



Proposed
Rule 62-4.161
Public Notice
of Pollution

November 16, 2016



Intent of Recently-Conducted Workshops/Hearings

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Department of Environmental Protection is holding rule workshops to discuss and receive public comment on its proposed Rule 62-4.161, F.A.C., Public Notice of Pollution, as recently published in a Notice of Rule Development on September 27, 2016 and Notice of Proposed Rule on September 28, 2016 in the Florida Administrative Register.



Scheduling of Recently-Conducted Workshops/Hearings

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

62-4.161 Public Notice of Pollution

The Department of Environmental Protection announces a workshop to which all persons are invited.

DATE AND TIME: October 17, 2016, 9:00 a.m.

PLACE: Southwest District Office, 13051 N. Telecom Parkway, Main Conference Room Temple Terrace, FL 33607

DATE AND TIME: October 18, 2016, 9:00 a.m.

PLACE: Southeast District Office, 3301 Gun Club Road, MSC 7210-1, Okeechobee Conference Room in B2, West Palm Beach, FL 33406

DATE AND TIME: October 19, 2016, 9:00 a.m.

PLACE: South District Office, 2295 Victoria Ave., Conference Rooms 380H and 368A/B, Fort Myers, FL 33901

DATE AND TIME: October 20, 2016, 9:00 a.m.

PLACE: Central District Office, 3319 Maguire Blvd., Suite 232, Conference Room A, B, C, Orlando, FL 32803

DATE AND TIME: October 24, 2016, 9:00 a.m.

PLACE: Northwest District Office, 160 West Government St., Room 502, Pensacola, FL 32502

DATE AND TIME: October 25, 2016, 9:00 a.m.

PLACE: Carr Building, 3800 Commonwealth Blvd., Room 170, Tallahassee, FL 32399

DATE AND TIME: October 26, 2016, 9:00 a.m.

PLACE: Northeast District Office, 8800 Baymeadows Way West, Suite 100, Conference Room 1A, Jacksonville, FL 32256



SUMMARY

The new rule will require owners and operators of any installation to provide notices to the Department, local government officials, and the public whenever there is an incident or discovery of pollution at an installation within 24 hours. In addition, the owner and operator would be required to provide a subsequent notice within 48 hours that describes any potentially affected areas beyond the property boundary of the installation, and the potential risk to public health, safety, or welfare. The owners and operators are required to notify the Department, local government officials, and the property owner within 24 hours of becoming aware that pollution from an installation has affected areas beyond the property boundaries of the installation.



Proposed Rule 62-4.161, F.A.C.

Any owner or operator of any installation who has knowledge of any pollution at such installation shall provide notice of the pollution as follows:

(1) Within 24 hours of the occurrence of any incident at an installation resulting in pollution, or the discovery of pollution, the owner or operator shall notify the Department and the following persons, in writing, of such pollution:

- (a) The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area.
- (b) The city manager, the county administrator, or the comparable senior official representing the affected area.
- (c) The general public by providing notice to local broadcast television affiliates and a newspaper of general circulation in the area of the contamination.



Proposed Rule 62-4.161, F.A.C.

(2) Within 48 hours of the occurrence of any incident at an installation resulting in pollution, or the discovery of pollution, the owner or operator shall notify the Department and persons identified in (1)(a) through (1)(c), in writing, of any potentially affected areas beyond the property boundaries of the installation, and the potential risk to the public health, safety, or welfare.

(3) Within 24 hours of becoming aware of pollution from an installation that has affected areas beyond the property boundaries of the installation, the owner or operator shall notify, in writing, the property owner of any affected area, the Department, and the persons identified in (1)(a) through (1)(b).

(4) Such notification to the Department shall be accomplished by submitting an email to pollution.notice@dep.state.fl.us.

(5) Failure to provide this notification shall be considered a violation and subject to penalties for purposes of Section 403.161, Florida Statutes.



Definition of Pollution

Pollution is defined, in section 403.031(7), Florida Statutes, as “the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.”



Definition of Installation

An “installation” is defined in section 403.031(4), Florida Statutes, as “any structure, equipment, or facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.”



Notice of an Incident or Discovery of Pollution

Governor Scott has directed the Florida Department of Environmental Protection (DEP) to issue an emergency rule that establishes new requirements for public notification of pollution incidents to take effect immediately. This emergency rule will require the owner, operator of any facility, including a city or county government, to provide notification of incidents or discovery of pollution within 24 hours to DEP, local governments and the general public through the media.

The new rule will apply regardless of whether the impacts of the pollution remain on-site or not. This will apply to any pollution affecting Florida's air or water resources, such as unauthorized discharges of treated and untreated wastewater and industrial wastewater releases.

Specifically, the new emergency rule requires:

- » Within 24 hours, DEP, local governments and the general public through the media must be notified of pollution by any and all responsible parties;
- » Within 48 hours, DEP, local governments and the general public through the media must be notified of any potential risks to public health, safety or welfare and to surrounding areas by any and all responsible parties; and
- » Within 24 hours of becoming aware pollution has affected areas off-site, affected property owners, in addition to DEP and local governments, must be notified of any potential health risks by any and all responsible parties.



To provide notice to the Florida Department of Environmental Protection of any incident, or discovery, of pollution, reports should be emailed to pollution.notice@dep.state.fl.us. These reports, at minimum, should include the following information:

- » Name of reporting party
- » Installation Name
- » Installation Address
- » Installation Location
- » Contact person for further information
- » Permit Number (if facility/installation holds a permit)
- » Date and time of the incident or discovery
- » Location of the incident or discovery
- » Suspected source and cause of incident or discovery
- » Type of pollution, including substance or contaminant name(s)
- » Amount of pollution, including substance or contaminant name(s)
- » Medium (e.g. land, water, air) affected by pollution
- » Potentially affected areas beyond installation property boundary
- » Potential risk to the public health, safety, or welfare
- » Identification of other parties notified of incident and time notification occurred
- » Any other information that may be helpful

As the department is notified of events we will post the collected information to this web page on a daily basis.



Public notification under the emergency rule:

Responsible parties are required to notify local broadcast television affiliates and a newspaper of general circulation in the area of the contamination. Notification does not mean formal notice under Chapter 50, Florida Statutes. For purposes of this emergency rule, it can be an email. The Department of State has provided a list of contacts for newspapers throughout the state [here](#).

The emergency rule will last for 90 days, during which time DEP will also simultaneously begin the formal rulemaking process to gather public input and make the rule change permanent.

Governor Scott will also propose legislation during the next legislative session to ensure the public is kept informed of incidents of pollution that may cause a threat to public health and to Florida's air and water resources. This legislation will put the 24-hour public notification requirements into law as well as increase the fine amounts and penalties on any violators.

FREQUENTLY ASKED QUESTIONS (1 of 7)

How quickly does the rule require public notification?

Under the new rule, a responsible party must:

- Notify DEP, the local government and the general public of the pollution incident within 24 hours.
- Notify DEP, the local government and the general public of any potential risks to public health, safety or welfare and to surrounding areas within 48 hours of the pollution incident.
- Notify affected property owners, DEP and the local government within 24 hours of becoming aware that pollution has affected areas off-site.

FREQUENTLY ASKED QUESTIONS (2 of 7)

How are owners or operators required to notify the public?

Owners or operators are required to notify the local media. The Department has provided several points of contact for newspapers throughout the state at dep.state.fl.us/pollutionnotice.

During formal rulemaking, the Department will have the opportunity to further define the manner of notification.

FREQUENTLY ASKED QUESTIONS (3 of 7)

What does the Department mean by pollution?

Pollution is defined in Chapter 403.031, Florida Statutes. It is the presence of any substance at levels that may be harmful to human health or welfare, or interfere with the enjoyment of life or property.

How are owners or operators required to notify DEP? Will the public have access to these notices?

Owners or operators are required to provide written notice to DEP at pollution.notice@dep.state.fl.us. DEP will post these notices to their website at dep.state.fl.us/pollutionnotice.

FREQUENTLY ASKED QUESTIONS (4 of 7)

What is the difference between the emergency rule and the proposed legislation?

This emergency rule puts the new notification requirements into place immediately, and expires in 90 days.

In addition to issuing the emergency rule, DEP will also complete regular agency rulemaking to gather public input and make the rule change permanent.

Governor Scott will propose legislation during the next legislative session to ensure the public is kept informed of incidents of pollution that may cause a threat to public health and to Florida's air and water resources. This legislation will amend current law which only requires public notification when pollution moves off-site of where the incident took place and threatens public health. This legislation will put the 24-hour public notification requirements into law as well as increase the fine amounts and penalties on any violators.

FREQUENTLY ASKED QUESTIONS (5 of 7)

What types of pollution will require this public notification?

Any substance at levels that may be harmful to human health or welfare, or interfere with the enjoyment of life or property would constitute pollution, including unauthorized discharges of treated and untreated wastewater and industrial wastewater releases.

If an entity is discharging within its permit limits, would those discharges be subject to this notification process?

No.

Is there a threshold for reporting?

There isn't a numerical threshold in the emergency rule. However, thresholds could be considered during the formal rulemaking.

FREQUENTLY ASKED QUESTIONS (6 of 7)

What specific steps is DEP taking to put these rules into place?

1. DEP has issued an emergency rule with these public notification requirements. These will take effect immediately and this emergency rule will expire pursuant to statute in 90 days.
2. DEP will complete regular agency rulemaking to ensure a rule is in place after the emergency rule expires.
3. DEP, at the direction of the Governor, will pursue statutory changes to place these notification requirements and increase the fine amounts in law during the next legislative session.

What are the Department's next steps to make this rule a part of the Department's everyday authority?

We have already initiated the formal rulemaking process through the issuance of a notice of rule development. Seven rule workshops have been scheduled across the state.

FREQUENTLY ASKED QUESTIONS (7 of 7)

What are the new fine amounts? What are the current amounts?

Currently, failure to submit required notification to DEP is subject to a one-time administrative fine of \$1,000.

Under the proposed legislation, failure to comply with these notification requirements will be subject to penalties from DEP, including fines up to \$10,000 per violation per day and other legal actions. These increased fines will not take effect until statutory changes take effect.

Does this replace current reporting requirements in permits, etc.?

No. This reporting requirements is separate from and in addition to any current reporting requirements. During rulemaking, the Department will review whether separate reporting is necessary.



FOR MORE INFORMATION...

Please access the FDEP website at:

<http://dep.state.fl.us/pollutionnotice/>