

# Public Outreach Proposal Not So Daunting

By Michael P. Turner

Environmental justice, public outcry, NIMBYs, and costly, protracted litigation, are just some of the doomsday phrases that come to mind when developers, corporations and elected officials consider the recent New Jersey Department of Environmental Protection (DEP) proposed public notification rules for increasing public participation in site remediation cases.

Last summer, the media swarmed over the discovery of mercury contamination at a day care center operating in a former thermometer manufacturing facility. Parents of the day care center students were justifiably outraged, fingers were pointed in all directions and state regulators were criticized for hiding the truth from the public. The episode created a somewhat exaggerated view of a deficiency in the state's oversight of environmentally challenged sites. These proposed public outreach requirements are a direct result of that experience.

Conventional wisdom among developers, responsible parties and their consultants holds that when proposing remediation for an environmentally challenged site, the lower the profile the better. According to this pattern, working behind the scenes helps avoid potential delays related to outcry by politically motivated local officials, candidates, citizen groups, the media, or some combination thereof.

Whether public engagement is a good idea depends upon one's perspective and the specifics of each individual site. Yet, while businesses—and their attorneys—may see greater risk in communicating with the public, there also exists great potential for positive results.

Keeping the public out of the situation may appear to be the most time- and cost-efficient strategy when working with the regulatory agencies and local officials. Yet all too often, that initial spirit of cooperation lasts only as long as there is no public debate. History shows that once a political, environmental or activist group asks the potentially difficult questions, support from regulatory or elected allies rapidly evaporates and much of the upfront work is lost, along with time and money.

For more than a decade, we have provided communications consulting to clients ranging from major corporations to single-unit real estate developers. We have proposed aggressive public outreach and education efforts to build allies in the community or region for our clients. That is not to say that we advise clients to approach the public with hat in hand, to allow the public to dictate the solution, or something worse. Quite the contrary. With very few exceptions, we have advo-

cated including the public in the decision-making process, arguing that if the community has skin in the game, it will be more likely to compromise and make progress. By giving the community some degree of ownership, it becomes responsible for the success or failure of the remediation plan.

The new DEP public participation guidance will increase credibility in the community and region where the site is located, establish an appropriate framework for conducting public outreach, and could streamline the approval process. As long as public officials are responsive to public outcry, there is great value in engaging the public early in the process.

Many of the proposed requirements in the DEP draft follow the comprehensive public outreach and education



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guidance issued by the U.S. EPA and the Nuclear Regulatory Commission. The requirements from these agencies involve Superfund or radiological waste cleanup efforts, certainly not something with which most brown-field developers want to be associated.

But the interests of the public are, in most cases, aligned with the developer. Both seek to minimize or eliminate risk and provide an opportunity for development to produce economic benefits. For the public, that could mean neighborhood revitalization, job creation, tax revenues, and increased property values. While every site is different and decisions must be made based on boots-on-the-ground intelligence, the DEP's proposal establishes a solid baseline approach that both developers and citizens can use. *CONTINUED ON PAGE 29*

CONTINUED FROM PAGE 30 Some involved in the DEP's site remediation standards task force have expressed concerns about the scope of the proposed outreach criteria. Anyone with experience in dealing with the public on a remedial action or development will agree that these critics have good reason to be cautious of increased public participation. In New Jersey, local environmental advocates, citizen groups and faith-based organizations have proven to be skilled legal adversaries. They have come out on the winning side of some of the most important environmental justice and court-ordered remedial actions in history, including the Honeywell site in Jersey City, where, after years of inaction and frustration, a local citizen/environmental/faith-based triumvirate succeeded in forcing one of the most costly single-site contamination cleanup actions in state history.

One of the more legitimate criticisms of the provision establishing criteria for identifying potentially affected citizens and communicating with them in their native language, came from a land use attorney who remarked that even in English, cleanup and redevelopment terms are difficult enough to understand.

He's not wrong, but there are ways to reach these pockets of local residents, such as through religious congregations, social services and local civic associations. Educating non-English speaking residents will be challenging, but simply advertising and/or setting up a hotline is no longer enough.

The greatest virtue of the proposed DEP guidance is that it allows the developer/company to establish its message and the facts of the project to the public before it is established for them. We are living in the age of the 24-hour media cycle. The public's ability to generate controversy over an issue such as redevelopment or chemical contamination fills the media's incessant need for content. Often, inaccurate information and uninformed speculation are the cause of such controversy. Proactively engaging in the dialogue and being accessible to the public and media greatly increases the likelihood that accurate information is conveyed, anxiety-inducing terminology is understood, and the positive messages of the project make it to key opinion leaders and the general public.

If for no other reason, actively communicating with the public demonstrates that the developer/company is not hiding, but has a respect for neighbors and wants to satisfy the reasonable needs and concerns of the community. The more we focus on redeveloping our urban core, the more the public will need to be involved.

Other states with fairly comprehensive public participation protocol or plans to enhance their public participation include California, the most comprehensive, Maryland, Massachusetts, New York, Pennsylvania, and West Virginia.

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## Proposed Requirements for the N.J. DEP Public Participation Guidance as of Oct. 1, 2007

While this may seem overly restrictive, many of the proposed requirements are not unfamiliar to anyone with experience in the industry. Some of the basics include:

- Submit a copy of Remedial Action Work Plan (RAWP), regular updates and status reports to the municipality.
- Identify sensitive populations and resources, such as residents, potable wells, K-12 schools, child care facilities, public parks and playgrounds, surface water, and Tier 1 well-head protection areas.
- Determine if site is located in a municipality where an Environmental Justice Petition neighborhood has been designated.
- Identify whether non-English speaking populations are present in sensitive populations.
- Generate a scaled map showing various criteria, including, but not limited to, sensitive populations and resources identified in site delineation process.
- Two weeks before Remedial Investigation (RI) field work, the Responsible Party should give notice to affected parties within 200 feet of site (or extent of migration, if migration off site has occurred) by letter or 2'x3' sign at the site. Sign to stay until No Further Action (NFA) letter is issued.
- Designate a contact person and toll free number for fielding public inquiries.
- Provide documented proof of sign posting (i.e., invoices, photograph of same) to DEP.
- Bi-annually scheduled notice letters on current site conditions and progress of remediation activities, until NFA is issued.
- Conduct enhanced outreach via fact sheet within two weeks of discovering off-site migration.
- Provide updated fact sheet at the conclusion of RI with information including, but not limited to, contaminants of concern and their concentrations, possible sources and a list of online resources for information about those contaminants.
- Publish the salient points of the fact sheet as a display ad in local newspapers within four weeks.
- Submit alternate outreach plans to the DEP for approval in unusual cases.
- Additional public outreach may be required if there is substantial public interest (perhaps the most contentious and overreaching part of the rule) based on the signature of 25 persons or a single municipal official. This outreach may include a public session or meeting, or establishing an information repository in the municipal office and/or on a Web site.