

Current Participation and Notification Procedures
NJDEP
Site Remediation & Waste Management*

The Department of Environmental Protection (NJDEP) institutes its commitment to protect the public health and the environment through a series of laws; regulations to direct implementation of those laws; and companion policies and practices that further underscore that commitment; and to provide public access to information.

The Site Remediation and Waste Management (SRWM) Program manages remediation activities for NJDEP through various SRWM bureaus. The major laws and regulations that govern those activities include:

- Superfund Authorization and Reauthorization Act of 1986
- Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 (Spill Act)
- Industrial Site Recovery Act, N.J.S.A. 13:1K-1 et seq. (ISRA)
- Hazardous Discharge Site Remediation Act, N.J.S.A. 58:10B-1 et seq.
- 1998 Brownfields and Contaminated Site Remediation Act (BCSRA), P.L. 1997, c. 278.
- Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21
- Underground Storage Tank regulations N.J.A.C. 7:14B
- Procedures for Remediation of Contaminated Sites, NJAC 7:26C
- Technical Requirements for Site Remediation, N.J.A.C. 7:26E (Tech Regs)

Remediation activities under NJDEP oversight are conducted by responsible parties as well as developers (collectively referred to as 'RPs') or, absent a remediating party, are publicly funded. RP sites include regulated underground storage tanks, industrial sites governed under the ISRA legislation and individual homeowner tank cases, among others. Superfund sites include both publicly funded and RP cases, and are jointly managed by NJDEP and EPA.

Many RP cases come into the Department voluntarily through a Memorandum of Agreement (MOA). Other cases are required to conduct remediation through oversight documents such as Administrative Consent Orders (ACOs) and remediation agreements.

It is possible for responsible parties to conduct a cleanup 'at peril' without NJDEP oversight. These 'at peril' cases will come before NJDEP for final approvals and are obligated to follow the Technical Requirements. When such work is found insufficient, the parties must revise their remediation to come into compliance before the work can be approved.

¹ "Documents provided on the Office of Community Relations website define in non-technical language the more commonly used environmental terms and concepts appearing in Site Remediation & Waste Management publications, news releases, and other documents available to the general public, students, the media, and state employees. These documents do not have regulatory effect, and cannot be relied upon in lieu of officially promulgated NJDEP rules and definitions published in the New Jersey Register and the New Jersey Administrative Code."

Assessing and cleaning up sites where oil or hazardous substances have been released into the environment, and understanding the processes followed by SRWM, requires interested citizens to work with complex technical and scientific information. The SRWM Office of Community Relations (OCR) assists the public in accessing information, learning about the various SRWM programs and generally improving the opportunity for public involvement in site remediation.

Current Notification Practices

Historically, the Department selected the remedial action for some contaminated sites. These could include sites subject to ACOs and those governed by early remediation legislation. The New Jersey Legislature, however, through the enactment of legislation in 1993, removed this authority from the Department for remediation that the Department itself was not conducting. That change allowed the owner or operator to select the remedial action.

This act, subsequently modified by the Brownfield and Contaminated Site Remediation Act (BCSRA), places the burden on the person proposing the remedial action to demonstrate that the remedial action is protective of public health, safety and the environment, and otherwise conforms with the requirements of that act. When that person is someone other than the Department, the BCSRA directs NJDEP to establish a minimum level of risk (1 in 1,000,000) as the threshold by which cleanup remedies will be judged acceptable or not. While SRWM recognizes public comments and endeavors to respond to those comments, when a proposed remedy shows that the risk posed by the site post-cleanup is below that threshold, the law obligates NJDEP to accept that remedy.

The Superfund legislation requires that the remediating parties give the public a formal opportunity to comment on the proposed remedy. For other publicly funded remediations in New Jersey, SRWM generally solicits public input on the remedy selection. The majority of cases in New Jersey (over 95%) are privately funded (RP) cases and there is no NJ legislative mandate to involve citizens directly in the remediation process for RP cases.

The New Jersey Technical Requirements for Site Remediation have several obligatory points of public communication, primarily notification of local officials and property owners. Those regulations are described below.

- 1) The party responsible for remediation (non-publicly funded sites) must notify the municipal clerk of each municipality in which the site is located 45 calendar days prior to
 - a) submission of the remedial action selection report
 - b) finalization of the engineering design plans for the selected remedial action of sites being remediated, and
 - c) implementation of the remedial action

- 2) Based on the selected remedy, some sites will require institutional and/or engineering controls, with corresponding notification provisions.

- a) A Classification Exception Area (CEA) may be established to ensure notification of groundwater contamination. This 'institutional control' requires the parties responsible for remediation to send copies of certified letters to municipal and county clerks and to designated local, county and regional health departments. If the ground water classification exception area is located in a ground water use area, property owners within the ground water classification exception area must also be notified.
- b) A second institutional control that requires notification covers instances where contaminated soils are left in place above their applicable criteria. This is done through a deed notice. A deed notice may include engineering controls (such as caps, covers, or leachate collection systems). Once the deed notice is filed with the county, parties responsible for the remediation are required to copy a number of entities, including certain municipal officials, designated local, county and regional health departments and anyone requesting a copy.
- c) The Tech Regs mandate that the persons responsible for monitoring the on-going protectiveness of a remedial action through engineering and institutional controls submit a biennial certification. This certification verifies that the engineering controls are being properly maintained and the remedial action continues to be protective of public health, safety and the environment. These notices must be copied to municipal and county clerks, designated local, county and regional health departments.

In addition to these regulatory requirements, it is Departmental practice to direct notification to local entities, such as local police or designated municipal officials, when calls come in to the DEP hotline. When cases are closed by the Department a letter of 'No Further Action' goes to the persons responsible for the remediation and copies are typically sent to municipal clerks, designated local, county and regional health departments and other parties who have expressed interest. Communications with parties known to have an interest in the site can also occur at other significant remedial milestones, but is exercised on a case-by-case basis.

In cases where there is high public concern, NJDEP may also ask the parties responsible for remediation to provide reports to the public through a local repository, generally a community library.

Public Access to Information

As previously noted, current legislation precludes formal public input on remedy selection. NJDEP accepts public comment on sites and responds to concerns when they are raised to our attention. Although this is an informal process, it offers concerned community members access to the information they need.

The main point of access for SRWM data is <http://www.nj.gov/dep/srp>. A second key site is the Known Contaminated Site List, found online at <http://www.nj.gov/dep/srp/kcs-nj/>, which lists, by county and municipality, every contaminated site that is before the department (as of 2001, when it was last updated). Site information is also available graphically through the I-Map site at <http://www.nj.gov/dep/gis/newmapping.htm>. A third key program is the Open

Public Records Act, which allows for public access to the case files. These include reports, correspondence and other materials. Those seeking information about a particular site can request to review the files for that case by filling out an OPRA request, which is online and can be submitted electronically. The form can be found at <http://www.nj.gov/dep/opra/forminfo.html>.

Citizens planning to purchase residential property in New Jersey may contact the Site Information Program for information about any contaminated properties in an area in which they intend to purchase. Staff there accept phone calls from prospective purchasers and provide them with information and maps of the area showing any known contaminated sites within ¼ mile of the property.

The Office of Community Relations (OCR) responds to general and specific questions about site remediation or specific sites. The staff welcome opportunities to speak with concerned citizens and assist them in finding information and the appropriate contacts for specific cases.

OCR works with various SRWM programs to create guidance documents and background materials. OCRT also hosts workshops on emerging issues. The July 2004 workshop, Working with Communities, was an example of that outreach, as were the two subsequent workshops on the proposed soil standards.

OCR recognizes the importance of community groups interested in site remediation issues. Staff frequently participate actively with these groups. Many of these are active at state-lead Superfund sites, cases where unknown sources of contamination have affected area wells, and other high profile publicly and privately funded cases. The OCR website, www.nj.gov/dep/srp/community, provides regularly updated information on these cases.