



Policy for Considering Environmental Justice in the Review of Investigation and Remediation of Contaminated Properties

1. Introduction

As a result of Rhode Island's industrial history and heritage, many properties in the State have been impacted by past activities. Impacts include environmental contamination by oil and hazardous chemicals that were used in these operations. The Rhode Island Department of Environmental Management (DEM) has authority and responsibility for the investigation and clean-up of these contaminated sites. Almost all the work done in this area is undertaken by parties who either caused the contamination, own the site, operated a business on the site, or are unrelated to the property but are interested in developing it. This work is monitored by DEM to make sure it is done in a manner that complies with all applicable rules and regulations.

Many of the impacted sites are located in the urban centers of the State. In many cases, low income and minority populations live in the communities around the sites. These populations have been subject to many historical inequities. Addressing these inequities and providing a fair, effective process for future involvement in site remediation projects is a main premise of environmental justice.

Due to the many challenges facing these residents, people living in these communities often are not as familiar with DEM, its' responsibilities and abilities, the hazards of environmental contamination, and the challenges of effectively investigating and cleaning up contaminated sites.

As implementation of this policy occurs, it will evolve and grow to better meet the goals articulated above. Also, as DEM expands the consideration of environmental justice into other programs, changes will be made to ensure consistency and effectiveness across the Department.

DEM has worked extensively with members of a stakeholder group to develop this policy for considering environmental justice in the review of the investigation and remediation of contaminated properties. The goals of this policy are:

- To help DEM make more informed decisions, improve work quality through collaborative efforts, and build mutual understanding and trust between the Department and the public it serves.
- To ensure that DEM staff understand the characteristics of the communities surrounding the sites that they are assigned to regulate.
- To increase awareness in the urban centers about DEM, the Site Remediation program, and the opportunities for assistance offered by DEM to residents living in these neighborhoods.
- To provide a clear process for residents to identify potentially contaminated sites to DEM, monitor the initial consideration of those sites, and understand the results of the evaluation.
- To encourage investment and development in environmental justice areas that balances the needs of residents, municipalities and the redevelopment community.
- To provide a clear and effective process for ongoing two-way communication and understanding as a site is investigated and cleaned up.

- To help DEM staff engage residents within their own community and neighborhoods in order to help build capacity of residents and community groups within urban areas to support progress towards the goals of this policy.
- To provide an opportunity to raise concerns about environmental justice and ensure they are considered by DEM.

It is important to remember that a wide variety of people and organizations have an interest in the investigation, clean-up and redevelopment of contaminated properties. As such, this policy can be viewed through multiple lenses:

- For DEM staff, this policy will guide and direct the Department's decisions and public involvement process in such a way that encourages timely, effective community participation.
- For residents living/working in environmental justice areas impacted by actual or suspected environmental contamination, implementation of this policy will provide clear, predictable opportunities to participate in environmental decision-making relative to the investigations and remediation of property regardless of race, income, national origin or English language proficiency.
- For investors and developers operating in environmental justice areas, this policy will help provide a clear, predictable process for interacting with both DEM and communities impacted by redevelopment projects on potentially contaminated sites.

2. Policy Statement

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, English language proficiency, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. DEM has established this goal for the review of the investigation and remediation of properties with actual or suspected contamination in all communities and for all persons across this State. It will be achieved when everyone enjoys a fair share of environmental benefits and the same degree of protection from environmental and health hazards, as well as equal access to the decision-making process to help ensure a healthy environment in which to live, learn, and work.

As properties are investigated and cleaned up, DEM must promote public participation based on the beliefs that individuals should have a timely, meaningful say in decisions that impact them, and that public participation in its best form is an ongoing, two-way process that benefits both the public and the agency. DEM defines public participation as people getting timely and accurate information, being heard at meaningful times, and if interested, contributing to the development of workable solutions. The public often holds diverse views and DEM will ensure that diverse voices are heard.

The Department's objective is to provide for proactive consideration of environmental justice concerns in order to help ensure that all communities have a strong voice in environmental decision-making relative to the investigations and remediation of property regardless of race, income, national origin or English language proficiency. Timely opportunity for informed public participation is a key part of meeting the intent and purpose of this policy.

In addition, residents have the right to petition DEM when they suspect release of contamination and receive a written, formal response from DEM.

Finally, this policy must be implemented in an efficient and effective manner to support clean-up, re-investment, and redevelopment of contaminated properties in our urban communities. Investors and developers must see a clear, predictable process for interacting with both DEM and communities around the properties undergoing investigation and clean-up. Care must be taken to effectively address community concerns without imposing additional administrative process and delays into projects whenever possible.

3. Site Discovery and Public Petitioning

As stated above, residents have the right to petition DEM when they suspect a release of contamination and receive a formal response. DEM is establishing a multi-lingual complaint hot-line for the filing of such petitions. In addition, the public has the right to inquire and receive adequate information about sites being actively remediated at any point during the site clean-up process.

All petitions for DEM consideration of a suspected contaminated site must receive a formal response, in writing, confirming the receipt of the petition and the anticipated work and timeline necessary for response.

Once the initial evaluation of the petition is completed, DEM staff must provide a result of the initial evaluation and the anticipated next steps to the petitioner in writing.

The Department's objective is to improve outreach and communication with the public through: 1) culturally and linguistically appropriate outreach methods; 2) timely distribution of information and public notification; and 3) improved access to up-to-date information through multiple media sources.

As required by federal Brownfields laws, the Department will maintain and publish lists of sites with planned response actions and sites with completed response actions and will work to publish inventories of all sites it has worked with.

DEM Summary Action Items
<ul style="list-style-type: none">○ Establish Multi-Lingual Complaint Hotline and Web Site.○ Accept all public petitions for suspected contaminated sites and investigate the suspicions promptly.○ Communicate, in writing, the results of the initial investigation and anticipated next steps back to the complainant, in their native language whenever possible.○ Maintain on-line lists of sites with planned response actions and completed response actions.○ Establish an on-line inventory showing all sites that have been in the program. For each site, information on the type(s) of contaminants found and the remedial actions taken, or to be taken, will be included.

4. Identifying Communities of Concern

In order to meet the various needs of different communities, the population in those communities must be clearly and consistently understood by the engineers and scientists within DEM responsible for overseeing the investigation and clean-up of properties. The United States Environmental Protection Agency (EPA) uses data from the census to develop population maps in Geographic Information Systems (GIS). In establishing their mapping criteria, EPA calculated (on a regional basis) the percent of the census block group that is minority AND the percent of the block group that is low-income (under 2x Federal Poverty Level). Areas mapped by EPA are both (% minority & % low-income) high enough to rank in the top 15% of block groups. DEM has adopted similar criteria, however, it compared the block groups on a state-wide basis instead of a regional basis. In addition, DEM mapped areas where the percent of the block group that is minority OR the percent of the block group that is low-income (under 2x Federal Poverty Level) are high enough to rank in the top 15% of block groups state-wide. For purposes of implementing this policy, the census blocks meeting these criteria shall be designated Environmental Justice Focus Areas.

When sites are located on these maps, the demographics of the surrounding community can be determined. Environmental Justice Focus Areas corresponding to the demographic calculations outlined above are mapped as a data layer under DEM's Waste Management Data section of the server.

DEM staff must map the locations of the sites assigned to them on the map server and compare the location to the highlighted areas in the Environmental Justice Focus Area overlay. For DEM staff, the DEM Internal Map Server is located at: <http://204.139.0.188/website/maps/viewer.htm> A static map of RI's Environmental Justice Focus Areas can be found on the DEM website at: <http://www.dem.ri.gov/envequity/index.htm>

Utilizing these types of mapping tools begins the process for deploying additional resources e.g., community outreach, bilingual tools, etc. As part of our GIS program, DEM coordinates geographic information and mapping tools with other RI agencies that have similar environmental and public health responsibilities, such as the Department of Health (DOH).

Efforts to identify communities of concern will additionally benefit from an understanding of those populations that regularly utilize a property undergoing remediation and redevelopment, not just the neighborhood that surrounds a particular site. Identifying communities of concern should involve a close review of both current and future site uses, and an attempt to identify other sources of pollution to determine if disproportionate environmental burdens exist.

This policy is not intended to eliminate or minimize DEM's responsibility to address environmental justice concerns that are raised outside designated environmental justice areas. In fact, this policy is intended to enhance and reinforce DEM's efforts to meet existing legal mandates in the RI Industrial Property Remediation and Reuse Act and in Title VI of the federal Civil Rights Act of 1964, which apply to all recipients of federal assistance, including DEM.

DEM Summary Action Items
<ul style="list-style-type: none">○ Maintain GIS Mapping site showing Environmental Justice Focus Areas○ Compare all sites reported to the Department with the Environmental Justice Focus Area overlay map to determine if the site is in such areas

5. Baseline Notice Requirements for Site Remediation Projects

There are three points to address during the regulatory process for the investigation and clean-up of contaminated sites that require notice to members of the community. This is a legal minimum notice required under law and regulation, and in many cases, supplemental notice and community involvement will be necessary for affected or potentially affected parties to have meaningful input.

The three required points in the regulatory process are:

- Prior to the implementation of the Site Investigation field activities, the performing party must notify all abutting property owners and tenants that an investigation is about to occur. (as required by Rule 7.07 A of DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases)
- Prior to the formal Department approval of the Site Investigation Report (in the form of a Remedial Decision Letter), the performing party must notify all abutting property owners, tenants and community well suppliers associated with any well head protection areas which encircle the contaminated-site that the investigation is complete and provide them with the findings of the investigation and any proposed remedial alternative which includes on-site treatment and/or containment of hazardous materials as part of the final remedy. (as required by Rule 7.07 B of DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases)
- In addition, in the 2006 legislative session, the Industrial Property Remediation and Reuse Act was amended to provide a supplemental level of due diligence and communication with the public where sites are proposed for reuse as schools, day care facilities, or recreational facilities. The following requirement was added: *Whenever a site that is known to be contaminated or is suspected of being contaminated based upon its past use is considered for possible reuse as the location of a school, child-care facility, or as a recreational facility for public use, the person proposing such reuse shall, prior to the establishment of a final scope of investigation for the site and after the completion of all appropriate inquiries, hold a public meeting for the purposes of obtaining information about conditions at the site and the environmental history at the site that may be useful in establishing the scope of the investigation of the site and/or establishing the objectives for the environmental clean-up of the site. The public meeting shall be held in a city or town in which the site is located; public notice shall be given of the meeting at least ten (10) business days prior to the meeting; and following the meeting, the record of the meeting shall be open for a period of not less than ten (10) and not more than twenty (20) business days for the receipt of public comment. The results of all appropriate inquiries, analysis and the public meeting, including the comment period, shall be documented in a written report submitted to the department.*

These are the minimum notice requirements in this program, as required by law. In order to facilitate effective communication however, these requirements must be supplemented (particularly in Environmental Justice Focus Areas).

DEM Summary Action Items
○ Ensure that all sites meet the baseline regulatory requirements for notice.

6. Beyond Notice: Increasing Awareness and Information

Enhanced Outreach: Providing More Information:

In many communities, residents may not be familiar with the role of DEM and the tools and resources the Department can bring to bear to address environmental issues in their neighborhoods. In order to increase awareness, DEM has begun to develop and distribute informational resources in both English and languages other than English. In addition, the Department is creating informational materials on the Site Remediation/Brownfields program and distributing them through as many organizations as possible that are active in Environmental Justice Focus Areas, both as stand-alone materials as well as through existing newsletters and other communications. It is particularly important that expanded outreach be considered through newspapers, newsletters and other media that specifically focus on the community near the site and that elected representatives, at both the local and State level, be provided with the information on the project. When appropriate, DEM will strive to publish notices, fact sheets and other informational materials in Spanish, Portuguese or other languages.

Clear, simple and straightforward information should be provided to the community surrounding a contaminated site in an Environmental Justice Focus Area at three levels:

- Information about DEM.
- Information about the DEM Site Remediation and Brownfields program.
- Information about the specific site.

An informational sheet about DEM has been prepared for this purpose. In addition, information has been produced to explain DEM's Brownfields program in clear, simple terms. The document, entitled "Brownfields, Turning Bad Places into Good Spaces", is available in both English and Spanish.

Fact sheets on a particular site should be prepared and forwarded to the DEM Communications Office for review prior to distribution. Emphasis should be put on including information on the known history of the site, the suspected contamination (based on both historical uses and existing environmental information), the point in the process where the site is and the expected path moving forward, and the DEM contact information (e.g. typically the site specific project manager). The fact sheet must be written in non-technical, layman's terms whenever possible.

It is the responsibility of all DEM staff persons assigned to oversee the investigation and clean-up of sites to be aware of the specific materials produced by DEM to enhance awareness and understanding of our programs and to offer those materials to interested members of the public as soon as possible in the regulatory process.

As new sites are identified, DEM staff are encouraged to use their own initiative, with approval from program management, to distribute information in areas within communities surrounding these new sites with emphasis on areas where people gather, such as community centers, health centers, religious institutions, etc. Material should only be distributed and/or displayed with the permission of the responsible person in charge of the location.

DEM Summary Action Items
<ul style="list-style-type: none">○ Provide clear, simple and straightforward information for all sites in an Environmental Justice Focus Area at three levels:<ul style="list-style-type: none">● Information about DEM.● Information about the DEM Site Remediation and Brownfields program.● Information about the specific site.○ Fact sheets on individual sites must be written outlining the known history of the site, the suspected contamination (based on both historical uses and existing environmental information), the point in the process where the site is and the expected path moving forward, and the DEM contact information.○ DEM Communications Office staff will review site fact sheets to make sure that they are written in non-technical layman's terms prior to distribution.○ Using their initiative, with approval from program management, DEM staff will distribute information at locations where people gather, such as community centers, health centers, religious institutions, etc.○ Expand advertisement of DEM's Environmental Roundtable meetings in urban communities and with organizations that regularly interact with residents of urban communities.

Providing Information at the Site:

In many cases, residents learn about activities occurring on a site by passing by the site in their neighborhood. Sites active in the Site Remediation program that are located in Environmental Justice Focus Areas should have signs posted to inform local residents about the project.

DEM will need to develop regulatory language establishing a site signage requirement. Until these regulations have been formally adopted, the criteria established by the state of Connecticut for site remediation projects should be used as guidance for the development of such signs. A summary of Connecticut's regulatory requirements for signs is as follows: 1) shall be at least four feet by six feet; 2) shall be posted for at least 30 days; 3) shall be maintained in legible condition; 4) shall be clearly visible from the nearest public highway/road; 5) shall include the name/phone number/address of an individual from whom any interested person may obtain information about the site or remediation; and 6) shall be the responsibility of the owner or responsible party/parties.

DEM Summary Action Items
<ul style="list-style-type: none">○ Amend the Site Remediation regulations to require that all sites in Environmental Justice Focus Areas have signs posted that include all required information.○ Ensure that all sites in Environmental Justice Focus Areas have proper signs posted.

Local Access to Public Files on a Site: Information Repositories

A repository is a paper and/or electronic file containing current information, correspondence, technical reports, reference documents, status updates, fact sheets and other associated documents regarding a site being proposed for clean-up or in the process of being cleaned up.

The purpose of an information repository should be to allow open and convenient public access to site-related documents. Through the use of the repository, the public should be able to research a

site, learn how to participate in the clean-up process, and photocopy any information/documents of interest. The repository should contain the name and contact information for a site specific contact person at DEM (typically the project manager) and a representative from the city/town wherein the project lies.

It is not necessary to create an information repository specific to every site clean-up project. DEM should create an information repository for sites which the Department reasonably expects will be of heightened interest to the public or when the public requests it.

When DEM receives a request to make information more available in the community, repositories should first be established electronically on-line. The repository should be set up as early in the site clean-up process as is practical, and should be maintained in legible condition and publicized to the immediate community and any site-specific stakeholders. This will require that all reports and documents submitted to DEM as part of a site clean-up be provided in both hard and electronic copy. Contact information for representatives from other municipal offices and state/federal agencies involved in the site clean-up should be provided on the DEM website. In addition, upcoming public meetings/hearings about the site should be advertised on the DEM website.

If a "hard copy" repository is requested by the community, it should be located in a public building that is convenient for local residents, such as a library, public school, city/town hall, or public health center (public libraries and city/town halls are the most common locations). Repository locations should be convenient to the public where photocopying equipment is available, and should meet the requirements of the Americans with Disabilities Act (ADA). In addition to site-specific technical information, the repository should contain basic fact sheets about the site.

In either the electronic or hard copy format, repository contents should be clearly organized and indexed for easy use by the public. When appropriate, DEM will strive to publish notices, fact sheets and other informational materials in Spanish, Portuguese or other languages.

DEM Summary Action Items
<ul style="list-style-type: none">○ Amend the Site Remediation regulations to require that all submissions provided to the Department in this program be made in both hard copy and electronic format.○ When DEM receives a request to make information more available in the community, establish an information repository electronically on-line.○ When DEM receives a request for a "hard copy" repository in the community, it must be established in a public building that is convenient for local residents.

Community Meetings:

Employees are encouraged, and may be assigned, to participate in community meetings and/or events to inform the public about DEM's Site Remediation/Brownfields program. If an event is identified that seems a strong candidate for program outreach, notify the program supervisor and the Office Chief of the event. If supervisory staff agree that the event is a good candidate for outreach, staff will be authorized to participate. Compensation for such participation will be consistent with Department and State policies.

Whenever a member of a community either located near a site, as a potential user of the site after redevelopment, requests a public meeting, an initial community meeting will be held. The purpose of the meeting is to: 1) disseminate information about DEM's Site Remediation program and the specific site of interest; 2) document community comments and concerns about the investigation, clean-up, and reuse of the site; and 3) engage in a dialogue with the public about the site.

Community meetings will be organized to be accessible to those who wish to attend (considering public transportation, access for disabled, and potentially child care needs when identified as an issue by potential participants). All meetings will be held at a convenient time, likely after working hours at a community center near the site. An atmosphere of "equal participation" among all involved should be established – avoiding panels, head tables, or auditorium presentations. Translation assistance for non-English speakers will be available when appropriate.

When organizing community meetings, the DEM staff person should:

- Recognize community champions and make sure the planning of the meeting is coordinated with them. If a community champion is not readily apparent, seek consensus from as many participants as possible. A community champion should be thought of as an individual (or individuals) who appears to express the collective voice of the neighborhood.
- If several members of the community are interested in participating, suggest the formation of a community advisory panel with a single point of contact for clear and efficient communication. Take advantage of all opportunities to help build capacity within the community to address environmental issues and concerns.
- Establish clear goals for the meeting – the following topics should be the minimum for discussion:
 - Summarize the information about the Site Remediation program including the investigation process, risk-based standards, and decision making process on clean-up. It may be beneficial to explain the limits of the program- i.e. focus on the site with little say over the specific reuse planned.
 - Identify the main issues of the community – dialog at the meeting should include elements to draw out local knowledge about the site, concerns about the investigation and clean-up, and identify any concerns about the reuse plan if applicable.
 - Formulate a proposed response to the issues raised. Try to agree to specific, clear action items and schedules. If commitment requires discussion with upper management at DEM, community members should be informed of this and given a time frame for follow up.
 - Determine the form and/or location for an information repository. Will an electronic, on-line repository meet the community's needs? Is there access to computers in area?
 - What is the desire for a continued dialog and the form and frequency?

A summary of all public meetings must be written and circulated internally to the Program Supervisor and Office Chief within 48 hours of the discussion. Participation in public meetings, events, or other distribution of materials shall be documented in the site file.

DEM Summary Action Items

- Hold an initial community meeting whenever requested by a member of the public.
- Organize community meetings to be accessible to those who wish to attend
- Hold meetings at a convenient time, likely after working hours, at a community center near the site.
- Organize meetings in a manner that encourages discussion and establishes an atmosphere of “equal participation” – avoiding panels, head tables, or auditorium presentations.
- Establish and communicate clear goals for meetings
- Respond to the issues raised with specific, clear action items and schedules.
- Summarize all public meetings in writing and circulate internally to the Program Supervisor and Office Chief within 48 hours of the discussion.
- Document participation in public meetings, events, or other distribution of materials in the site file.

7. Sites With Very Significant Community Involvement Needs

In some cases, community concerns over the contamination at a site can be very significant. Communications beyond the enhanced level outlined in Section 6 above are necessary to facilitate an effective dialog on the project.

DEM staff must advise the Program Supervisor, the Office Chief, and the Assistant Director whenever such community needs become evident. DEM staff should be prepared to provide program supervisors with specific information such as the language/translation needs of the impacted community, anticipated need for additional resources, public sensitivity/perception of risk expressed by community members, and a summary of comments and significant concerns voiced by the community. In these cases, the following enhancements may be considered:

- Developing a site-specific community involvement plan.
- Providing expert independent technical support to the community to facilitate broader understanding of complex documents.
- Establishing an ongoing schedule of meetings with the community or an advisory group.

Because these enhanced measures require a commitment of staffing and financial resources, these investments require the specific approval of DEM senior management.

DEM Summary Action Items

- Amend Site Remediation regulations to give the Department the clear authority to require the development of site specific community/public involvement plans.

8. Building Capacity for Effective Participation

Effective two-way communication involves strong local neighborhood and resident organizational capacity and understanding within both DEM and the community. In many areas throughout the State, and in particular Environmental Justice Focus Areas, there is not strong technical capacity or familiarity with the Site Remediation process to easily support such conversations.

DEM is committed to working with community groups to build capacity for effective two-way participation. In addition, DEM is committed to providing education and training to its' own staff to strengthen these dialogs.

Topics for DEM training will include EPA Environmental Justice training, effective facilitation and relationship-building, and strengthening cultural awareness.

DEM will also continue to build networks with community groups and organizations operating in Environmental Justice Focus Areas throughout Rhode Island with the intent of establishing stronger communications and capacity to act within the community.

DEM will continue to seek funding to strengthen this effort, with partners and individually.

DEM Summary Action Items
<ul style="list-style-type: none">○ Coordinate with EPA Region 1 to provide Environmental Justice training program for DEM staff.○ Explore future EPA funding opportunities to build upon and strengthen DEM's connections with the urban community.○ Actively seek interactions with the public through speaking opportunities, civic groups, exhibits, workshops, etc.

9. Effective Date and Applicability

This Policy is effective June 26, 2009. This Policy is for the use of DEM personnel during the investigation and remediation of contamination from the release of hazardous materials under the authority of the environmental statutes and regulations that DEM administers. This Policy applies to all such site investigation and remediation actions commenced after the effective date of this Policy.

Every two years DEM will review the policy and its implementation and may, after soliciting public input, amend the policy to more effectively serve its purposes.



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6/23/09

Date