

DER-23 / Citizen Participation Handbook for Remedial Programs

New York State Department of Environmental Conservation

DEC Program Policy

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I. Summary:

This Program Policy provides guidance to the New York State Department of Environmental Conservation (DEC) Division of Environmental Remediation (DER) staff and the public on how to fulfill citizen participation (CP) requirements according to 6 NYCRR Part 375, *Environmental Remediation Programs*. This policy is applicable to DEC's remedial programs consisting of the Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program, SSF); the Brownfield Cleanup Program (BCP); and the Environmental Restoration Program (ERP). It also identifies who is responsible for planning and conducting CP programs and activities; explains the common objectives of CP programs and how they integrate with the remedial programs; and outlines opportunities and recommended methods for effective CP.

II. Policy:

Refer to attached *Citizen Participation Handbook for Remedial Programs*.

III. Purpose and Background:

The purpose of this Program Policy is to identify CP requirements for remedial programs managed by DER, including the SSF, BCP, and ERP. It provides guidance to DER staff and the public on how to plan and conduct required CP activities for each remedial program according to 6 NYCRR Part 375, and to determine if additional CP activities should be conducted for a particular contaminated site, with guidance to plan and conduct these additional CP activities. It also outlines opportunities and recommended methods for effective CP.

This Program Policy replaces the June 1998 DER guidance document *Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook*.

IV. Responsibility:

Responsibility for maintaining this Program Policy lies with the Policy and Planning Section, Bureau of Program Management, DER. Primary responsibility for implementing this Program Policy is assigned to DER Remedial Bureau Directors and DER Regional Managers. Remedial parties and their contractors are encouraged to consult and work with DER's project managers during the planning and implementation of CP programs.

V. Procedure:

Follow the attached guidance document to identify, plan, and conduct CP requirements for remedial programs.

VI. Related References:

- Article 27, Title 13 of the Environmental Conservation Law (ECL)
- Article 27, Title 14 of the ECL
- Article 56, Title 5 of the ECL
- 6 NYCRR Part 375, *Environmental Remediation Programs*, December 14, 2006
- Program Policy DER-14, *Technical Assistance Grant (TAG) Guidance Handbook*, March 2006



NEW YORK
STATE OF
OPPORTUNITY

**Department of
Environmental
Conservation**

Prepared by
Division of Environmental Remediation

Citizen Participation Handbook

for

Remedial Programs

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List of Acronyms

Alternatives Analysis	AA
Brownfield Cleanup Program	BCP
Certificate of Completion	COC
Citizen Participation	CP
Citizen Participation Specialist	CPS
Citizen Participation Handbook for Remedial Programs	Handbook
Division of Environmental Remediation	DER
Environmental Conservation Law	ECL
Environmental Justice	EJ
Environmental Notice Bulletin	ENB
Environmental Restoration Program	ERP
Explanation of Significant Differences	ESD
Final Engineering Report	FER
Interim Remedial Measure	IRM
New York State Department of Environmental Conservation	DEC
Proposed Remedial Action Plan	PRAP
Remedial Investigation	RI
Record of Decision	ROD
Registry of Inactive Hazardous Waste Disposal Sites	Registry
Remedial Action Work Plan	RAWP
State Superfund Program	SSF
Technical Assistance Grant	TAG

Section 1

Introduction: Citizen Participation for Remedial Programs

The Citizen Participation Handbook for Remedial Programs (Handbook) is designed to assist New York State (State) Department of Environmental Conservation (DEC) staff, responsible parties, applicants, municipalities, and contractors to plan and implement citizen participation (CP) during the investigation and remediation of sites within remedial programs administered by DEC's Division of Environmental Remediation (DER). The Handbook also helps citizens to understand DER's CP program and how to effectively participate in the remedial process.

The remedial programs addressed in this Handbook are the Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program or SSF), Brownfield Cleanup Program (BCP), and Environmental Restoration Program (ERP). This Handbook identifies and describes applicable CP requirements contained in the Environmental Conservation Law (ECL), 6 NYCRR Part 375 regulations, and DER policies that set forth procedures for conducting CP.

1.1 How to Use This Handbook

This Handbook describes the CP program and how it integrates with DER's remedial programs. It outlines opportunities and recommended methods for effective CP. It provides guidance to plan and conduct required CP activities for each remedial program, and to determine if additional CP activities should be conducted for a contaminated site, with guidance to plan and conduct these additional CP activities.

To use this Handbook, begin by reviewing Section 1 to become acquainted with the goals, objectives, and structure of DER's CP program. These characteristics apply consistently to each of the remedial programs addressed in the Handbook. Section 1 identifies web-based CP resources, as well as the sources in statute, regulation and policy that establish the CP requirements. It also includes a summary chart of the CP requirements.

After reading Section 1, select the appropriate section of the Handbook for details about the CP requirements for the remedial program in which a particular site is being addressed:

- Section 2 – Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program)
- Section 3 – Brownfield Cleanup Program
- Section 4 – Environmental Restoration Program

1.2 Goals and Objectives of the Citizen Participation Program

To facilitate the remedial process and enable citizens to participate in decisions that affect their health, environment, and social well-being, DER's CP Program provides opportunities for citizen involvement and ongoing two-way communication with citizens before decision makers form or adopt final positions.

DER defines CP in relation to its remedial programs as:

A program of activities that provides opportunities for citizens to participate early and in an ongoing way in the decision-making process for the remediation of contaminated sites. The CP program promotes communication among people affected by or interested in contaminated sites, DEC, and parties responsible for site investigation and remediation.

DER's CP program includes the following goals:

- Promote the development of timely and effective site remedial programs that protect public health and the environment.
- Enhance the public's access to, and understanding of, issues and information related to a site and that site's remedial process.
- Provide citizens with early and continuing opportunities to participate in DER's site remedial process and timely notice of such opportunities.
- Ensure that DER staff make site remedial decisions after considering the input and concerns of the affected and interested community.

To accomplish these goals, DER plans and conducts CP activities to achieve the following objectives:

- Provide a process for the affected and interested public to become well informed about site issues and information and to effectively participate in the decision-making process for site remedial actions.
- Foster meaningful public participation that reflects the diversity of interests and perspectives found within the community.
- Solicit public comments at formal milestones and encourage public input at any time during the site remedial process.
- Encourage dialogue to promote the exchange of information among the affected and interested public, governmental agencies, and other interested parties that strengthens trust among the parties, increases understanding of site and community issues and concerns, and improves decision making.
- Provide timely and courteous responses to citizen requests, concerns and issues.
- Inform the public, gather public input, and minimize needless delays caused by uncertainty or lack of information.

1.3 Structure of the Citizen Participation Program

Successful implementation of a CP program and its related activities requires planning and strategy. A site CP program integrates with the site's remedial program and contains several steps:

- Plan CP activities for effectiveness.
- Conduct CP activities to promote meaningful participation by citizens.
- Incorporate results of CP into decision making as appropriate.
- Evaluate CP activities for effectiveness and adjust the CP program as appropriate.

DER recommends an overall strategy to effectively plan and conduct a CP program for a site being addressed under one of its remedial programs. View resources on the DER internal and public web sites about planning and conducting a site CP program.

1. CP Requirements. A site CP program must begin early in the site's remedial process and CP requirements must be applied consistently from site to site within programs. At a minimum, CP activities are conducted at milestones in a site's remedial process. DER staff coordinate with other DEC staff, other agencies, remedial parties and citizens as appropriate to plan and implement CP efforts.

CP activities are an integral part of the overall site remedial program. Conducting a baseline level of required CP activities is important to ensure that the public is informed and involved at major stages of a site's remedial process. State statutes and DEC regulations establish these tasks as the minimum requirements for CP:

- a site contact list and document repository,
- a site CP Plan and fact sheets, and
- public comment periods.

The DER Project Manager has overall responsibility for ensuring the coordination, planning, and implementation of DER's CP program. This is because the CP activities are an integral part of the overall site remedial program. However, the DER Project Manager must closely coordinate the site CP program with others who may include, but are not limited to:

- DEC Citizen Participation Specialists (CPS);
- other DER and DEC staff;
- project staff from the New York State Department of Health;
- the remedial party investigating and/or cleaning up the site;
- the remedial party's contractors; and
- the affected/interested community.

2. CP Options and Flexibility. At many sites, the program of required CP activities meets the needs of all parties involved with the site's remedial program. At other sites, CP activities beyond the minimum requirements are necessary and appropriate because of the nature of the site and/or community interest or concern. This raises several questions:

- How do staff who plan and implement CP for a site determine if the program of required CP activities is sufficient, or if more should be done?

- How are additional CP activities selected for a site remedial program?
- How can the required CP activities and any additional CP activities be implemented most effectively?

These questions can be addressed by preparing the site's required CP Plan and keeping it current. The CP Plan is the main tool that identifies CP needs and activities for a site. The site CP Plan is developed at the start of Remedial Investigation (RI) activities and it provides an early opportunity to assess the nature and level of community concerns. This assessment is documented in a section of the site CP Plan that identifies major issues of public concern.

DER has developed a planning tool called a "Scoping Sheet for Major Issues of Public Concern" (Scoping Sheet) that can help to identify issues and information needs of stakeholders. The Scoping Sheet should be used for all sites during the initial project phases to develop information that will help to prepare the site's CP Plan. The Scoping Sheet can also be used or updated at any time during the site's remedial process to help staff to plan and conduct the CP program. Access the Scoping Sheet and related instructions on DER's web site.

The Scoping Sheet can help staff with the following tasks:

- Identify the affected/interested public and their issues and information needs for the site.
- Define major issues and information needs regarding the site, and the potential impacts of the site's contamination and cleanup that are important to all involved parties.
- Determine if a site warrants CP effort beyond the required "baseline" program.
- Update the CP Plan and the site contact list as needed during the site's remedial process.

A basic understanding of community issues of concern and information needs helps to effectively address the CP requirements and any additional activities that may be chosen for a site.

1.4 Virtual Public Meetings

Public meetings are required at various stages of the remedial process in order to solicit public input on projects. In the event that an in-person meeting has been deemed not possible, DER may opt to hold the public meeting as a virtual public meeting. This allows the DER Project Manager to convey project information, answer questions, and accept comments from the public.

Virtual meetings should be planned well in advance in order to ensure proper notification for affected communities, and the notification process must take into consideration the affected community's internet access. Properly structured meetings tend to be subject to fewer disruptions and encourage more productive discourse. It is the responsibility of the DER Project Manager to draft a Virtual Public Meeting Plan for review by their Bureau Director and the Bureau of Public Outreach (Office of Communication Services) well in advance of the planned meeting date.

1.5 Environmental Justice and the Site Remedial Process

DER's CP program is consistent with and complements the goals and objectives of DEC's Environmental Justice (EJ) policy. DEC's EJ efforts focus on improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities. The CP program also complies with DEC policy regarding contact, cooperation, and consultation with Indian Nations, which formally recognizes that relations between DEC and Indian Nations will be conducted on a government-to-government basis and include critical program areas such as site remediation.

For the purposes of this Handbook, EJ means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the implementation and enforcement of DER's remedial programs.

Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from contaminated sites or the execution of DER's remedial programs and policies consistent with applicable environmental laws and regulations.

DER seeks to integrate EJ principles into its site remedial programs. The goal is for all people to enjoy the same degree of protection from environmental and health hazards and equal access to information and participation in the decision-making process to have a healthy environment in which to live, learn, and work.

DER and others responsible for implementing CP during the site remedial process need to evaluate potential EJ communities on an individual basis. A community may possess unique attributes/qualities that need to be recognized and addressed to ensure that CP efforts are undertaken to provide for an open and accessible decision-making process. For example:

- An EJ community may be disproportionately impacted by pollutants and other forms of contamination. Lack of participation or silence in the past should not be interpreted as lack of concern or interest in these issues.
- EJ communities may not trust or, in some cases, may fear the government because of perceived or unintended experiences of injustices or diverse cultural backgrounds.
- Additional collaborative efforts with EJ communities may be needed to help them to participate more effectively in the remedial process, including additional technical assistance provided directly by DER staff and by help obtained through technical assistance grants and EJ grants.
- In communities where English is not the primary language, materials may need to be developed in the applicable language(s). Local community leaders may be willing to help in identifying the appropriate language(s). Alternately, DEC's Office of Environmental Justice may be able to provide recommendations. The development of materials in a language other than English also may be appropriate in areas outside of EJ communities.

The Scoping Sheet discussed at 1.3 above can assist in identifying significant issues related to EJ communities. In addition, DEC's Office of Environmental Justice can provide EJ consultation about important issues of public concern that affect a potential EJ community.

There may be unique ways that EJ communities can best participate in the site remedial process, but general recommendations for planning and conducting an effective CP program apply. These efforts can help to achieve the following objectives:

- Potentially affected community residents have an appropriate opportunity to participate in decisions made about a contaminated site that could affect their environment and/or health.
- The public's contributions can influence DER's decisions.
- The concerns of all participants involved are considered in the decision-making process.
- Decision makers seek out and facilitate the involvement of those potentially affected.
- DER conveys issues in ways that can be tailored (for example, translation, timing, location) to each community and that seek to bridge cultural and economic differences that may hamper participation.

DEC's EJ policies and resources are addressed in detail on the DEC web site at: <https://www.dec.ny.gov/public/333.html>.

1.6 Links to DER Citizen Participation Materials on the Web

This Handbook cross-references CP resources on the DER public and internal web sites as follows:

DER Public web site (for citizens and remedial parties)

- Latest version of DER-23 – Citizen Participation Handbook for Remedial Programs and CP support materials for DER-23:
<https://www.dec.ny.gov/regulations/2393.html>
- SSF Program Site CP Plan Template:
<https://www.dec.ny.gov/chemical/106221.html>
- BCP Site CP Plan Template:
<https://www.dec.ny.gov/chemical/8450.html>

DER Internal web site (for DEC staff)

- Templates and instructions to create fact sheets and a CP Plan for sites in the SSF, BCP, and ERP, as well as guidance and recommendations to plan and conduct CP programs and specific CP activities:
<https://nysemail.sharepoint.com/sites/DECInSite-DER/SitePages/CP.aspx>

The statutory, regulatory and policy sources for the CP requirements of the remedial programs are listed below.

Statute: ECL

- Inactive Hazardous Waste Disposal Sites Remedial Program (Article 27):
 - Title 13, Section 27-1305. Reports by the Department; registry of sites.
 - Title 13, Section 27-1316. Citizen technical assistance grants.

- Brownfield Cleanup Program (Article 27):
 - Title 14, Section 27-1407. Request for participation.
 - Title 14, Section 27-1409. Brownfield site cleanup agreement.
 - Title 14, Section 27-1417. Citizen participation.

- Environmental Restoration Program (Article 56):
 - Title 5, Section 56-0503. Environmental restoration projects; state assistance.

Regulations: 6 NYCRR Part 375 Environmental Remediation Programs

- Subpart 375-1: General Remedial Program Requirements
- Subpart 375-2: Inactive Hazardous Waste Disposal Site Remedial Program
- Subpart 375-3: Brownfield Cleanup Program
- Subpart 375-4: Environmental Restoration Program
- Subpart 375-6: Remedial Program Soil Cleanup Objectives

Official online version resides on Westlaw's website.

DER Policy:

- DER-14 / Technical Assistance Grant (TAG) Guidance Handbook
<https://www.dec.ny.gov/regulations/2590.html>

1.7 Summary of Citizen Participation Requirements in DER's Remedial Programs

The chart on the following page identifies the CP requirements for the SSF, BCP, and ERP.

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DER Remedial Programs CP Requirements

State Superfund Program	Brownfield Cleanup Program	Environmental Restoration Program
<p><u>Site Listing/Classification:</u></p> <ul style="list-style-type: none"> • Mail notice to site contact list about final decisions concerning an initial site listing, classification, or reclassification and post to DEC Delivers listserv. • If contact list not developed: Publish notice in local newspaper, mail notice to adjacent property owners and others, and post to DEC Delivers listserv <p><u>Before Start of Remedial Investigation (RI):</u></p> <ul style="list-style-type: none"> • Correct and/or expand site contact list • Establish document repository • Place approved RI Work Plan in document repository and make available in the DECinfo Locator • Prepare CP Plan • Mail fact sheet to site contact list about availability of RI Work Plan and upcoming RI field work and post to DEC Delivers listserv <p><u>When DER Approves RI Report:</u></p> <ul style="list-style-type: none"> • Place approved RI Report in document repository and make available in the DECinfo Locator • Post fact sheet about RI results to DEC Delivers listserv* <p><u>When DER Releases Proposed Remedial Action Plan (PRAP):</u></p> <ul style="list-style-type: none"> • Place PRAP in document repository and make available in the DECinfo Locator • Post fact sheet about PRAP, 30-day public comment period, and public meeting to DEC Delivers listserv* • Conduct 30-day public comment period about PRAP • Hold public meeting during PRAP comment period <p><u>When DER Issues Record of Decision (ROD):</u></p> <ul style="list-style-type: none"> • Place ROD in document repository and make available in the DECinfo Locator • Post fact sheet summarizing and announcing availability of ROD to DEC Delivers listserv.* ROD includes responsiveness summary of significant comments about PRAP <p><u>Before Start of Remedial Action (RA):</u></p> <ul style="list-style-type: none"> • Post fact sheet about upcoming RA to DEC Delivers listserv* <p><u>When Cleanup Action Completed at One or More Site Operable Units</u></p> <ul style="list-style-type: none"> • Place Construction Completion Report in document repository and make available in the DECinfo Locator 	<p><u>Application Process:</u></p> <ul style="list-style-type: none"> • Prepare site contact list • Establish document repository • Place complete application in repository and make available in the DECinfo Locator • Publish notice in Environmental Notice Bulletin about receipt of complete Application and 30-day public comment period • Publish notice in local newspaper • Mail notice to site contact list • Post notice to DEC Delivers listserv • Conduct 30-day public comment period about complete Application <p><u>If Application Includes a Remedial Investigation (RI) Work Plan, Investigation Report and/or Remedial Work Plan:</u></p> <ul style="list-style-type: none"> • Perform activities above for all appropriate documents • Documents are reviewed concurrently with the application (comment period extended, as appropriate). <p><u>After Execution of Brownfield Cleanup Agreement:</u></p> <ul style="list-style-type: none"> • Prepare CP Plan <p><u>Before DER Approves Proposed RI Work Plan:</u></p> <ul style="list-style-type: none"> • Place draft RI Work Plan in document repository and make available in the DECinfo Locator • Mail fact sheet to site contact list about proposed RI Work Plan and 30-day public comment period and post to DEC Delivers listserv • Conduct 30-day public comment period about proposed RI Work Plan <p><u>Before DER Approves RI Report:</u></p> <ul style="list-style-type: none"> • Post fact sheet about RI results to DEC Delivers listserv <p><u>Significant Threat Determination:</u></p> <ul style="list-style-type: none"> • Post fact sheet about significant threat determination to DEC Delivers listserv. Announce in another fact sheet, if appropriate <p><u>Before DER Approves Remedial Action Work Plan (RAWP):</u></p> <ul style="list-style-type: none"> • Place draft RAWP in document repository and make available in the DECinfo Locator • Post fact sheet about draft RAWP and 45-day public comment period to DEC Delivers listserv • Conduct 45-day public comment period about draft RAWP • Hold public meeting during public comment period if significant 	<p><u>Before Start of Remedial Investigation/Alternatives Analysis (RI/AA):</u></p> <ul style="list-style-type: none"> • Prepare site contact list • Establish document repository • Place approved RI/AA Work Plan in document repository and make available in the DECinfo Locator • Prepare CP Plan • Mail fact sheet to site contact list about availability of RI/AA Work Plan and upcoming RI field work and post to DEC Delivers listserv <p><u>When DER Approves Remedial RI Report:</u></p> <ul style="list-style-type: none"> • Place approved RI Report in document repository and make available in the DECinfo Locator • Post fact sheet about RI results to DEC Delivers listserv <p><u>If Municipality Does Not Proceed with Remediation:</u></p> <ul style="list-style-type: none"> • Post fact sheet about RI results to DEC Delivers listserv • Conduct 30-day public comment period • Prepare responsiveness summary of significant comments • File notice of RI results with county clerk or register <p><u>When DER Releases Proposed Remedial Action Plan (PRAP):</u></p> <ul style="list-style-type: none"> • Place PRAP in document repository and make available in the DECinfo Locator • Post fact sheet about PRAP, 45-day public comment period, and public meeting to DEC Delivers listserv • Conduct 45-day public comment period about PRAP • Hold public meeting during PRAP comment period

State Superfund Program	Brownfield Cleanup Program	Environmental Restoration Program
<p>• Post fact sheet announcing cleanup achieved at one or more site operable units to DEC Delivers listserv*</p> <p><u>When DER Issues Final Engineering Report (FER) and Reclassifies or Proposes to Delist Site:</u></p> <ul style="list-style-type: none"> • <u>Without Certificate of Completion (COC) or Other Similar Site Closure Document (State Lead Sites):</u> <ul style="list-style-type: none"> • Notify Property owner of site reclassification • Place approved FER/Site Management Plan in document repository and make available in the DECinfo Locator • Post public notice announcing final FER/Reclassification to DEC Delivers listserv * • <u>With COC or Other Similar Site Closure Document:</u> <ul style="list-style-type: none"> • Place FER and COC (or other similar site closure document) in document repository and make available in the DECinfo Locator • Post fact sheet about issuance of FER and COC or other similar site closure document to DEC Delivers listserv. Fact sheet announces site reclassification or proposed delisting* <p><u>Proposed Site Delisting:</u></p> <ul style="list-style-type: none"> • At least 60 days prior to delisting: <ul style="list-style-type: none"> • Publish notice in Environmental Notice Bulletin announcing proposal to delist and 30-day public comment period • Publish notice in local newspaper • Mail notice to site contact list about proposal to delist and 30-day public comment period. If contact list not developed, provide notice to adjacent property owners, chief executive officer of the municipality, and public water supplier, if applicable. • Notify site owner of intent to delist site • Post notice to DEC Delivers listserv • Conduct 30-day public comment period about proposed delist • Prepare responsiveness summary and make publicly available • Notify owner site has been delisted or reconsidered <p>NOTES:</p> <p><u>Technical Assistance Grants (TAGs):</u></p> <ul style="list-style-type: none"> • Available for Class 1 and 2 sites <p><u>Interim Remedial Measure (IRM):</u></p> <p>If IRM represents all or significant part of remedy:</p> <ul style="list-style-type: none"> • Place IRM in document repository and make available in the DECinfo Locator • Post fact sheet about IRM Work Plan to DEC Delivers listserv* • Conduct 30-day public comment period about IRM Work Plan • Hold public meeting during public comment period 	<p>threat site and requested by community</p> <p><u>Before Applicant Starts Remedial Action:</u></p> <ul style="list-style-type: none"> • Place approved RAWP in document repository and make available in the DECinfo Locator • Post fact sheet about upcoming Remedial Action to DEC Delivers listserv <p><u>Before DER Approves Final Engineering Report:</u></p> <ul style="list-style-type: none"> • Post fact sheet about report to DEC Delivers listserv <p><u>When DER Issues Certificate of Completion (COC):</u></p> <ul style="list-style-type: none"> • Post fact sheet about issuance of COC to DEC Delivers listserv <p>NOTES:</p> <p><u>Technical Assistance Grants (TAGs):</u></p> <ul style="list-style-type: none"> • Available for significant threat BCP sites <p><u>Interim Remedial Measure (IRM):</u></p> <p>If IRM represents all or significant part of remedy:</p> <ul style="list-style-type: none"> • Place IRM in document repository and make available in the DECinfo Locator • Post fact sheet about IRM Work Plan to DEC Delivers listserv • Conduct 30-day public comment period about IRM Work Plan • Hold public meeting during public comment period (if significant threat site and requested by community) 	<p><u>When DER Issues Record of Decision (ROD):</u></p> <ul style="list-style-type: none"> • Place ROD in document repository and make available in the DECinfo Locator • Post fact sheet summarizing and announcing availability of ROD to DEC Delivers listserv. ROD includes responsiveness summary of significant comments about PRAP <p><u>Before Municipality Starts Remedial Action:</u></p> <ul style="list-style-type: none"> • Post fact sheet about upcoming Remedial Action to DEC Delivers listserv <p><u>When DER Issues Certificate of Completion (COC):</u></p> <ul style="list-style-type: none"> • Place COC in document repository and make available in the DECinfo Locator • Post fact sheet about issuance of COC to DEC Delivers listserv <p>NOTE:</p> <p><u>Interim Remedial Measure (IRM):</u></p> <p>If IRM represents all or significant part of remedy:</p> <ul style="list-style-type: none"> • Place IRM in document repository and make available in the DECinfo Locator • Post fact sheet about IRM Work Plan to DEC Delivers listserv • Conduct 30-day public comment period about IRM Work Plan • Hold public meeting during public comment period <p style="text-align: center;">→ FOR ALL REMEDIAL PROGRAMS ←</p> <p>* Mail fact sheet to individuals who have stated that they cannot receive fact sheets through DEC Delivers and need to receive paper copies through the mail.</p>

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Section 2

Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program) Citizen Participation Requirements

Introduction

This section identifies the citizen participation (CP) activities that are required to be conducted during the remedial process for a site in the State Superfund Program (SSF). These CP activities are conducted either by DER or the responsible party under DER oversight. CP requirements are incorporated into site classification decisions, as well as important parts of the site remedial process. The CP requirements are described in the order in which they would occur in a remedial process that flows from investigation and remedy selection through remedial action and issuance of a Certificate of Completion (COC) or similar site closure document.

DER may determine that additional CP activities must be conducted for a site to supplement the minimum CP program requirements. In making this determination, DER may consider factors that include: the actual or potential impact of the site on the community; the level and nature of public interest in the site or the remedial program; public input; the nature (including duration and complexity) of the site's remedial program; and available resources. If DER determines that additional CP activities need to be performed, the DER Project Manager will ensure that the CP activities are implemented. See discussion at **1.3 Structure of the Citizen Participation Program** for guidance about planning and conducting CP requirements and options.

2.1 Summary of State Superfund Program Citizen Participation Requirements

The table on the next page identifies the CP requirements of the SSF and how they integrate with the remedial process for a SSF site project. Additional details to plan and conduct each CP requirement follow the table.

As noted earlier, at some sites CP activities beyond the minimum requirements are necessary and appropriate because of the nature of the site and community interest or concern. Refer to Section 1 of this Handbook for guidance.

Successful implementation of a CP program and its related activities requires planning and strategy. An overall strategy to effectively plan and conduct a CP program is discussed on DER's public and internal websites. See **1.5** for links.

State Superfund Program (SSF) Citizen Participation (CP) Requirements

SSF CP Requirements	Timing of CP Requirements
Site Listing and Classification:	
<ul style="list-style-type: none"> • Mail notice to site contact list. If contact list not developed, publish notice in local newspaper and mail notice to adjacent property owners, chief executive officer of the municipality, and public water supplier, if applicable. • Post notice to DEC Delivers listserv 	When final decisions about a site listing or reclassification are made. A class 1 or 2 SSF site on the Registry is eligible for a Technical Assistance Grant.
Before Start of Remedial Investigation (RI):	
<ul style="list-style-type: none"> • Prepare site contact list (if not previously done) • Establish document repository • Prepare CP Plan • Place approved RI Work Plan in document repository and make available in the DECinfo Locator • Mail fact sheet to site contact list that announces availability of RI Work Plan and describes upcoming RI field work and post to DEC Delivers listserv <p>Note: All mailings require certification of mailing to DER within 5 days</p>	Before start of RI. Note: Draft CP Plan must be submitted to DER within 20 days of effective date of Consent Order. CP Plan must be approved by DER before distribution.
When DER Approves RI Report:	
<ul style="list-style-type: none"> • Post fact sheet that describes RI results to DEC Delivers listserv* • Place approved RI Report in document repository and make available in the DECinfo Locator 	When DER approves RI Report
When DER Releases Proposed Remedial Action Plan (PRAP):	
<ul style="list-style-type: none"> • Place PRAP in document repository and make available in the DECinfo Locator • Post fact sheet that describes PRAP and announces 30-day comment period and public meeting to DEC Delivers listserv* • Conduct 30-day public comment period • Hold public meeting about PRAP 	When DER releases PRAP, comment period begins/ends as per dates identified in fact sheet. Public meeting is held during the comment period.
When DER Issues Record of Decision (ROD):	
<ul style="list-style-type: none"> • Place ROD in document repository and make available in the DECinfo Locator • Post fact sheet that summarizes and announces availability of ROD to DEC Delivers listserv.* ROD includes responsiveness summary of significant comments about PRAP 	When DER issues ROD.
Before Start of Remedial Action (RA):	
<ul style="list-style-type: none"> • Post fact sheet that describes upcoming RA to DEC Delivers listserv* 	Before the start of RA at the site.
When Cleanup Action is Completed at One or More Operable Units	
<ul style="list-style-type: none"> • Place Construction Completion Report in document repository and make available in the DECinfo Locator • Post fact sheet that announces cleanup achieved at one or more operable units to DEC Delivers Listserv* 	When cleanup requirements have been achieved at one or more site operable units. Additional site remediation likely. Site not being re-classed or delisted at this point.
When DER Issues Final Engineering Report (FER) and Certificate of Completion (COC) (if applicable); Reclassifies (or Delists) Site	
<ul style="list-style-type: none"> • Place FER and COC or other similar site closure document (if applicable) in document repository and make available in the DECinfo Locator • Post fact sheet that announces issuance of FER and COC (if applicable), and site reclassification or proposed delisting (if applicable) to DEC Delivers listserv* • For State lead sites without a COC: <ul style="list-style-type: none"> ○ Place FER and Site Management Plan in document repository and make available in the DECinfo Locator ○ Post public notice announcing reclassification and beginning of Site Management to DEC Delivers listserv 	Within 10 days after DER issues COC/owner notification letter or other similar site closure document. (Note special delist procedures below.)

Proposed Site Delisting:	
<ul style="list-style-type: none"> • Publish notice in Environmental Notice Bulletin announcing proposed site delisting and 30-day public comment period • Publish notice in local newspaper • Mail notice to site contact list. If contact list not developed, provide notice to adjacent property owners, chief executive officer of the municipality, and public water supplier, if applicable. • Notify owner of intent to delist site • Post notice to DEC Delivers listserv* • Conduct 30-day public comment period • Prepare responsiveness summary and make publicly available • Notify owner site has been delisted or reconsidered for delisting 	<p>At least 60 days before proposed site delisting.</p> <p>* Mail fact sheet to individuals who have stated that they cannot receive fact sheets through DEC Delivers and need to receive paper copies through the mail.</p>

2.2 Information About the State Superfund Program Citizen Participation Requirements

1. Fact Sheet Preparation and Distribution. Many of the CP requirements discussed in this section involve preparing and distributing fact sheets to the site contact list. All required fact sheets share the following protocols:

Preparation: Use electronic fact sheet templates available from DER to prepare the draft fact sheets. Access the templates and instructions for preparing the fact sheets on the DER internal web site. See 1.5 for link.

The templates should be customized using plain, understandable language so that issues are explained in clear terms to readers who do not have specialized environmental and technical knowledge.

The DER Project Manager generally prepares fact sheets. The DER Project Manager will provide the appropriate DEC Citizen Participation Specialist (CPS), and others as appropriate, an opportunity to review a draft fact sheet and provide comments within the required time frame. A fact sheet usually is reviewed by DER management, DEC Executive, and the DEC Press Office before it is finalized for distribution. Ensure that the fact sheet review follows the review policy currently in use.

Distribution: DER always determines when an approved fact sheet is distributed and will determine who will perform any paper mailing of the fact sheet. DER or the responsible party will place the fact sheet in the document repository. DER will always place the fact sheet in electronic form in the DECinfo Locator. DER always performs the distribution for State-lead sites and places the fact sheet in the repository. The fact sheet that announces the public comment period for the Proposed Remedial Action Plan (PRAP) must be distributed so that it is received by the site contact list before the comment period begins. Other fact sheets that describe upcoming field work will be distributed so that they are received before significant site activities take place.

- Email and paper mail distribution: DER uses DEC’s electronic listserv service, DEC Delivers, to distribute notices and fact sheets by email to the interested and affected community. DER also ensures distribution of notices and fact sheets by paper mail in specific circumstances:
 - DER’s Site Control Section distributes the notices it generates to a specific public contact list defined by law and regulation.
 - DER expands, as appropriate, the Site Control public contact list at the start of

a site's remedial investigation (RI) and ensures that the initial site remedial fact sheet is mailed to this contact list with instructions to sign up with DEC Delivers to continue to receive site information.

- DER will ensure that fact sheets are mailed to individuals who notify DER that they cannot receive notices through DEC Delivers.
- DER will ensure that fact sheets are mailed to individuals based on EJ criteria.

If a responsible party mails a notice or fact sheet to the site contact list, it must provide a certification of mailing to the DER Project Manager within five days of mailing each fact sheet. The responsible party must certify to DER, on a form supplied by DER, that the fact sheet was mailed by Regular First-Class mail. A similar certification must be provided for email distribution. The certification forms can be accessed on the DER web site.

Note: Where the site or adjacent real property contains multiple dwelling units (for example an apartment building or trailer park), an alternative method for providing such notice in lieu of mailing to each individual may be developed. Such alternative method for notice must be approved by the DER Project Manager.

2. Public Comment Period. DER conducts a 30-day public comment period about the PRAP. DER will consider a request in writing by letter or email to extend the comment period, provided that the request is received within five days of the identified end of the comment period. The maximum time allotted for an extension will be 30 days.

3. Interim Remedial Measures (IRMs). CP activities are required if the scope of the IRM is likely to represent all or a significant portion of the remedy for the site. In this case, the review and approval of the IRM work plan will be completed using the same procedures as for a PRAP, including CP. See discussion at **2.6 When DER Releases Proposed Remedial Action Plan.**

Note: In the instance of an IRM that does **not** represent all or a significant part of the remedy for the site, DER should determine if it is appropriate to conduct CP activities. This will be decided on a site-specific basis, considering the nature of the IRM, level of citizen interest and concern, and other factors.

2.3 Site Listing/Classification

Notice to Site Contact List. When DER lists or reclassifies a site on the Registry of Inactive Hazardous Waste Disposal Sites (Registry), it must mail a notice or fact sheet to the site contact list. The contact list, at a minimum, must include adjacent property owners, the chief executive officer of the city, town, or village, and the public water supplier, if any, in which the site is located. The notice describes the listing action.

- DER also will distribute the notice or fact sheet through the appropriate county listserv of DEC Delivers.

Newspaper Notice. If a contact list has not been developed for the site, DER must publish a notice about the listing or reclassification action in a local newspaper of general circulation servicing the area that includes the site, and mail a notice to adjacent property owners, the chief executive officer of the city, town, or village, and the public water supplier, if any, in which the site is located.

2.4 Before Start of Remedial Investigation

1. Site Contact List (Component of Site Citizen Participation Plan). The responsible party or DER must prepare a site contact list consisting of, at a minimum:

- the chief executive officer and planning board chairperson of each county, city, town and village in which the site is located;
- residents, owners, and occupants of the site and properties adjacent to the site;
- the public water supplier which serves the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on or near the site for the purposes of posting and/or dissemination at the facility; and
- the document repository(ies) selected for the project.

Note: the categories identified above are a minimum. Additional interested and affected individuals, organizations, elected and appointed officials, and media will be included as appropriate.

If a responsible party submits a site contact list, the DER Project Manager reviews it for adequacy as part of the site's CP Plan. The DER Project Manager should provide the appropriate DEC CPS an opportunity to review and provide comments within the required time frame. For a State-lead site, the DER Project Manager develops the site contact list with assistance from the CPS and others as appropriate.

The contact list should be evaluated periodically to ensure that additional individuals, groups, and organizations are included as appropriate. These stakeholders include those who are affected or potentially affected by the site, who have expressed an interest in the investigation, remediation, or redevelopment of the site, who have attended a public meeting, and others as appropriate. Guidance to develop, expand, and maintain a site contact list is on DER's public and internal websites. See **1.5** for links.

2. Document Repository (Component of Site Citizen Participation Plan). The document repository provides the community with convenient access to project information about the site and the investigation and remediation efforts. The document repository also serves as a place for people to review draft project documents that will be subject to public comment, as well as the final versions of these documents.

DER will ensure that the repository is available in a publicly accessible building near the site, and that it is convenient to the affected/interested community by providing evening and, if possible, weekend hours. This is important so that people who work during the day can access the information. A local public library is usually a suitable location. If a local library is not available or suitable, alternatives include municipal offices, public health offices, and schools.

Note for DEC Region 2 Sites: the appropriate Community Board will serve as an additional site document repository for a site located within the five boroughs of New York City.

- **DECinfo Locator:** The DECinfo Locator is an interactive application that provides the public with electronic access to documents and public data about sites in DER's remedial programs. The DECinfo Locator will complement the site's physical document repository(ies). DER will make available through the DECinfo Locator

significant documents generated about a site during the remedial process, including documents about which DER requests public comments.

- The web link to the site's documents in the DECinfo Locator will be provided in all notices and fact sheets about the site distributed to the public.

If a responsible party proposes the location of a project document repository, the DER Project Manager reviews the recommendation for adequacy. The DER Project Manager will provide the appropriate DEC CPS an opportunity to review and provide comments within the required time frame. For a State-lead site, the DER Project Manager selects the document repository with similar input.

Note: The responsible party or DEC must contact the potential document repository *before* beginning to send documents and before formally identifying it in the site's CP Plan. The responsible party must submit proof of acceptance of this designation by the document repository.

The responsible party will ensure that all appropriate documents are in the repository for responsible party lead sites, except where specified otherwise in the guidance. The DER Project Manager will ensure that appropriate documents are available electronically through the DECinfo Locator in a timely manner.

Significant site documents referenced and/or summarized in fact sheets – especially those subject to public review and comment -- must be available in a repository and through the DECinfo Locator at the time the fact sheets are distributed to the public.

The site's CP Plan and fact sheets developed during the site's remedial process are useful tools to inform the public about the DECinfo Locator and the location(s) and hours of operation of the document repository(ies).

The amount of time a document repository should be maintained will vary from site to site. For sites which involve significant site management activities, the repository should be maintained until the activities are completed. Repository contents may be pared down at appropriate points to those documents that retain relevance to the site activities. The DER Project Manager is encouraged to make such decisions following appropriate consultation with the appropriate DEC CPS, the document repository contact, and the community. View resources on the DER public and internal web sites about setting up and maintaining a document repository. See **1.5** for links.

3. Citizen Participation Plan. Within 20 days of the effective date of an Administrative Order requiring a responsible party to conduct remedial activities, the responsible party is required to submit a written CP Plan, in electronic format, to DER for review and approval. The DER Project Manager will provide the appropriate DEC CPS a copy of the draft CP Plan and an opportunity to review and provide comments within the required time frame. For a State-lead site, the Project Manager develops the site's CP Plan with assistance from the CPS and others as appropriate.

Note: The RI Work Plan will not be approved until the CP Plan has been approved.

Preparation: The responsible party or DER Project Manager should use the current electronic CP Plan template available from DER to prepare the CP Plan. The template and instructions to

prepare the CP Plan are available on the DER public and internal web sites. See 1.5 for links.

At a minimum, the CP Plan includes the following content:

- list of the names, mailing addresses, and email addresses of the interested public (site contact list);
- name and address of the document repository, and the web link for public access to documents on the DECinfo Locator;
- overview of the site's history and contamination issues;
- the major elements of the site's remedial program;
- major issues of public concern related to the site, including any EJ issues or special conditions; and
- description of CP activities already conducted and planned for the site.

Distribution: The responsible party or DER Project Manager will place the approved document in the site's document repository. The DER Project Manager will ensure access to the CP Plan through the DECinfo Locator.

4. Remedial Investigation (RI) Work Plan in Repository. When DER approves the RI Work Plan, the responsible party will place the document in the document repository. For a State-lead site, the DER Project Manager is responsible for placing the document in the repository. The DER Project Manager will ensure access to the RI Work Plan through the DECinfo Locator.

Note: Make the RI Work Plan available to the public before mailing the notice and fact sheet and distributing them through the appropriate county listserv of DEC Delivers.

5. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that announce the availability of the RI Work Plan and describe the upcoming investigation. The template and instructions to prepare the RI Work Plan fact sheet are available on the DER internal web site. See 1.5 for link.

- DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers. If this is the first fact sheet distributed to the site's expanded contact list, it will also be mailed to the contact list for the site with instructions to sign up with DEC Delivers to continue to receive updates about the site. Anyone wishing to receive hard copies of subsequent fact sheets must inform the DER Project Manager.

2.5 When DER Approves Remedial Investigation Report

1. RI Report in Repository. The responsible party will place the approved RI Report in the document repository. For a State-lead site, the DER Project Manager is responsible for placing the document in the repository. The DER Project Manager will ensure access to the RI Report through the DECinfo Locator.

Note: Make the RI Report available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers and mailing to those who have requested hard copies of fact sheets.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the RI Report. The template and instructions to prepare the RI Report

fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers and mail hard copies to those who have requested them.

2.6 When DER Releases Proposed Remedial Action Plan

1. PRAP in Repository. The DER Project Manager will place the PRAP in the document repository and ensure its availability through the DECinfo Locator.

Note: Make the PRAP available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers, mailing hard copies to those who have requested them, and before the start of the 30-day public comment period discussed below.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describe the PRAP and announce a 30-day public comment period and a public meeting. The template and instructions to prepare the PRAP fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers and will mail hard copies to those who have requested them.

Note: DER will post information about the upcoming public meeting and comment period on the DEC Events Calendar located on the DEC public web site.

3. 30-Day Public Comment Period. DER conducts a 30-day public comment period about the PRAP before issuing the Record of Decision (ROD) (see discussion at **2.7** below).

4. Public Meeting. DER conducts a public meeting about the PRAP within the 30-day public comment period. It is recommended that the public meeting be held near the midpoint of the public comment period to afford the public sufficient time to submit comments. The meeting should be structured to provide the public with adequate time to present comments and ask questions. The public will be advised about the meeting through the PRAP fact sheet discussed at **2.6.2** above. View resources on the DER public and internal web sites about planning and conducting a public meeting. See **1.5** for links.

2.7 When DER Issues Record of Decision

1. ROD in Repository. The DER Project Manager will place the ROD in the document repository and ensure its availability through the DECinfo Locator. The ROD includes a responsiveness summary of significant public comments received about the PRAP during the public comment period.

Note: Make the ROD available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that summarizes the selected remedy described in the ROD. The template and instructions to prepare the ROD fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers and mail hard copies to those who have requested them.

2.8 Changes to Selected Remedies

After DER issues the ROD, it may determine that a change or changes to the selected remedy are needed. CP is required for this process if the changes are “significant” or “fundamental.”

1. Significant change. A significant change has an impact on an essential part of the remedy. DER will issue an Explanation of Significant Differences (ESD), which is a notice that a change has occurred to the selected remedy. The DER Project Manager will place the ESD in the document repository and ensure its availability through the DECinfo Locator. DER will prepare a notice and fact sheet about the ESD, mail hard copies to those who have requested them, and distribute through the appropriate county listserv of DEC Delivers.

2. Fundamental change. A fundamental change involves a new approach to the remedy or adds/subtracts significant components of the remedy. DER will prepare an Amendment to the ROD, which discusses the proposed changes to the selected remedy. All other aspects of the ROD process are followed, including release of a proposed ROD Amendment, a public meeting, public comment period, responsiveness summary, and issuance of a revised ROD.

2.9 Before Start of Remedial Action

1. Notice and Fact Sheet to Site Contact List. Before field work begins at the site to implement the remedy, DER will ensure development of a notice and fact sheet that describe the upcoming field work. The template and instructions to prepare the fact sheet about upcoming Remedial Action are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers and mail hard copies to those who have requested them.

2.10. Cleanup Action Completed at One or More Operable Units

This public outreach step will be taken if DER issues a construction completion report describing the achievement of cleanup requirements of one or more operable units; additional remedial activities likely will be needed at the site; and the site is not being reclassified or delisted at this time.

1. Construction Completion Report in Repository. The DER Project Manager will place the final Construction Completion Report in the document repository and ensure its availability through the DECinfo Locator.

Note: Make the final Construction Completion Report available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that announces the achievement of cleanup requirements at one or more site operable units. The template and instructions to prepare the construction completion fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers and mail hard copies to those who have requested them.

2.11 When DER Issues Final Engineering Report and Reclassifies the Site

This public outreach step is taken when remediation has been completed at the site's last operable unit. DER has issued a Final Engineering Report (FER) certifying that cleanup requirements have been or will be achieved and may or may not have issued a COC. DER reclassifies the site or, if appropriate, proposes that the site be deleted from the Registry.

1. FER and Notice of COC (if applicable) in Repository. The DER Project Manager will place the FER and notice of COC (if applicable) in the document repository and ensure their availability through the DECinfo Locator.

Note: Make the FER and notice of COC (if applicable) available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers.

2. Notice and Fact Sheet to Site Contact List. When DER issues the FER and within 10 days after DER issues a COC (if applicable), DER will ensure development of a notice and COC/Reclassification fact sheet that describes these achievements. The fact sheet is also used to announce that DER has reclassified the site or, if applicable, invites public comment about a proposal to delete the site from the Registry. The template and instructions to prepare the fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet 15 days after issuance of the COC through the appropriate county listserv of DEC Delivers and mail hard copies to those who have requested them.

3. For State lead sites without a COC:

- Place FER and Site Management Plan in document repository and make available in the DECinfo Locator
- Post public notice announcing reclassification and beginning of Site Management to DEC Delivers listserv

2.12 Proposed Site Delisting

DER will not delist a site from the Registry without commencing the following activities at least 60 days before the proposed delisting:

1. Environmental Notice Bulletin (ENB) Notice. DER must publish a notice in DEC's ENB that describes the proposed delisting action and announces a 30-day public comment period.

2. Newspaper Notice. DER must publish a notice in a local newspaper of general circulation in the county where the site is located.

3. Initial Notification to Site Owner. DER must send written notice to the site owner regarding the intent to delist the site from the Registry.

4. Notice to Site Contact List. DER provides notice to the site contact list. The contact list, at a minimum, must include adjacent property owners, the chief executive officer of the city, town, or village, and the public water supplier, if any, in which the site is located.

- DER also will distribute the notice or fact sheet through the appropriate county listserv of DEC Delivers.

5. 30-Day Public Comment Period. DER conducts a 30-day public comment period about the proposed site delisting action. The 30-day public comment period is held during the 60-day notification period. DER may hold a public meeting in those cases where site issues are complex and there is great public interest in the delisting of a site.

6. Summary of Comments. DER will summarize any comments received. A summary of responses to the comments will be made available to the public in the regional office in which the site is located, or in the local site document repository if one had been set up during the project, and through the DECinfo Locator.

7. Final Notification to Site Owner. DEC sends a final notification letter to the site owner stating either that the site has been deleted from the Registry or that DEC is reconsidering delisting of the site.

2.13 Technical Assistance Grant Information

A qualifying community group may apply for a Technical Assistance Grant (TAG) for a Class 1 or Class 2 inactive hazardous waste disposal site on the Registry. The purpose of a TAG is to provide funds to the qualifying community group to obtain independent technical assistance. This assistance helps the TAG recipient to interpret and understand existing environmental information about the nature and extent of contamination related to the site and the development and implementation of a remedy.

An eligible community group must certify the following: that it is a not-for-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code; that its membership represents the interests of the community affected by the site; and that its members' health, economic well-being or enjoyment of the environment may be affected by a release or threatened release of contamination at the eligible site.

View resources about TAGs on the DER web site at:
<https://www.dec.ny.gov/regulations/2590.html> .

Section 3

Brownfield Cleanup Program Citizen Participation Requirements

Introduction

This section identifies the citizen participation (CP) activities that are required to be conducted during the remedial process for a site in the Brownfield Cleanup Program (BCP). CP requirements begin when an Applicant applies as a “Requestor” to participate in the BCP. The CP requirements are described in the order in which they would occur in a remedial process that flows from investigation and remedy selection through remedial action and issuance of a Certificate of Completion (COC).

Some of the CP requirements are implemented by DER. Others are implemented by the Requestor/Applicant, with review and approval by DER. DER staff and the Applicant are encouraged to begin consultation and planning early in the remedial process to help to ensure successful implementation of a brownfield site CP program.

DER may determine that additional CP activities must be conducted for a particular site to supplement the minimum CP program requirements. In making this determination, DER may consider factors that include: the actual or potential impact of the site on the community; the level and nature of public interest in the brownfield site or the remedial program; public input; Applicant input; the nature (including duration and complexity) of the brownfield site’s remedial program; and available resources. If DER determines that additional CP activities need to be performed, the DER Project Manager will ensure that the CP activities are implemented. See discussion at **1.3 Structure of the Citizen Participation Program** for guidance about planning and conducting CP requirements and options.

3.1 Summary of Brownfield Cleanup Program Citizen Participation Requirements

The table on the next page identifies the CP requirements of the BCP and how they integrate with the remedial process for a BCP project. Additional details to plan and conduct each CP requirement follow the table.

As noted earlier, at some sites CP activities beyond the minimum requirements are necessary and appropriate because of the nature of the site and community interest or concern. Refer to Section 1 of this Handbook for guidance.

Successful implementation of a CP program and its related activities requires planning and strategy. An overall strategy to effectively plan and conduct a CP program is discussed on DER’s public and internal websites. See **1.5** for links.

Brownfield Cleanup Program (BCP) Citizen Participation (CP) Requirements

BCP CP Requirements	Timing of CP Requirements
Application Process:	
<ul style="list-style-type: none"> • Prepare site contact list • Establish document repository 	When Requestor prepares Application to participate in BCP.
<ul style="list-style-type: none"> • Place complete Application in document repository and make available in the DECinfo Locator • Publish notice in Environmental Notice Bulletin (ENB) announcing receipt of Application and 30-day comment period • Publish notice in local newspaper • Mail notice to site contact list (all mailings require certification of mailing sent to DER within 5 days) and post notice to DEC Delivers listserv • Conduct 30-day public comment period on the complete Application 	When DER determines that Application is complete. Comment period begins on publication date of ENB notice. End date is as stated in ENB notice. ENB, newspaper, and site contact list notices should be provided at the same time. Notice should request comments on all appropriate documents included in Application package (Remedial Investigation (RI) Work Plan, RI Report and/or RWP).
After Execution of Brownfield Cleanup Agreement (BCA):	
<ul style="list-style-type: none"> • Prepare CP Plan 	Draft CP Plan must be submitted to DER within 20 days of execution of BCA. CP Plan must be approved by DER before distribution.
Before DER Approves Proposed RI Work Plan:	
<ul style="list-style-type: none"> • Place proposed RI Work Plan in document repository and make available in the DECinfo Locator • Mail fact sheet to site contact list about proposed RI Work Plan and 30-day public comment period and post to DEC Delivers listserv • Conduct 30-day public comment period on the proposed RI Work Plan 	Before DER approves RI Work Plan. If RI Work Plan is submitted with application, the public comment periods will be combined and public notice will also include a fact sheet. Comment period begins/ends as per dates identified in fact sheet.
<ul style="list-style-type: none"> • Place approved RI Work Plan in document repository and make available in the DECinfo Locator 	When DER approves RI Work Plan.
Before DER Approves RI Report:	
<ul style="list-style-type: none"> • Post fact sheet that describes RI results to DEC Delivers listserv* 	Before DER approves RI Report.
<ul style="list-style-type: none"> • Place approved RI Report in document repository and make available in the DECinfo Locator 	When DER approves RI Report
Significant Threat Determination:	
<ul style="list-style-type: none"> • Post fact sheet that discusses significant threat determination to DEC Delivers listserv*. Combine notice with another fact sheet where appropriate 	Determination may be made any time during remedial process but no later than 20 days after DER approves RI Report. A significant threat site is eligible for a Technical Assistance Grant.
Before DER Approves Remedial Action Work Plan (RAWP):	
<ul style="list-style-type: none"> • Place draft RAWP in document repository and make available in the DECinfo Locator • Post fact sheet that describes draft RAWP and announces 45-day comment period to DEC Delivers listserv* • Conduct 45-day public comment period about draft RAWP • Hold public meeting about draft RAWP if site a significant threat and requested by community 	Before DER approves RAWP. Comment period begins/ends as per dates identified in fact sheet. Public meeting would be held during the comment period.
<ul style="list-style-type: none"> • Place approved RAWP and final Decision Document in document repository and make available in the DECinfo Locator 	When DER approves RAWP and finalizes Decision Document.
Before Applicant Starts Remedial Action (RA):	
<ul style="list-style-type: none"> • Post fact sheet that describes upcoming RA to DEC Delivers listserv* 	Before the start of RA at the site.

Before DER Approves Final Engineering Report (FER):	
<ul style="list-style-type: none"> • Post fact sheet that describes FER and any proposed institutional/engineering controls to DEC Delivers listserv* 	Before DER approves FER.
<ul style="list-style-type: none"> • Place FER in document repository and make available in the DECinfo Locator 	When DER approves FER.
When DER Issues Certificate of Completion (COC)	
<ul style="list-style-type: none"> • Place Notice of COC in document repository and make available in the DECinfo Locator • Post fact sheet that announces issuance of COC to DEC Delivers listserv* <p>* Mail fact sheet to individuals who have stated that they cannot receive fact sheets through DEC Delivers and need to receive paper copies through the mail.</p>	Within 10 days after DER issues COC.

3.2 Important Information About the Brownfield Clean-up Program Citizen Participation Requirements

1. Fact Sheet Preparation and Distribution. Many of the CP requirements discussed in this section involve preparing and distributing fact sheets to the site contact list. All required fact sheets share the following protocols.

Preparation: Use electronic fact sheet templates available from DER to prepare the draft fact sheets. Access the templates and instructions for preparing the fact sheets on the DER internal web site. See 1.5 for link.

The templates should be customized using plain, understandable language so that issues are explained in clear terms to readers who do not have specialized environmental and technical knowledge.

The DER Project Manager generally prepares fact sheets. The DER Project Manager will provide the appropriate DEC Citizen Participation Specialist (CPS) and others as appropriate, an opportunity to review a draft fact sheet and provide comments within the required time frame. A fact sheet usually is reviewed by DER management, DEC Executive, and the DEC Press Office before it is finalized for distribution. Ensure that the fact sheet review follows the review policy currently in place.

Distribution: DER always determines when an approved fact sheet is distributed and will determine who will perform any paper mailing of the fact sheet. DER or the Applicant will place the fact sheet in the document repository. DER will always place the fact sheet in electronic form in the DECinfo Locator. Fact sheets that announce public comment periods must be distributed so that they are received by the site contact list before the comment periods begin. Other fact sheets that describe upcoming field work will be distributed so that they are received before significant site activities take place.

- Email and paper mail distribution: DER uses DEC’s electronic listserv service, DEC Delivers, to distribute all notices and fact sheets by email to the interested and affected community. DER also ensures distribution of notices and fact sheets by paper mail in specific circumstances:
 - DER’s Site Control Section ensures distribution of the notices which it develops, reviews, and/or approves to a specific contact list defined by law and regulation;
 - DER ensures that the public contact list approved by the Site Control Section is expanded, as appropriate, at the start of a site’s remedial investigation and ensures

that the initial site remedial fact sheet is mailed to this contact list with instructions to sign up for DEC Delivers to continue to receive site information.

- DER will ensure that fact sheets are mailed to individuals who notify DER that they cannot receive notices through DEC Delivers.

If the Applicant mails a notice or fact sheet to the site contact list, it must provide a certification of mailing to the DER Project Manager within five days of mailing each fact sheet. The Applicant must certify to DER, on a form supplied by DER, that the fact sheet was mailed by Regular First-Class mail. A similar certification must be provided for email distribution. The certification forms can be accessed on the DER web site.

Note: Where the site or adjacent real property contains multiple dwelling units (for example an apartment building or trailer park), the Applicant shall work with the DER Project Manager to develop an alternative method for providing such notice in lieu of mailing to each individual.

2. Significant threat determination and fact sheets. DER may determine at any time in the remedial process whether the brownfield site constitutes a significant threat to public health or the environment but must make such determination no later than 20 days after it approves the Remedial Investigation (RI) Report. DER will ensure the development and distribution of the appropriate fact sheet that includes information about the significant threat determination.

3. Combining Citizen Participation Activities. There are instances when CP requirements may be combined during the remedial program. For some projects, DER may encourage Applicants to submit certain reports and work plans simultaneously. This will allow for a more integrated approach to review the documents. This symbol (*) in the text that follows alerts the reader to opportunities to combine CP activities.

4. Public Comment Periods. DER requires several public comment periods about draft remedial documents during the remedial process. DER will consider a request in writing by letter or email to extend a comment period provided that the request is received within five days of the identified end of the comment period. The maximum time allotted for extensions will be 30 days.

5. Interim Remedial Measures (IRMs). CP activities are required if the scope of the IRM is likely to represent all or a significant portion of the remedy for the site. In this case, the review and approval of the IRM work plan will be completed using the same procedures as for a Remedial Work Plan, including CP. For such IRMs, the public comment period is 30 days. See discussion at **3.9 Before DER Approves Remedial Work Plan.**

Note: In the instance of an IRM that does **not** represent all or a significant part of the remedy for the site, DER will determine if it is appropriate to conduct CP activities. This will be decided on a site-specific basis, considering the nature of the IRM, level of citizen interest and concern, and other factors.

3.3 Application Process

1. Site Contact List. The Requestor must prepare and submit with its BCP Application a site contact list consisting of, at a minimum:

- the chief executive officer and planning board chairperson of each county, city, town and village in which the site is located;
- residents, owners, and occupants of the site and properties adjacent to the site;
- the public water supplier which serves the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on or near the site for the purposes of posting and/or dissemination at the facility; and
- the document repository selected for the brownfield project.

DER reviews the site contact list as part of the process of determining if the Application is complete. The site contact list facilitates the mailing of notices and fact sheets about the brownfield site. The site contact list becomes part of the site's CP Plan which must be developed within 20 days of the effective date of the Brownfield Cleanup Agreement. See discussion at **3.4.1. Citizen Participation Plan**.

Distribution to the contact list should be evaluated periodically to help ensure that additional individuals, groups, and organizations are included, as appropriate. These stakeholders would include those who are affected or potentially affected by the site, who have expressed an interest in the investigation, remediation, or redevelopment of the site, who have attended a public meeting, and others as appropriate. Guidance to develop, expand, and maintain a site contact list is on DER's public and internal websites. See **1.5** for links.

2. Document Repository. The Requestor must identify in its BCP Application the location of a document repository for the project. The document repository provides the community with convenient access to project information about the brownfield site and the investigation and remediation efforts. The document repository also serves as a place for people to review draft project documents that will be subject to public comment, as well as the final versions of these documents.

The repository should be located in a publicly accessible building near the brownfield site and should be convenient to the affected/interested community by providing evening and, if possible, weekend hours. This is important so that people who work during the day can access the information. A local public library usually is a suitable location. If a local library is not available or suitable, alternatives include municipal offices, public health offices, and schools.

Note for DEC Region 2 Sites: The appropriate Community Board will serve as an additional document repository for a site located within the five boroughs of New York City.

Note: The Requestor must contact the potential document repository *before* sending documents to it for the first time and before formally identifying it in its Application. The Application requires that the Requestor submit proof of acceptance of this designation by the document repository.

DECinfo Locator: The DECinfo Locator is an interactive application that provides the public with electronic access to documents and public data about sites in DER's remedial programs. The DECinfo Locator will complement the site's physical document repository. DER will make available through the DECinfo Locator significant documents generated about a site during the remedial

process, including documents about which DER requests public comment.

- The web link to the site's documents in the DECinfo Locator will be identified in all notices and fact sheets about the site distributed to the public.

The Requestor (designated the Applicant after DER accepts its application) will ensure that all appropriate documents are in the repository, except where specified otherwise in the guidance. The DER Project Manager will ensure that appropriate documents are available electronically through the DECinfo Locator in a timely manner.

Significant site documents referenced and/or summarized in fact sheets – especially those subject to public review and comment -- must be available in a repository and through the DECinfo Locator at the time the fact sheets are distributed to the public.

The site's CP Plan, notices and fact sheets developed during the site's remedial process are useful tools to inform the public about the DECinfo Locator and the document repository location(s) and hours of operation.

The amount of time a document repository should be maintained varies from site to site. For sites which involve significant site management activities, the repository should be maintained until the activities are completed. Repository contents may be pared down at appropriate points to those documents that retain relevance to the site activities. The DER Project Manager is encouraged to make such decisions following appropriate consultation with the appropriate DEC CPS, the document repository contact, and the community. View resources on the DER public and internal web sites about setting up and maintaining a document repository. See **1.5** for links.

3. Application in Repository. The Requestor must place a copy of the complete Application in the document repository. DER will ensure access to the complete Application through the DECinfo Locator. The document must be placed in the repository before the start of the 30-day public comment period discussed at **3.3.7.** below.

4. Environmental Notice Bulletin (ENB) Notice. DER publishes the notice of complete Application in DEC's ENB. The date when the Application completeness determination is made and the publishing cycle and deadlines for the ENB assist DER to set the start and end dates for the required 30-day public comment period about the Application.

5. Newspaper Notice. DER sends a letter to the Requestor when it determines that the Requestor's Application is complete. DER prepares and attaches to this completeness letter a notice which the Requestor must provide, without modification, to a local newspaper of general circulation servicing the area which includes the brownfield site for publication no later than the date specified in DER's letter.

The notice is required to be located prominently in the community bulletin section or similar local section of the newspaper. The notice must be published in English and in any other language spoken by significant numbers of people within the community.

The newspaper notice defines the BCP, identifies the Requestor, states that the Requestor has applied to participate in the BCP, and that DEC has determined that the Application is complete. The newspaper notice also identifies the location of the property being proposed, the end date of the public comment period for the Application, the site's document repository, and who to contact at

DEC with comments and/or questions.

The Requestor must forward to DER proof of publication provided by the newspaper within five days of receipt of the document.

6. Notice to Site Contact List. DER instructs the Requestor in its completeness letter that the Requestor must mail a notice specified in the letter to the site contact list. The mailing must take place so that it would be received before the start of the 30-day public comment period about the Application.

The Requestor must complete and submit to DER a certificate of mailing provided by DER within five days of the mailing.

- DER also will distribute the notice or fact sheet through the appropriate county listserv of DEC Delivers.

7. 30-Day Public Comment Period. After DER determines that the Application is complete, it will conduct a 30-day public comment period. The public is notified about the 30-day public comment period through the ENB notice, newspaper notice and notice to site contact list described above.

Note: If the required newspaper notice or notice to the site contact list is not made in a timely manner, the 30-day period is extended to the latest date necessary to provide a full 30-day public comment period.

Note: DER will post information about the upcoming public comment period on the DEC Events Calendar located on the DEC public web site.

***Combining CP requirements:** An Application may also include a proposed RI Work Plan, final RI Report, and/or draft Remedial Action Work Plan (RAWP). In this case, the ENB notice, newspaper notice, and notice to the site contact list will solicit comments about the Application and the other documents. The pertinent documents will be placed in the document repository and will be made available through the DECinfo Locator before the start of the public comment period. The public comment period will be extended to 45 days in the event the draft RAWP is subject to the public comment period.

DER approves or denies the Application following the public comment period. After its application to participate in the BCP is approved, the Requestor is referred to as the “Applicant” (whether as a “volunteer” or “participant” under the law). DEC and the Applicant then execute a Brownfield Cleanup Agreement, which commits the Applicant to undertake certain remedial activities under DEC’s oversight.

3.4 After Execution of Brownfield Cleanup Agreement

1. CP Plan. Within 20 days of the effective date of the Brownfield Cleanup Agreement, the Applicant is required to submit a written CP Plan, in electronic format, to DER for review and approval.

Note: The Remedial Investigation Work Plan will not be approved until the CP Plan has been approved.

Preparation: The Applicant will use the current electronic CP plan template available from DER to prepare the CP Plan. The template and instructions to prepare the CP Plan are available on the

DER public and internal web sites. See 1.5 for links.

At a minimum, the CP Plan includes the following content:

- updated list of the names, mailing addresses, and email addresses of the interested public set forth in the site contact list provided with the Application (note that the DEC CPS can provide experience and resources for the site contact list development process);
- name and address of the document repository, and the web link for access to documents on the DECinfo Locator;
- overview of the brownfield site's history and contamination issues;
- the major elements of the brownfield site's remedial program;
- major issues of public concern related to the brownfield site including any EJ issues or special conditions; and
- description of CP activities already conducted and planned for the brownfield site.

The DER Project Manager will provide the appropriate DEC CPS a copy of the draft CP Plan and an opportunity to review and provide comments within the required time frame.

Distribution: The Applicant will place the approved document in the brownfield site's document repository. The DER Project Manager will ensure access to the CP Plan through the DECinfo Locator.

3.5 Before DER Approves Proposed Remedial Investigation Work Plan

1. Proposed RI Work Plan in Repository. The Applicant will place the document in the document repository before the mailing of the notice and fact sheet and before the start of the 30-day public comment period discussed below. The DER Project Manager will ensure access to the Proposed RI Work Plan through the DECinfo Locator.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the proposed RI Work Plan and announces a 30-day public comment period. The template and instructions to prepare the RI Work Plan fact sheet are available on the DER internal web site. See 1.5 for link.

- DER will post the fact sheet to the appropriate county listserv of DEC Delivers. If this is the first fact sheet sent to the site's expanded contact list, it will also be mailed to the contact list with instructions to sign up with DEC Delivers to continue to receive updates about the site.

3. 30-Day Public Comment Period. DER conducts a 30-day public comment period about the proposed RI Work Plan before approving the document.

Note: DER will post information about the upcoming public comment period on the DEC Events Calendar located on the DEC public web site.

4. Approved RI Work Plan in Repository. The Applicant will place the approved document in the document repository. The DER Project Manager will ensure access to the approved document through the DECinfo Locator.

3.6 Before DER Approves Remedial Investigation Report

1. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the draft RI Report. Depending on timing, this fact sheet also can inform the public about DER's determination of whether the site constitutes a significant threat to public health or the environment. See the discussion about the significant threat determination at **3.7** below. The template and instructions to prepare the RI Report fact sheet are available on the DER internal web site. See **1.5** for link. DER will post the fact sheet to the appropriate county listserv of DEC Delivers.

2. Approved RI Report in Repository. The Applicant will place the approved document in the document repository. The DER Project Manager will ensure access to the approved document through the DECinfo Locator.

***Combining CP Requirements.** DER encourages Applicants to submit the final RI Report and the draft RAWP simultaneously. This will allow for a more integrated approach to review the documents. If this is done, the notices and fact sheets to the site contact list about the final RI Report and the draft RAWP will be combined. The single notice and fact sheet also will announce the 45-day public comment period about the draft RAWP and public meeting (if held).

3.7 Significant Threat Determination

No later than 20 days after approval of the RI Report, DER will determine if the site constitutes a significant threat to public health or the environment. If DER makes the significant threat determination at the time it approves the RI Report, it is appropriate to use the RI Report fact sheet discussed at **3.6.1.** above, to inform the site contact list. Otherwise, DER will ensure that a separate notice and fact sheet is developed and distributed through the appropriate county listserv of DEC Delivers.

Note: For CP purposes, a brownfield site that is determined to constitute a significant threat is eligible for a Technical Assistance Grant (TAG).

3.8 Technical Assistance Grant Information

If DER determines that the brownfield site poses a "significant threat," a qualifying community group may apply for a TAG. The purpose of a TAG is to provide funds to the qualifying community group to obtain independent technical assistance. This assistance helps the TAG recipient to interpret and understand existing environmental information about the nature and extent of contamination related to the brownfield site and the development and implementation of a remedy.

An eligible community group must certify the following: that it is a not-for-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code; that its membership represents the interest of the community affected by the site; and that its members' health, economic well-being or enjoyment of the environment may be affected by a release or threatened release of contamination at the eligible site.

View resources about TAGs on the DER web site at: <http://www.dec.ny.gov/regulations/2590.html> .

3.9 Before DER Approves Remedial Action Work Plan

When the RI phase is completed, DER will determine if the brownfield site needs to be remediated, or if no action is required. If remediation is necessary, the Applicant may elect to continue under the BCP and work with DER to develop an acceptable RAWP. The BCP requires public notice and a 45-day public comment period before DER approves a RAWP.

1. Draft RAWP in Repository. The Applicant will place the draft RAWP in the document repository. The DER Project Manager will ensure access to the RAWP through the DECinfo Locator.

Note: Make the draft RAWP available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers and before the start of the 45-day public comment period discussed below.

2. Notice and Fact Sheet to Site Contact List. DER will ensure the development of a notice and fact sheet that describes the draft RAWP. The fact sheet also announces a 45-day public comment period and, if criteria are met, a public meeting discussed at **3.9.4.** below. The template and instructions to prepare the draft RAWP fact sheet are available on the DER internal web site. See **1.5** for links. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

Note: DER will post information about the upcoming public comment period and, if scheduled, the public meeting, on the DEC Events Calendar located on the DEC public web site.

3. 45-Day Public Comment Period. DER conducts a 45-day public comment period about the draft RAWP.

4. Public Meeting (if criteria are met): If the brownfield site has been determined to pose a significant threat to public health or the environment, and if requested by the community, DER will conduct a public meeting about the draft RAWP. The affected community may request a public meeting for a brownfield site that does not constitute a significant threat.

The public meeting must be held within the 45-day public comment period. It is recommended that the public meeting be held near the midpoint of the public comment period to afford the public sufficient time to submit comments. The meeting should be structured to provide the public with adequate time to present comments and ask questions. The public will be advised about the meeting through the RAWP fact sheet discussed at **3.9.2** above. View resources on the DER public and internal web sites about planning and conducting a public meeting. See **1.5** for links.

5. Approved RAWP and Decision Document in Repository. When DER approves the draft RAWP, and when DER finalizes the Decision Document, the documents will be placed in the document repository. Generally, the Applicant will place the documents in the document repository unless otherwise determined by DER. The DER Project Manager will ensure access to the approved RAWP and Decision Document through the DECinfo Locator.

3.10 Changes to Selected Remedies

After DER approves the RAWP, it may determine that a change or changes to the selected remedy are needed. CP is required for this process if the changes are “significant” or “fundamental.”

1. Significant change. A significant change has an impact on an essential part of the remedy. DER will issue an Explanation of Significant Differences (ESD), which is a notice that a change has occurred. DER will prepare a notice and fact sheet about the ESD and distribute it to the appropriate county listserv of DEC Delivers.

2. Fundamental change. A fundamental change involves a new approach to the remedy or adds/subtracts significant components of the remedy. DER will prepare an Amendment to the RAWP, which discusses the proposed changes to the selected remedy. All other aspects of the RAWP process are followed, including release of a proposed RAWP Amendment, a public meeting if criteria are met, public comment period, responsiveness summary, and issuance of a revised RAWP.

3.11 Before Applicant Starts Remedial Action

1. Notice and Fact Sheet to Site Contact List. Before field work begins at the brownfield site to implement the remedy, DER will ensure development of a notice and fact sheet that describes the upcoming field work. The template and instructions to prepare the Remedial Action fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

3.12 Before DER Approves Final Engineering Report

1. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the draft Final Engineering Report (FER). The template and instructions to prepare the FER fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

2. FER in Repository. The Applicant will place the approved document in the document repository. The DER Project Manager will ensure access to the FER through the DECinfo Locator.

3.13 When DER Issues Certificate of Completion

1. Notice of COC in Repository. The Applicant will place the notice of COC in the document repository before the distribution of the notice and fact sheet discussed below. The DER Project Manager will ensure access to the notice of COC through the DECinfo Locator.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the COC and institutional and/or engineering controls as applicable. This requirement applies to all sites, including those without institutional and/or engineering controls incorporated into the remedy. The template and instructions to prepare the COC fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers. This will be done within 10 days after DER issues a COC for the site.

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Environmental Restoration Program Citizen Participation Requirements

Introduction

This section identifies the citizen participation (CP) activities that are required to be conducted during the remedial process for a site in the Environmental Restoration Program (ERP). The CP requirements are described in the order in which they would occur in a remedial process that flows from investigation and remedy selection through remedial action and issuance of a Certificate of Completion (COC).

Some of the CP requirements are implemented by DER. Others may be implemented by the municipality, with review and approval by DER. DER staff and the municipality are encouraged to begin consultation and planning early in the remedial process to help to ensure successful implementation of an ERP site CP program.

DER may determine that additional CP activities must be conducted for a site to supplement the CP program requirements. In making this determination, DER may consider factors that include: the actual or potential impact of the site on the community; the level and nature of public interest in the site or the remedial program; public input; municipality input; the nature (including duration and complexity) of the ERP site's remedial program; and available resources. If DER determines that additional CP activities need to be performed, the DER Project Manager will ensure that the CP activities are implemented. See discussion at **1.3 Structure of the Citizen Participation Program** for guidance about planning and conducting CP requirements and options.

4.1 Summary of Environmental Restoration Program Citizen Participation Requirements

The table on the next page identifies the CP requirements of the ERP and how they integrate with the remedial process for an ERP project. Additional details to plan and conduct each CP requirement follow the table.

As noted earlier, at some sites CP activities beyond the minimum requirements are necessary and appropriate because of the nature of the site and community interest or concern. Refer to Section 1 of this Handbook for guidance.

Successful implementation of a CP program and its related activities requires planning and strategy. An overall strategy to effectively plan and conduct a CP program is discussed on DER's public and internal websites. See **1.5** for links.

Environmental Restoration Program (ERP) Citizen Participation (CP) Requirements

ERP CP Requirements	Timing of CP Requirements
Before Start of Remedial Investigation/Alternatives Analysis (RI/AA):	
<ul style="list-style-type: none"> • Prepare site contact list • Establish document repository • Prepare CP Plan • Place approved RI/AA Work Plan in document repository and make available in the DECinfo Locator • Mail fact sheet to site contact list that announces availability of RI/AA Work Plan and describes upcoming RI field work and post to DEC Delivers 	<p>Before start of RI. Note: Draft CP Plan must be submitted to DER within 20 days of effective date of the State Assistance Contract. CP Plan must be approved by DER before distribution.</p>
When DER Approves RI Report:	
<ul style="list-style-type: none"> • Post fact sheet that describes RI results to DEC Delivers listserv* • Place approved RI Report in document repository and make available in the DECinfo Locator 	<p>When DER approves RI Report</p>
If Municipality Does Not Proceed With Remediation:	
<ul style="list-style-type: none"> • Post fact sheet that describes RI results to DEC Delivers listserv* • Conduct 30-day public comment period • Prepare responsiveness summary of significant comments received 	<p>When RI results are complete.</p>
When DER Releases Proposed Remedial Action Plan (PRAP):	
<ul style="list-style-type: none"> • Place PRAP in document repository and make available in the DECinfo Locator • Post fact sheet that describes PRAP and announces 45-day comment period and public meeting to DEC Delivers listserv* • Conduct 45-day public comment period • Hold public meeting about PRAP 	<p>When DER releases PRAP. Comment period begins/ends as per dates identified in fact sheet. Public meeting is held during the comment period.</p>
When DER Issues Record of Decision (ROD):	
<ul style="list-style-type: none"> • Place ROD in document repository and make available in the DECinfo Locator • Post fact sheet that summarizes and announces availability of ROD to DEC Delivers listserv*. ROD includes responsiveness summary of significant comments about PRAP 	<p>When DER issues ROD.</p>
Before Municipality Starts Remedial Action (RA):	
<ul style="list-style-type: none"> • Post fact sheet that describes upcoming RA to DEC Delivers listserv* 	<p>Before the start of RA at the site.</p>
When DER Issues Certificate of Completion (COC)	
<ul style="list-style-type: none"> • Place COC in document repository and make available in the DECinfo Locator • Post fact sheet that announces issuance of COC to DEC Delivers listserv* 	<p>Within 10 days after DER issues COC.</p> <p>* Mail fact sheet to individuals who have stated that they cannot receive fact sheets through DEC Delivers and need to receive paper copies through the mail.</p>

4.2 Important Information About the ERP Citizen Participation Requirements

1. Fact Sheet Preparation and Distribution. Many of the CP requirements discussed in this section involve preparing and distributing fact sheets to the site contact list. All required fact sheets share the following protocols.

Preparation: Use electronic fact sheet templates available from DER to prepare the draft fact sheets. Access the templates and instructions for preparing the fact sheets on the DER internal web site. See **1.5** for link.

The templates should be customized using plain, understandable language so that issues are explained in clear terms to readers who do not have specialized environmental and technical knowledge.

The DER Project Manager generally prepares fact sheets. The DER Project Manager will provide the appropriate DEC Citizen Participation Specialist (CPS) and others, as appropriate, an opportunity to review a draft fact sheet and provide comments within the required time frame. A fact sheet usually is reviewed by DER management, DEC Executive, and the DEC Press Office before it is finalized for distribution. Ensure that the fact sheet review follows the review policy currently in place.

Distribution: DER always determines when an approved fact sheet is distributed and will determine who will perform any paper mailing of the fact sheet. DER or the municipality also will place the fact sheet in the document repository. DER will always place the fact sheet in electronic form in the DECinfo Locator. The fact sheet that announces the public comment period for the PRAP must be distributed so that it is received by the site contact list before the comment period begins. Other fact sheets that describe upcoming field work will be distributed so that they are received before significant site activities take place.

- Email and paper mail distribution: DER uses DEC's electronic listserv service, DEC Delivers, to distribute all notices and fact sheets by email to the interested and affected community. DER will also ensure the distribution of notices and fact sheets by paper mail in specific circumstances.

If a municipality mails a notice or fact sheet to the site contact list, it must provide a certification of mailing to the DER Project Manager within five days of mailing each fact sheet. The municipality must certify to DER, on a form supplied by DER, that the fact sheet was mailed by Regular First-Class mail. A similar certification must be provided for email distribution. The certification forms can be accessed on the DER web site.

Note: Where the site or adjacent real property contains multiple dwelling units (for example an apartment building or trailer park), the municipality shall work with the DER Project Manager to develop an alternative method for providing such notice in lieu of mailing to each individual.

2. Public Comment Period. DER conducts a 45-day public comment period about the PRAP. DER will consider a request in writing by letter or email to extend a comment period provided that the request is received within five days of the identified end of the comment period. The maximum time allotted for an extension will be 30 days.

3. Interim Remedial Measures (IRMs): CP activities are required if the scope of the IRM is likely to represent all or a significant portion of the remedy for the site. In this case, the review and approval of the IRM work plan will be completed using the same procedures as for a PRAP, including CP. For such IRMs, the public comment period is 30 days. See discussion at **4.6 When DER Releases Proposed Remedial Action Plan.**

Note: In the instance of an IRM that does **not** represent all or a significant part of the remedy for the site, DER should determine if it is appropriate to conduct CP activities. This will be decided on a site-specific basis, considering the nature of the IRM, level of citizen interest and concern, and other factors.

4.3 Before Start of Remedial Investigation/Alternatives Analysis

1. Site Contact List (Component of Site CP Plan). The municipality must prepare a site contact list consisting of, at a minimum:

- the chief executive officer and planning board chairperson of each county, city, town and village in which the site is located;
- residents, owners, and occupants of the site and properties adjacent to the site;
- the public water supplier which serves the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on or near the site for the purposes of posting and/or dissemination at the facility; and
- the document repository selected for the project.

Note: the categories identified above are a minimum. Additional interested individuals, organizations, elected and appointed officials and media should be included as appropriate.

The DER Project Manager reviews the site contact list for adequacy as part of the site's CP Plan. The DER Project Manager should provide the appropriate DEC CPS an opportunity to review and provide comments within the required time frame.

Distribution to the contact list should be evaluated periodically to help ensure that additional individuals, groups, and organizations are included as appropriate. These stakeholders include those who are affected or potentially affected by the site, who have expressed an interest in the investigation, remediation, or redevelopment of the site, who have attended a public meeting, and others as appropriate. Guidance to develop, expand, and maintain a site contact list is on DER's public and internal websites. See **1.5** for links.

2. Document Repository (Component of Site CP Plan). The document repository provides the community with convenient access to project information about the site and the investigation and remediation efforts. The document repository also serves as a place for people to review draft project documents that will be subject to public comment, as well as the final versions of these documents.

DER will ensure that the repository is available in a publicly accessible building near the site, and that it is convenient to the affected/interested community by providing evening and, if possible, weekend hours. This is important so that people who work during the day can access the information. A local library is usually a suitable location. If a local library is not available or suitable, alternatives include municipal offices, public health offices, and schools.

Note for DEC Region 2 Sites: the appropriate Community Board will serve as an additional site document repository for a site within the five boroughs of New York City.

- **DECinfo Locator:** The DECinfo Locator is an interactive application that provides the public with electronic access to documents and public data about sites in DER's remedial programs. The DECinfo Locator will complement the site's physical document repository. DER will make available through the DECinfo Locator significant documents generated about a site during the remedial process, including documents about which DER requests public comment.

The web link to the site's documents in the DECinfo Locator will be identified in all notices and fact sheets about the site distributed to the public.

Note: The municipality or DER must contact the potential document repository *before* sending documents to it for the first time and before formally identifying it in the site's CP Plan. The municipality must submit proof of acceptance of this designation by the document repository.

The municipality will ensure that all appropriate documents are in the repository, except where specified otherwise in the guidance. The DER Project Manager will ensure that appropriate documents are available electronically through the DECinfo Locator in a timely manner.

Significant documents referenced and/or summarized in fact sheets – especially those subject to public review and comment – must be available in a repository and through the DECinfo Locator at the time the fact sheets are distributed to the public.

The site's CP Plan, notices and fact sheets developed during the site's remedial process are useful tools to inform the public about the DECinfo Locator and the location(s) and hours of operation of the document repository(ies).

The amount of time a document repository should be maintained varies from site to site. For sites which involve significant site management activities, the repository should be maintained until the activities are completed. Repository contents may be pared down at appropriate points to those documents that retain relevance to the site activities. The DER Project Manager is encouraged to make such decisions following appropriate consultation with the appropriate DEC CPS, the document repository contact, and the community. View resources on the DER public and internal web sites about setting up and maintaining a document repository. See **1.5** for links.

3. CP Plan. Within 20 days of the effective date of the State Assistance Contract, the municipality is required to submit a written CP Plan, in electronic format, to DER for review and approval. The DER Project Manager will provide the appropriate DEC CPS a copy of the draft CP Plan and an opportunity to review and provide comments within the required time frame.

Note: The RI/Alternatives Analysis (AA) Work Plan will not be approved until the CP Plan has been approved.

Preparation: The municipality will use the current electronic CP Plan template available from DER to prepare the CP Plan. The template and instructions to prepare the CP Plan are available on the DER internal web site. See **1.5** for link.

At a minimum, the CP Plan includes the following content:

- list of the names, mailing addresses, and email addresses of the interested public (site contact list);
- name and address of the document repository, and the web link for access to documents on the DECinfo Locator;
- overview of the site's history and contamination issues;
- the major elements of the site's remedial program;
- major issues of public concern related to the site including any EJ issues or special conditions; and
- description of CP activities already conducted and planned for the site.

Distribution: The municipality will place the approved document in the site's document repository. The DER Project Manager will ensure access to the CP Plan through the DECinfo Locator.

4. RI/AA Work Plan in Repository. The municipality will place the approved document in the document repository before the mailing of the notice and fact sheet discussed below. The DER Project Manager will ensure access to the RI/AA Work Plan through the DECinfo Locator.

Note: Make the RI/AA Work Plan available to the public before mailing the notice and fact sheet and distributing it through the appropriate county listserv of DEC Delivers.

5. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that announces the availability of the RI/AA Work Plan and describes the upcoming investigation. The template and instructions to prepare the RI/AA Work Plan fact sheet are available on the DER internal web site. See **1.5** for link.

- DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers. If this is the first fact sheet distributed to the site's contact list, it will also be mailed to the contact list for the site with instructions to sign up to DEC Delivers to continue to receive updates about the site.

4.4 When DER Approves Remedial Investigation Report

1. Remedial Investigation (RI) Report in Repository. The municipality will place the approved document in the document repository. The DER Project Manager will ensure access to the RI Report through the DECinfo Locator.

Note: Make the RI Report available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the RI Report. The template and instructions to prepare the RI Report fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

4.5 If Municipality Does Not Proceed with Remediation

1. Notice and Fact Sheet to Site Contact List. In those cases where the municipality does not intend to proceed with remediation of the site, DER will ensure development of a notice and fact sheet that describes the results of the site investigation and announces a 30-day public comment period. The template and instructions to prepare the site investigation results fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

Note: DER will post information about the upcoming public comment period on the DEC Events Calendar located on the DEC public web site.

2. 30-Day Public Comment Period. DER conducts a 30-day public comment period about the RI results.

3. Responsiveness Summary. The municipality will prepare a responsiveness summary of significant public comments about the RI results. When DER approves the responsiveness summary, the municipality will place the document in the document repository. The DER Project Manager will ensure access to the responsiveness summary through the DECinfo Locator.

4. File Notice of RI Results. The municipality will file a notice of the results of the site RI with the county clerk or register.

4.6 When DER Releases Proposed Remedial Action Plan

1. PRAP in Repository. The DEC Project Manager will place the PRAP in the document repository and ensure its availability through the DECinfo Locator.

Note: Make the PRAP available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers and before the start of the 45-day public comment period discussed below.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that describes the PRAP and announces a 45-day public comment period and a public meeting. The template and instructions to prepare the PRAP fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

Note: DER will post information about the upcoming public meeting and comment period to the DEC Events Calendar located on the DEC public web site.

3. 45-Day Public Comment Period. DER conducts a 45-day public comment period about the PRAP before issuing the Record of Decision (ROD) (see discussion at **4.7** below).

Public Meeting. DER conducts a public meeting about the PRAP within the 45-day public comment period. It is recommended that the public meeting be held near the midpoint of the public comment period to afford the public sufficient time to submit comments. The public meeting should be structured to provide the public with adequate time to present comments and ask questions. The public will be advised about the meeting through the PRAP fact sheet discussed at **4.6.2.** above. View resources on the DER public and internal web sites about

planning and conducting a public meeting. See **1.5** for links.

4.7 When DER Issues Record of Decision

1. ROD in Repository. The DER Project Manager will place the ROD in the document repository and ensure its availability through the DECinfo Locator. The ROD includes a responsiveness summary of significant public comments received about the PRAP during the public comment period.

Note: Make the ROD available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers.

2. Notice and Fact Sheet to Site Contact List. DER will ensure development of a notice and fact sheet that announces and summarizes the selected remedy described in the ROD. The template and instructions to prepare the ROD notice are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

4.8 Changes to Selected Remedies

After DER issues the ROD, it may determine that a change or changes to the selected remedy are needed. CP is required for this process if the changes are “significant” or “fundamental.”

1. Significant change. A significant change has an impact on an essential part of the remedy. DER will issue an Explanation of Significant Differences (ESD), which is a notice that a change to the selected remedy has occurred. The DER Project Manager will place the ESD in the document repository and ensure its availability through the DECinfo Locator. DER will prepare a notice and fact sheet about the ESD and distribute it through the appropriate county listserv of DEC Delivers.

2. Fundamental change. A fundamental change involves a new approach to the remedy or it may add/subtract significant components of the remedy. DER will prepare an Amendment to the ROD, which discusses the proposed changes to the selected remedy. All other aspects of the ROD process are followed, including release of a proposed ROD Amendment, a public meeting if criteria are met, public comment period, responsiveness summary, and issuance of a revised ROD.

4.9 Before Municipality Starts Remedial Action

1. Notice and Fact Sheet to Site Contact List. Before field work begins at the site to implement the remedy, DER will ensure the development of a notice and fact sheet that describes the upcoming field work. The template and instructions to prepare the fact sheet for the upcoming Remedial Action are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.

4.10 When DER Issues Certificate of Completion

1. Notice of COC in Repository. The DER Project Manager will place the notice of COC in the document repository and ensure its availability through the DECinfo Locator.

Note: Make the notice of COC available to the public before distributing the notice and fact sheet through the appropriate county listserv of DEC Delivers.

Notice and Fact Sheet to Site Contact List. Within 10 days after DER issues a COC, DER will ensure development of a notice and fact sheet that describes the issuance of the COC. The template and instructions to prepare the COC fact sheet are available on the DER internal web site. See **1.5** for link. DER will distribute the fact sheet through the appropriate county listserv of DEC Delivers.