

Managing Director's Directive No. 55

City of Philadelphia Responsibilities for Notice of Intent to
Remediate (NIRs) & Public Involvement Plans (PIPs) Under
Pennsylvania Act 2

Prepared by City of Philadelphia
Office of the Managing Director
June 16, 2003

A. Purpose: The purpose of this directive is to outline the City of Philadelphia's responsibilities regarding the implementation of the public involvement provisions of the Pennsylvania Land Recycling and Environmental Remediation Standards Act of 1995, commonly known as Act 2. This memorandum will specifically outline the instances in which the City of Philadelphia will require a site remediator, who has publicly issued a Notice of Intent to Remediate (NIR) under Act 2, to prepare and implement a Public Involvement Plan (PIP). This directive will also list the minimum requirements of a PIP.

B. Background: The Pennsylvania Land Recycling and Environmental Remediation Standards Act of 1995, requires that the remediator of a Site, who desires clean-up liability protection, to select one or a combination of three state environmental remediation clean-up standards. The extent of a site remediator's obligation for public notice and participation under Act 2 is dependent upon the clean-up standards to be used for the site, as well as the location of the site. Sites being cleaned-up under Act 2 guidelines must be remediated to one, or a combination of the three clean-up standards described in Section C below.

C. Act 2 Clean-up Standards:

- **Background** – The background is defined as the concentration of a contaminant that is present at the site but is not related to any release of contamination at the site. Background levels must be met for all contaminants when this standard is used for site remediation. For example, the contaminant could be present because it is a natural component of soil or because it has been released from an off-site facility.
- **Statewide Health Standards** - Specific clean-up levels for various contaminants have been established statewide. These standards are not site specific.
- **Site Specific Standards** – Site Specific Standards are clean-up levels developed specifically for an individual site based on the contaminants, exposures, future use, and conditions unique to that site.

D. Public Participation Requirements: For all sites being remediated under Act 2 the remediator must submit a Notice of Intent to Remediate (NIR) and a notice of the submission of the final remediation report to the Pennsylvania Department of Environmental Protection (PaDEP), and the City of Philadelphia Department of Public Health, for sites located in the City. A summary of these two must be published in a local newspaper. The City has no statutory authority under Act 2 to request PIPs for sites being remediated solely to Background or Statewide Health Standards. However, the use of a combination of clean-up standards that includes Site Specific standards and/or Statewide Health Standards and/or Background invokes public involvement processes as specified in Act 2 and defined below. For property remediation efforts adhering to Site Specific clean-up standards, and sites located in

Special Industrial Areas (described in Section E below), a detailed public involvement program is required if requested by the local municipality. In all instances, the NIR must be sent to PaDEP and the City of Philadelphia Department of Public Health, and a summary of the NIR must be published in a local newspaper. In addition, a thirty (30) day public and local government comment period follows. During this time the City government can request to be involved in the development of the remediation and site reuse plans. The City may then request that the remediator design and implement a PIP if it is a site to which the requirement applies as noted above. The PIP must contain measures to include the public in the development and review of the remedial investigation report, risk assessment report, clean-up plan, and the final report. Other PaDEP recommended public involvement measures are described in PaDEP Fact Sheet 2530-FS-DEP1851, entitled, "Opportunities for Public Involvement in the Land Recycling Program." (See Section J below).

It is the responsibility of the City to request, or not request, a PIP for properties to be remediated to Site Specific standards, and sites located in Special Industrial Areas within its boundaries. Section F below describes the situations when the City of Philadelphia will request a PIP from the remediator for sites to be cleaned-up to Site Specific standards, a combination of clean-up standards that includes site specific, or sites to be remediated that are located within SIAs.

E. Special Industrial Areas (SIAs): SIAs are defined as properties used for industrial activities where there is no financially viable responsible party to clean-up contamination on the property; or property that is located within an Enterprise Zone or Keystone Opportunity Zone as designated by the Pennsylvania Department of Community and Economic Development (DCED).

F. Situations for City PIP Request: The City through the Managing Director may request the preparation and implementation of a PIP by the remediator under the following circumstances when a site is to be remediated using site specific standards, a combination of clean-up standards that includes site specific, or sites defined as SIAs:

Adjacent in the following context is defined as the site to be remediated being within 300 feet or less of the property usages listed in 4 below as identified by Geographical Information System (GIS) analysis.

- 1) Whenever the end use of a site will be utilized by children, such as schools or daycare centers.
- 2) Upon request from a citizens group, neighborhood coalition, concerned citizens, or from a Community Development Corporation (CDC), acting on its own behalf, or on behalf of property owners immediately adjacent (see definition above) to residential, educational (schools/daycare), medical, religious, recreational and park properties. Requests received from such organizations will be referred to the

Hazardous Waste Technical Committee (defined below) by the Managing Director's Office for analysis within timeframes provided for in the Act 2 regulations.

- 3) Upon request from affected elected officials having an interest in this site or the PIP process.
- 4) Upon request of the majority of the members of the City's Hazardous Waste Technical Committee after evaluation by the Committee of the following criteria (the Managing Director's Office (MDO) may act on a request from a smaller number of departments if MDO deems it appropriate):
 - a. Properties immediately adjacent (see above definition) to residential, educational (schools/daycare), medical, religious, recreational and park properties.
 - b. Instances when redevelopment of the land will be transformed from industrial usage to sensitive usages such as residential, educational (schools/daycare), medical, religious, and recreational and parkland.
 - c. Sites adjacent to residential, educational (schools/daycare), medical, religious, recreational and park properties that contain or contained underground storage tanks.
 - d. Where the proposed use for the site runs contrary to existing redevelopment plans for the immediate area, particularly if the proposed clean-up standard could create risk to individuals under the proposed development plan.

G. Hazardous Waste Technical Committee:

The Hazardous Waste Technical Committee represents the opinions and interests of the following departments:

- Managing Director's Office (Chair)
- Health Department, Environmental Health Services (Facilitator)
- Law Department
- City Planning Commission
- Fire Department
- Licenses and Inspections
- Police Department
- Water Department
- Commerce Department

- City Council Technical Staff
- Streets Department
- Office of Emergency Management

H. Minimum Remediator PIP Implementation Requirements:

- 1) The remediator will hold a public meeting to discuss the site conditions and clean-up.
- 2) The remediator will post a notice in a City wide newspaper and in a neighborhood newspaper advertising the date, time and place of any public meeting at least thirty (30) days prior to the public meeting. The City should be notified through correspondence from the remediator as to the date, time and location of the public meeting at least thirty (30) days prior to the public meeting. The City's 30-day clock begins on the day the City is notified by the remediator. However, should the City receive notification prior to the notice being in the newspaper, the 30-day clock will begin once the notice is placed in the newspaper, or whichever is later.
- 3) The posted notice for the public meeting will give a short description of the reason for the meeting and note that public comments may be submitted in writing at the public meeting or prior to it.
- 4) The remediator will place all environmental reports and documents relating to the property to be remediated in a public repository in proximity to the site to be remediated at least thirty (30) days prior to the public meeting, and will advertise the location of the repository and the availability of documents in the notice of the public meeting.
- 5) A copy of all site assessment and/or Phase II environmental investigation reports for the site shall be sent to the City in advance of the public meeting.
- 6) The remediator will notify the municipality in writing that the public Meeting and other PIP activities were conducted and completed as required.

I. City Departmental NIR & PIP Responsibilities:

- 1) The Health Department will continue to be the NIR receiving entity for the City of Philadelphia. The Health Department will continue to circulate the NIRs, via e-mail immediately upon receipt, to the Office of the Managing Director and other appropriate City Departments represented as the "Hazardous Waste Technical Committee", for sites

to be remediated using site specific standards, a combination of clean-up standards that includes site specific standards, or sites located in SIAs.

- 2) Each member of the Hazardous Waste Technical Committee will conduct an independent review of the NIR information forwarded by the Health Department. If any Committee member determines that a PIP is warranted then that member will forward their recommendation and reasoning for their recommendation by e-mail to the Managing Director's Office within fifteen (15) days of receipt of the NIR from the Health Department.
- 3) The Managing Director's Office will forward the e-mail to the other members of the Hazardous Waste Technical Committee. Each Committee member is to forward a message back to the Managing Director's Office within five (5) business days from the date of the e-mail to note concurrence or non-concurrence with the PIP request. Committee members concurring with the request for a PIP must present their reasoning for concurrence in their response. The lack of a response within this time frame will be interpreted as a vote of non-concurrence with the PIP request.
- 4) Should a majority of the Hazardous Waste Technical Committee members concur with the request for a PIP, a formal request for a PIP will then be forwarded to the Managing Director's Office, to prepare formal correspondence to the remediator.
- 5) All formal PIP requests to the remediator will be in writing and will be prepared by the Managing Director's Office within five days of the end of the advertised thirty (30) day public notice.
- 6) The Managing Director's Office may, at its discretion, call for meetings of the Hazardous Waste Technical Committee to discuss the NIR and PIP process, or individual NIRs and PIPs. The final decision to request a PIP will lie with the Managing Director.
- 7) The Managing Director's Office will make the final decision on whether the PIP was properly public noticed and implemented by the remediator based on the advice of the members of the Hazardous Waste Technical Committee. In this situation, if the PIP implementation is judged to be inadequate and not in the best interests of the residents of Philadelphia, then the Managing Director's Office will advise PaDEP of the inadequacy of the PIP, recommending to the Commonwealth that release from liability be withheld until a satisfactory PIP is implemented, and to advise the remediator of such.

The Managing Director's Office will also request the remediator to modify and re-implement the PIP.

J. PaDEP NIR & PIP Reference Documents:

PaDEP has a number of fact sheets pertaining to NIRs and PIPs on their website at www.dep.state.pa.us. These documents are found by searching under the topic Act 2. The website should be visited periodically to insure that the Hazardous Waste Technical Committee is reviewing the most recent PaDEP publications and guidance documents.

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**City of Philadelphia Responsibilities for Notice of Intent to
Remediate (NIRs) & Public Involvement Plans (PIPs) Under
Pennsylvania Act 2**

Prepared by City of Philadelphia
Office of the Managing Director
May 12, 2003

A. Purpose: The purpose of this directive is to outline the City of Philadelphia's responsibilities regarding the implementation of the public involvement provisions of the Pennsylvania Land Recycling and Environmental Remediation Standards Act of 1995, commonly known as Act 2. This memorandum will specifically outline the instances in which the City of Philadelphia will require a site remediator, who has publicly issued a Notice of Intent to Remediate (NIR) under Act 2, to prepare and implement a Public Involvement Plan (PIP).

B. Background: The Pennsylvania Land Recycling and Environmental Remediation Standards Act of 1995, requires that the remediator of a Site, who desires clean-up liability protection, must select one or a combination of three state environmental remediation clean-up standards. The extent of a site remediator's obligation for public notice and participation under Act 2 is dependent upon the clean-up standards to be used for the site, as well as the location of the site. Sites being cleaned-up under Act 2 guidelines must be remediated to one, or a combination of the three clean-up standards described in Section C below.

C. Act 2 Clean-up Standards:

- **Background** – The background is defined as the concentration of a contaminant that is present at the site but is not related to any release of contamination at the site. Background levels must be met for all contaminants when this standard is used for site remediation.
- **Statewide Health Standards** - Specific clean-up levels for various contaminants have been established statewide. These standards are not site specific.
- **Site Specific Standards** – Site Specific Standards are clean-up levels developed specifically for an individual site based on the contaminants, exposures, and conditions unique to that site.

D. Public Participation Requirements: For all sites being remediated under Act 2, the remediator must submit a Notice of Remediation (NIR) and a notice of the submission of the final remediation report to the Pennsylvania Department of Environmental Protection (PaDEP), and the municipality in which the site is located. A summary of these two must be published in a local newspaper. The City has no statutory authority under Act 2 to request PIPs for sites being remediated to Background or Statewide Health Standards. However, the use of a combination of clean-up standards that includes Site Specific standards and/or Statewide Health Standards and/or Background invokes public involvement processes as specified in Act 2 and defined below. For property remediation efforts adhering to Site Specific clean-up standards, and sites located in Special Industrial Areas (described in Section E below), a detailed public involvement

program is required. In all instances, the NIR must be sent to PaDEP and the municipality and a summary of the NIR published in a local newspaper. In addition, a thirty (30) day public and municipal comment period follows. During this time the municipality can request to be involved in the development of the remediation and site reuse plans. The municipality may then request that the remediator design and implement a PIP. The PIP must contain measures to include the public in the development and review of the remedial investigation report, risk assessment report, clean-up plan, and the final report. Other PaDEP recommended public involvement measures are described in PaDEP Fact Sheet 2530-FS-DEP1851, entitled, "Opportunities for Public Involvement in the Land Recycling Program."

It is the responsibility of the municipality in which the site is located to request, or not request, a PIP for properties to be remediated to Site Specific standards, and sites located in Special Industrial Areas. Section F below describes the situations when the City of Philadelphia will request a PIP from the remediator for sites to be cleaned-up to Site Specific standards, or sites to be remediated that are located within SIAs.

E. Special Industrial Areas (SIAs): SIAs are defined as properties used for industrial activities where there is no financially viable responsible party to clean-up contamination on the property; or property that is located within an Enterprise Zone or Keystone Opportunity Zone as designated by the Pennsylvania Department of Community and Economic Development (DCED).

F. Situations for City PIP Request:

The City will automatically request the preparation and implementation of a PIP by the remediator under the following circumstances when a site is to be remediated using site specific standards, a combination of clean-up standards that includes site specific, or sites defined as SIAs:

- 1) Whenever the end use of a site will be utilized by children, such as schools or daycare centers.
- 2) Upon request from a citizens group, neighborhood coalition, concerned citizens, or from a Community Development Corporation (CDC), acting on its own behalf, or on behalf of property owners immediately adjacent (see definition below) to residential, educational (schools/daycare), medical, religious, recreational and park properties. Requests received from such organizations will be referred to the Hazardous Waste Technical Committee (defined below) by the Managing Director's Office for analysis within timeframes provided for in the Act 2 regulations.
- 3) Upon request from selected elected officials having an interest in the site or PIP process, which shall be limited to a member of Philadelphia

City Council, the Mayor's Office, Governor's Office, member(s) of the Pennsylvania General Assembly, or member(s) of the United States Congress.

- 4) Upon request of the majority of the members of the City's Hazardous Waste Technical Committee after evaluation by the Committee of the following criteria:
 - a. Properties immediately adjacent (see definition below) to residential, educational (schools/daycare), medical, religious, recreational and park properties.
 - b. Instances when redevelopment of the land will be transformed from industrial usage to sensitive usages such as residential, educational (schools/daycare), medical, religious, and recreational and parkland.
 - c. Sites adjacent to residential, educational (schools/daycare), medical, religious, recreational and park properties that contain or contained underground storage tanks.

- 5) The Hazardous Waste Technical Committee represents the opinions and interests of the following departments:

- Managing Director's Office (Chair)
- Health Department, Environmental Health Services (Facilitator)
- Law Department
- City Planning Commission
- Fire Department
- Licenses and Inspections
- Police Department
- Water Department
- Commerce Department
- City Council Technical Staff
- Streets Department
- Office of Emergency Management

Adjacent in this context is defined as the site to be remediated being within 300 feet or less of the property usages listed in 4 above as identified by Geographical Information System (GIS) analysis.

G. Remediator PIP Implementation Requirements:

- 1) The remediator will post a notice in a City wide newspaper and a neighborhood newspaper advertising the date, time and place of any

public meeting at least thirty (30) days prior to the public meeting. The City should be notified through correspondence from the remediator. The City's 30 day clock begins on the day the City is notified, not on the day the public notice appears in the newspaper unless both the newspaper notices and the municipality notice take place on the same day.

- 2) The remediator will place all environmental reports and documents relating to the property to be remediated in a public repository in proximity to the site to be remediated at least thirty (30) days prior to the public meeting, and will advertise the location of the repository and the availability of documents in the notice of the public meeting.

H. Remediator's PIP Municipality Notice Requirements:

- 1) The City will be notified in writing as to the date, time and location of the public meeting by the remediator at least thirty (30) days prior to the public meeting. The 30 day clock starts on the day the City is notified by the remediator.
- 2) The remediator will supply the City with all environmental reports and documents relating to the property to be remediated if requested by the City within five (5) business days of the City's request. The City's request may be verbal or written.
- 3) The remediator will notify the municipality in writing that the public Meeting and other PIP activities were conducted as required.

I. City Departmental NIR & PIP Responsibilities:

- 1) The Health Department will continue to be the NIR receiving entity for the City of Philadelphia. The Health Department will continue to circulate the NIRs, via e-mail immediately upon receipt, to the Office of the Managing Director and other appropriate City Departments represented as the "Hazardous Waste Technical Committee", for sites to be remediated using site specific standards, a combination of clean-up standards that includes site specific standards, or sites located in SIAs.
- 2) Each member of the Hazardous Waste Technical Committee will conduct an independent review of the NIR information forwarded by the Health Department. If any Committee member determines that a PIP is warranted then that member will forward their recommendation and reasoning for their recommendation by e-mail to the Managing Director's Office within fifteen (15) days of receipt of the NIR from

the Health Department.

- 3) The Managing Director's Office will forward the e-mail to the other members of the Hazardous Waste Technical Committee. Each Committee member is to forward a message back to the Managing Director's Office within five (5) business days from the date of the e-mail to note concurrence or non-concurrence with the PIP request. Committee members concurring with the request for a PIP must present their reasoning for concurrence in their response. The lack of a response within this time frame will be interpreted as a vote of non-concurrence with the PIP request.
- 4) Should a majority of the Hazardous Waste Technical Committee members concur with the request for a PIP, a formal request for a PIP will then be forwarded to the Managing Director's Office, to prepare formal correspondence to the remediator.
- 5) All formal PIP requests to the remediator will be in writing and will be prepared by the Managing Director's Office within five days of the end of the advertised thirty (30) day public notice.
- 6) The Managing Director's Office may, at its discretion, call for meetings of the Hazardous Waste Technical Committee to discuss the NIR and PIP process, or individual NIRs and PIPs. The final decision to request a PIP will lie with the Managing Director.
- 7) The Managing Director's Office will make the final decision on whether the PIP was properly public noticed and implemented by the remediator based on the advice of the members of the Hazardous Waste Technical Committee. In this situation, if the PIP implementation is judged to be inadequate and not in the best interests of the residents of Philadelphia, then the Managing Director's Office will advise PaDEP of the inadequacy of the PIP, recommending to the Commonwealth that release from liability be withheld until a satisfactory PIP is implemented, and to advise the remediator of such. The Managing Director's Office will also request the remediator to modify and re-implement the PIP.

Additional NIR & PIP Reference Documents: PaDEP has a number of fact sheets pertaining to NIRs and PIPs on their website at www.dep.state.pa.us. These documents are found by searching under the topic Act 2.

Office of the Managing Director

MEMORANDUM

July 9, 2003

TO: All Departments, Boards and Commissions

FROM: Philip R. Goldsmith, Managing Director

SUBJECT: MANAGING DIRECTOR'S DIRECTIVE NO. 55

Attached is Managing Director's Directive No. 55, regarding the City of Philadelphia's interdepartmental roles and responsibilities concerning actions involving "Notices of Intent to Remediate and Public Involvement Plans" under Pennsylvania Act 2, also known as the Commonwealth of Pennsylvania's Brownfields law.