

NORTHWEST REGION BROWNFIELDS PROGRAM VOLUNTARY NOTICE POLICY

Goals

The goals of this Notice Policy are:

1. To notify potentially affected persons and appropriate public officials about health and environmental hazards discovered during the program that may pose a risk to human health or the environment; and
2. To encourage public participation in the program.

Policy

1. General Provisions

- a) It is the policy of the NRPC to maintain information shared with it by property owners participating in the Brownfields Program confidential to the extent allowed by law and consistent with these policies.
- b) Potential participants in the Brownfield program should be made aware that persons who have knowledge of a release or a suspected release may have affirmative duties under Vermont law and may be subject to certain penalties for failure to fulfill those duties. See 10 V.S.A. §§ 6612; 6615; and 6617; see generally Title 10, Chapter 159 of Vermont Statutes Annotated.
- c) In considering whether to provide voluntary notice to municipal officials, potentially affected neighbors, and other parties, decision-makers should consider whether the information to be acted upon is from a Phase I Environmental Assessment, Phase II Environmental Assessment, or from another source. It is generally understood that the information contained in Phase I Environmental Assessments is not field verified by sampling. The information contained in Phase II Environmental Assessments is generally based upon field verified sampling. When considering whether to provide voluntary notice based upon other sources of information, the reliability of the source of information ought to be carefully considered.
- d) The Executive Director, or his or her designee, should report the results of all assessments to the NRPC in a timely fashion. If an assessment report reveals an immediate and substantial potential harm to human health and/or the environment, the Executive Director should immediately notify the NRPC or appropriate subcommittee thereof for appropriate follow-up action.
- e) If information received during the application process reveals an imminent and substantial harm to human health and/or the environment, the NRPC should notify the municipal

legislative body, local health officer, potentially affected neighbors, and other parties as appropriate.

f) This Voluntary Notice Policy it outlines the general notice goals of the Northwest Regional Planning Commission; it is not mandatory. All of the decisions made in reference to this policy are wholly discretionary in nature.

g) Owners and other property stakeholders should be invited to participate in the voluntary notice process. At the discretion of the NRPC and after consultation with it, owners or other parties may be permitted to provide the notification.

2. Phase I Assessment Results

a) Generally, NRPC will not give notice to neighboring landowners and other public officials upon completion of Phase I Assessments.

b) However, where a Phase I assessment reveals:

i. A substantial likelihood that a biological, chemical, or physical agent(s) poses an imminent and substantial harm to human health:

1. The NRPC may immediately notify the applicable municipal legislative body(s) and local health officer(s);¹ and

2. The NRPC may also notify potentially affected neighbors and other parties.²

ii. A substantial likelihood that a biological, chemical, or physical agent(s) poses a harm to human health:³

1. The NRPC may notify the applicable municipal legislative body(s) and local health officer(s); and

¹ This somewhat tracks language from the health statute. See 18 V.S.A. §§ 2(8), 126 & 127. It adds a high “substantial likelihood” standard because it would be working off a Phase I “opinion” rather than a Phase II “evidentiary” basis. It also addresses imminent and substantial harms – this is really for emergencies. See 18 V.S.A. § 127. To be most inclusive, it addresses “human health” rather than the “public health” terminology of the health statute. See 18 V.S.A. § 2(8) (determination of whether something is a public or private health hazard is made by the health commissioner or his/her designee). Finally, it triggers notice to the selectboard and health officer because the selectboard can issue local health orders, 18 V.S.A. § 126, and health officers may issue emergency health orders, 18 V.S.A. § 127. “Health officers” include local and district health officers, and the commissioner of health or his/her designee. 18 V.S.A. § 2(4).

² See FN1 -- This provision is included because the local health officer and Health Commissioner only act upon a “public” health issue, which is subject to interpretation as to how many persons constitute the “public,” and the potential harm here may only impact a few people. This provision is also included in the event that the NRPC wants to act independently of the health authorities.

³ This provision is not only for emergencies – and removes the “immediately” from notifying the selectboard and local health officer. However, even for non-emergencies, it accounts for the possibility that the NRPC may want to provide notice at this stage if the “substantial likelihood” standard is met and balances out against the lack of hard evidence.

2. The NRPC may also notify potentially affected neighbors and other parties.

3. Phase II or Supplemental Phase II Assessment Results

a) Where a Phase II or Supplemental Phase II Assessment reveals

i. A reasonable probability that a biological, chemical, or physical agent(s) poses an imminent and substantial harm to human health:

1. The NRPC may immediately notify the applicable municipal legislative body(s) and local health officer(s); and

2. The NRPC may also notify potentially affected neighbors and other parties.⁴

ii. A reasonable probability that a biological, chemical, or physical agent(s) poses a harm to human health:

1. The NRPC may notify the applicable municipal legislative body(s) and local health officer(s); and

2. The NRPC may also notify potentially affected neighbors and other parties.

iii. That a biological, chemical, or physical agent(s) may be a potential harm to the public health.

1. The NRPC may notify the applicable municipal legislative body(s) and local health officer(s).⁵

2. The NRPC may also notify potentially affected neighbors and other parties.

iv. Information that hazardous wastes may present an actual or potential threat to human health or the environment, the NRPC may notify the Agency of Natural Resources.⁶

⁴ This tracks the language of the emergency provision under Phase I, except is based on the lower “reasonable probability” standard rather than a “substantial likelihood” because Phase II produces hard evidence.

⁵ Even without a reasonable probability, this is the statutory standard that triggers a health officer to investigate “a condition that may be a public health hazard.” See 18 V.S.A. §§ 2(8) & 602a(1).

⁶ Vermont Hazardous Waste Management Regulations § 7-107(a) Enforcement (Eff. Oct. 15, 2006). This is the enforcement provision for hazardous wastes, for which there are no standards for soil contamination. There is nothing about groundwater in this policy because Vermont has groundwater contamination standards that trigger environmental consultants to report to ANR. See Groundwater Protection Rule and Strategy § 12-701-706 (Eff. Jan. 27, 2005).