

FDEP – BPSS Petroleum Cleanup Program

Off-Site Contamination Noticing Requirement & Procedures

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Topics of Discussion

- Backlog (Pre-Rule) Noticing Recap
- Rule 62-770.220, F.A.C. – Noticing
- Chapter 2005-50, L.O.F. – Contamination Notification
- Rule 62-770.220, F.A.C., Notice of Proposed Rule Development
- Noticing FAQ's

Backlog (Pre-Rule) Noticing Recap

- 8/2/04 - BPSS developed draft strategy for off-site contamination notification
- 8/2/04 – Phase 1, BPSS survey of SM's to identify sites with off-site contamination & estimate the # of affected properties (confirmed & suspected) - deadline 8/24/05
- 8/3/04 – Tasked Admin. Services Contractor to begin planning for master database, ownership records search and notice preparation
- 1/1/05 – DWM first draft noticing implementation strategy for all contaminated sites

Backlog (Pre-Rule) Noticing Recap

- 3/11/05 – 1st list of 250 sites sent to SM's, LP's & Districts with 2 week deadline to submit information
 - ◆ First noticing mail outs on 4/26/05 & 4/27/05
- 5/11/05 – 2nd list of 530 sites sent, 6 week deadline
 - ◆ Began weekly noticing mail outs on 6/3/05
- 7/18/05 – 3rd list of 542 sites sent, 6 week deadline
- 9/14/05 – 4th list of 537 sites sent, 6 week deadline
- 11/29/05 – 5th list of 518 sites sent, 6.5 week deadline

Backlog (Pre-Rule) Noticing Recap

- Total # of sites on backlog noticing list - 2,386
 - ◆ Petroleum – 1,854 (78%)
 - ◆ Non-petroleum – 531 (22%)
- Total # of sites with notices sent – 1,720
 - ◆ Petroleum – 1,323 (77%)
 - ◆ Non-petroleum – 397 (23%)
 - ◆ Subset Backlog – 1,682 (98%)
 - ◆ Subset Rule – 38 (2.2%)
- Total # of backlog sites complete – 2,336 (98%)
(noticed-1,682/eliminated-654)
- Total # of sites not yet complete – 50 (2.1%)
(4 petro/45 non-petroleum)

Backlog (Pre-Rule) Noticing Recap

- Total # of notices sent - 6,711
 - ◆ Petroleum – 50%
 - ◆ Non-Petroleum – 50%
 - ◆ Govt./Non-Govt. – 32% / 68%
 - ◆ FDOT – 11%
 - ◆ Confirmed GW contamination – 48%
 - ◆ Suspected GW contamination – 49%
 - ◆ Soil contamination, any – 5.4%
 - ◆ Soil contamination only – 1.4%
 - ◆ GW & soil contamination – 3.3%

Backlog (Pre-Rule) Noticing Recap

- Average # of notices per site – 3.9
 - ◆ Petroleum – 2.6
 - ◆ Non-petroleum – 8.4
- Max # of properties noticed per site
 - ◆ Petroleum – 61
 - ◆ Non-petroleum – 239
- Most common contaminants
 - ◆ Petroleum – Benzene & Total Xylenes
 - ◆ Non-Petroleum – Tetrachloroethene & Trichloroethene
- Call Center Stats – 818 calls (avg. 14/week, 3/work day)

62-770.220, F.A.C. - Noticing

■ (2) Initial Notice of Contamination Beyond Property Boundaries (Effective 4/17/05)

- ◆ Within 10 days of discovery of contamination above CTLs by QA lab analytical sample in any medium beyond the boundaries of the property at which site rehabilitation was initiated, the PRSR (or agent/rep) shall give actual notice to the DWM in Tallahassee.
- ◆ Do not refer to project property as “source” property
- ◆ Do not wait until the source of contamination has been confirmed
- ◆ Medium can be (one or more) GW, SW, Soil or Sediment
- ◆ Must be actual sample taken from off-site property
- ◆ Does not apply to “suspected” properties, even if within official plume map

62-770.220, F.A.C. - Noticing

- Actual notice by Form 62-770.900(3) - “Initial Notice of Contamination Beyond Property Boundaries”

- ◆ Send by “Certified Mail, Return Receipt Requested.”

- ◆ Send copy to DEP District Office and County Health Department.

- Information required in notice includes:

- ◆ Location of the property at which site rehabilitation was initiated and contact information for the PRSR (agent/rep)
 - ◆ List of owners of all off-site real property at which contamination was discovered, the parcel identification #, the owner’s address listed in the county property tax office records, and their telephone #.

62-770.220, F.A.C. - Noticing

- ◆ Separate table(s) by medium that list:
 - ★ Sampling locations
 - ★ Sampling date(s)
 - ★ Contaminants detected above CTLs & CTLs
 - ★ Contaminant concentration(s)
 - ★ Whether the CTL is based on health or nuisance, organoleptic, or aesthetic concerns
- ◆ A vicinity map that shows:
 - ★ Sampling locations with lab results & date(s) collected
 - ★ Property boundaries of the property at which site rehabilitation was initiated & off-site properties where contamination was discovered



Initial Notice of Contamination Beyond Property Boundaries

FDEP Form # 62-770.906(3)
Form Title: Initial Notice of
Contamination Beyond
Property Boundaries
Effective Date: 4-17-05

This form provides written notification of the discovery of contamination [as defined in subsection 62-770.200(9), F.A.C.] required by subsection 62-770.220(2), Florida Administrative Code (F.A.C.). If a site is subject to Chapter 62-770, F.A.C., notification must be postmarked within 10 days from the date of discovery of contamination in any medium beyond the boundaries of the property at which site rehabilitation was initiated pursuant to this chapter. The notification shall be submitted to the Florida Department of Environmental Protection (FDEP), Division of Waste Management, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 via Certified Mail (Return Receipt Requested), and copies shall be mailed to the County Health Department and to the appropriate FDEP District Office where the property is located. This form and any attached table(s) shall be completed in entirety.

1. Attach completed and separate tables by medium (groundwater, soil, surface water, or sediment) that list sampling locations; sampling date(s); names of contaminants detected above CTLs; their corresponding CTLs; the contaminant concentration(s); and whether the CTL is based on health or nuisance, organoleptic, or aesthetic concerns.
2. Attach copies of applicable laboratory reports.
3. Attach a vicinity map that shows the date(s), location(s) and type(s) of sample(s) collected, the laboratory analytical result(s) for each sample, and the property boundaries for the property at which site rehabilitation was initiated pursuant to this chapter and the real property(ies) at which contamination was discovered.

4. Information regarding the property that is the subject of this site rehabilitation:

FDEP Facility Identification Number: _____ Owner of Property: _____
Contact Person: _____ Telephone Number: _____
E-mail Address: _____ Operator (if applicable): _____
Property Physical Address: _____

5. Actions taken or proposed actions regarding suspected contamination (e.g., provide additional notice, removal of contaminated soil, connection to public water supply well, provision of bottled water, etc.):

6. Additional Comments:

To the best of my knowledge and belief, all information submitted on this form is true, accurate, and complete.

Printed Name of PRSR or Authorized Agent or Representative

Signature of PRSR or Authorized Agent or Representative

Provide Affiliation: _____

Completed by: PRSR or Agent or Representative
(Circle Appropriately)

Date Signed: _____

This form is submitted pursuant to subsection 62-770.220(2), F.A.C., to notify the FDEP and the applicable County Health Department about discovery of contamination beyond the boundaries of the property at which site rehabilitation was initiated pursuant to this chapter. Submission of this form is not an admission of responsibility, liability, or risk associated with potential or actual exposure to such contamination.

(Additional pages may be used to complete this form.)



Form #62-770.900(3)
Page Two

Note: A separate page two of Form #62-770.900(3) shall be completed for each separate parcel of real property at which contamination was discovered beyond the boundaries of the property at which site rehabilitation was initiated pursuant to this chapter. Please make additional copies of page two as necessary and staple all pages together for submission.

1. Street address of real property at which contamination was discovered beyond the boundaries of the property at which site rehabilitation was initiated pursuant to this chapter:

2. Parcel ID # for the real property identified in 1. above: _____
3. Name of record owner(s) of the real property identified in 1. above: _____

4. Address(es) of record owner(s) as listed in current county property tax office records (if different from answer provided in 1.):

5. Telephone Number(s) of record owner(s): _____

6. Date of discovery of contamination at real property identified in 1. above: _____

Remainder of page intentionally left blank.

62-770.220, F.A.C. - Noticing

- (3) Subsequent Notice of Contamination Beyond Source Property Boundaries for Establishment of a Temporary Point of Compliance (TPOC)
 - ◆ Effective 8/4/05, moved & included active remediation
 - ◆ For TPOC beyond the boundary of the source property in conjunction with Natural Attenuation Monitoring or Active Remediation pursuant to Rules 62-770.690 and .700, F.A.C.
 - ◆ Prior to approval, PRSR must provide actual notice to the County Health Department & All record owners of real property into which the TPOC is allowed to extend.
 - ★ Send notices by “Certified Mail, Return Receipt Requested”
 - ★ Send notice to owner’s address in the county property tax records
 - ★ PRSR must provide copies to Dept. as proof of compliance
 - ★ Affected properties within plume do not require on-site samples
 - ★ New TPOC letter template will be posted on BPSS web site

62-770.220, F.A.C. - Noticing

■ Actual TPOC notice shall include:

- ◆ The type of proposed agency action (i.e., temporary extension of the point of compliance)
- ◆ A description of the location of the cleanup project site and the name and address of the responsible party
- ◆ The location of copies of documents concerning the site and the proposed remedial strategy, including TPOC, for public inspection
- ◆ The name and address of the Department/LP project manager to whom comments should be directed requests for copies of the Department's actions regarding the site may be requested; and

62-770.220, F.A.C. - Noticing

- ◆ 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.” For purposes of actual notice, the 30-day comment period shall commence on the delivery date stamped on the return receipt.

■ (4) TPOC Status Update 5-Year Notice

- ◆ Additional notice concerning the status of the site rehabilitation shall be similarly provided every five years to the classes of persons who received notice pursuant to subsection 62-770.220(3), F.A.C., unless
 - ★ In the intervening time, such persons have been informed that the contamination no longer affects the property into which the point of compliance was allowed to extend.

62-770.220, F.A.C. - Noticing

- (5) When the PRSR is the Department, if the Department ceases to conduct the site rehabilitation, then the noticing requirements shall be assumed by the responsible party.
 - ◆ Applies to Initial and TPOC notices
- Similar amendments were made at the same time to the Department's other cleanup rules including, Chapter 62-782: Dry Cleaning Solvents, Chapter 62-785: Brownfields, and Chapter 62-780: Other Contaminated Sites.

62-770.220, F.A.C. - Noticing

- The DWM and DOH toll free information “Hotlines” started in April 2005 with hours of 10 a.m. – 7 p.m.
 - ◆ 10/10/05 cut to 10 - 6
 - ◆ 2/16/06 cut to 2 - 6
 - ◆ 4/26/06 cut to message only with 1 bus day call back
- The DWM web site has “Property Owner Notice of Discovery of Pollution” feature
 - ◆ Map of Florida & Counties
 - ◆ Click on County and get list of all program sites, site ID #s, addresses and public notice date
 - ◆ May enhance this information in future

Chapter 2005-50, L.O.F.

- Effective September 1, 2005
- Section 376.30702, F.S. - Contamination Notification, applies to all waste cleanup programs:
 - ◆ Petroleum Cleanup, Dry Cleaning Solvents, Brownfields, and Other Contaminated Sites
- Paragraph (2) – Initial Notice Of Contamination Beyond Property Boundaries - Same as 62-770.220 (2), F.A.C., but adds:
 - ◆ The PRSR must now mail a copy of the notification package to all known lessees and tenants of the source* property, though the off-site property and owner information is not required to be included.

Chapter 2005-50, L.O.F.

- (3) DEPARTMENT'S NOTICE RESPONSIBILITIES
 - ◆ Within 30 days after receiving the actual notice required pursuant to subsection (2), Department shall send a copy of such notice, or an equivalent notification, to all record owners of any off-site real property where contamination was discovered.
 - ◆ If the off-site property is the site of a school, 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 them to provide actual notice to teachers and parents or guardians of students attending the school during the period of site rehabilitation.

Chapter 2005-50, L.O.F.

- (3) DEPARTMENT'S NOTICE RESPONSIBILITIES (cont.)
 - ◆ (For Schools) Along with the copy of the notice or its equivalent, the Department shall include a letter identifying sources of additional information about the contamination and a telephone number to which further inquiries should be directed. The Department may collaborate with the Department of Health to develop such sources of information and to establish procedures for responding to public inquiries about health risks associated with contaminated sites.

62-770.220 Notice of Proposed Rulemaking

- Notice of proposed rulemaking for all 4 cleanup rules posted 5/26/06
 - ◆ Minor changes to conform to new statute, no workshop planned unless requested for good cause.
 - ★ Add to end of (2) “and to all known lessees and tenants of the property at which site rehabilitation was initiated.”
 - ★ Add to end of (2) (b) “This paragraph does not apply to notice provided to the lessees and tenants of the property at which site rehabilitation was initiated pursuant to this chapter;
 - ◆ Plan to publish guidance with Forms and Excel Tables by effective date
 - ◆ Does not address Department’s noticing responsibilities

Frequently Asked Questions

- Question 1: Who is responsible for submitting the Initial Notice of Contamination Beyond Property Boundaries for those sites at which the State is conducting the site rehabilitation activities?
 - ◆ Answer: The Department will act as the PRSR for State-lead sites under active site rehabilitation. Preparation of Form 62-770.900(3) and attachments may be tasked to the Preapproval or State Cleanup contractor provided the required timelines are met (anticipate templated cost by next SOP update).

At this time the BPSS Admin Services Contractor, is continuing to process rule based “Initial” notice packages submitted to the DWM and to send letters to off-site property owners.

If site is not currently funded due to low priority or funding cap and the PRSR is voluntarily proceeding with site rehabilitation under Chapter 62-770, F.A.C., then they would be responsible for submitting any required notification to the Department.

Frequently Asked Questions

- Question 2: How is noticing handled for sites that are eligible for State-funded cleanup but currently not of sufficient priority for funding approval?
 - ◆ Answer: Rule 62-770.160(4), F.A.C., allows for a general exemption for eligible sites from complying with the requirements of Chapter 62-770, F.A.C., in advance of commitment of restoration funding in accordance with the site's priority ranking.

Therefore, eligible sites that are not within funding range or otherwise approved for funding are not required to comply with these notification requirements at this time.

However, as stated in #1 above, if the RP for an eligible site below funding range chooses to voluntarily proceed with site rehabilitation, the RP for that site will become the PRSR and would be subject to the notification requirements.

Frequently Asked Questions

- Question 3: Rule 62-770.160(4), F.A.C., says that property owners of sites where active remediation or monitoring are being performed in accordance with a RAP, MOP, NAMP or Risk Assessment approval order may elect to complete the cleanup based on the version of the rule in effect at the time the order was issued. In such a case, if the order was issued prior to the initial noticing requirements in the rule, would those requirements apply?
 - ◆ Answer: This provision would not apply to notification requirements as it does to other rule requirements because Section 376.30702, F.S., does not contain such grandfathering provisions.

Therefore, PRSRs for sites continuing with site rehabilitation initiated under a Department Order prior to April 17, 2005 are subject to the noticing requirements.

Frequently Asked Questions

- Question 4: If contamination is documented at the edge of the property and it appears obvious that contamination exceeding CTLs are present on the off-site property and/or if a technical report includes a projected plume map that indicates an impact to the off-site property, is a notice required to be submitted to the Department?
 - ◆ Answer: No, for the “Initial Notice” the governing statute and rule specifies that such off-site contamination be documented with laboratory analytical samples under appropriate quality assurance protocols.

While “backlog” noticing efforts did include properties “suspected” to be contaminated within projected contaminant plumes (if the technical report was signed by a professional geologist or engineer), “Rule” based noticing requirements are limited to sites with actual laboratory analyses performed on samples taken within their boundaries.

Frequently Asked Questions

- Question 5: As a licensed professional, I feel that I have a responsibility to notify the owner of “suspected” properties based on the evidence available. Why is the Department not requiring notification for “suspected” sites.
 - ◆ Answer: The intent of the “Initial Notice” in the rule and statute was for quick disclosure upon discovery based on actual laboratory analytical samples, often prior to confirmation of the source(s) or complete assessment.

This issue was the topic of much discussion and compromise during the rule making process and approval by the Environmental Regulatory Commission. For that reason, the subsequent statutory amendment was intentionally worded in a similar manner. The serious consequences of such official notices to the owners of affected properties and the PRSRs, including potential responsibilities and liabilities mandate that they be based on clear and competent supporting evidence.

Frequently Asked Questions

- Question 6: If a site at which site rehabilitation was initiated has already had an “Initial Notice” submitted to the Department or was included in the “Backlog” noticing efforts, would there ever be a need to submit additional notifications for that site?
 - ◆ Answer: Yes, a “rule” based notification must be submitted if a new off-site property is discovered to be contaminated or if new contaminants are detected above CTLs that were not part of the previous notice for the same off-site property.

Additional notification is not required for a change in concentrations of previously noticed contaminants (up or down), or when the site reaches site rehabilitation completion status.

Frequently Asked Questions

- Question 6: Rules 62-770.220 (3) and (4), F.A.C., “Subsequent Notice of Contamination Beyond Property Boundaries for Establishment of a Temporary Point of Compliance” also requires notification of off-site property owners. Are these requirements different from those for the “Initial Notice of Contamination Beyond Property Boundaries”?
 - ◆ Answer: Yes, the TPC notices apply to “all” off-site properties into which the TPC is allowed to extend and would include those within official plume maps from complete and approved site assessment reports.

Frequently Asked Questions

- Question 7: Will the BPSS Administrative Services Contractor handle the notice letters to property owners for the “Subsequent Notice of Contamination Beyond Property Boundaries for Establishment of a Temporary Point of Compliance” ?
 - ◆ Answer: No, the TPC notice requirements have been in effect since 1999, at least for natural attenuation monitoring. For State-lead sites, the site managers should handle and for non-program or voluntary cleanup sites, the PRSR should handle.