

Excavation and Development within the Jacob Smelter

Sections:

- 1.10 Findings
- 1.20 Applicability
- 1.30 Definitions
- 1.40 Prohibited activity
- 1.50 Permits required
- 1.60 Permit procedures
- 1.70 Performance Standards
- 1.80 Soil testing
- 1.90 Inspection and Maintenance of Permanent Remedy
- 1.100 Appeals
- 1.110 Severability

1.10 FINDINGS.

The United States Environmental Protection Agency (EPA) has identified and designated an area known as the Jacob Smelter Tailing site as being contaminated with mining wastes containing high concentrations of lead and arsenic, and has consequently placed such Site on the EPA's National Priorities List for clean up and remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9601 et seq. The EPA has determined that the concentration of lead and arsenic on the Site pose a potential health risk to humans, especially small children and pregnant women. Also, the EPA has formulated and issued a remedy for clean up of the site as published and set forth in a Record of Decision (ROD) dated 29 July 1999.

1.20 APPLICABILITY.

These regulations shall apply to and govern any development or activity, which may cause or contribute to the movement or disturbance of contaminated soil or other material within the boundaries of the Site as identified and designated by the EPA. And as depicted on the official map as maintained in the office at the Stockton Town Hall, 18 North Johnson Street Stockton Utah 84071-0240. Additional maps of the Site shall be maintained in the Offices of the County Clerk and Recorder, the Utah Department of Environmental Quality (DEQ), and Tooele County Health Department.

1.30 DEFINITIONS

As used in this chapter.

- A. "Activity" means any action occurring on, above, or below the surface of the ground within the boundaries of the Site, which results or may result in a disturbance of the permanent remedy applicable to the Site.
- B. "Clean fill" means topsoil or other fill material with lead concentration of 200 mg/kg {parts per million (ppm)} or less.
- C. "Contaminated soil or materials" mean soil or material containing lead concentration greater than 500 mg/kg (ppm) or 70 mg/kg (ppm) arsenic.
- D. "Development" means any construction or man-made change in the use or character of land including but not limited to building, grading, excavating, digging, paving, drilling, demolition work, or planting.

- E. "Hard surface cover" means a non-permeable or semi-permeable barrier overlaying the ground surface such as paving, asphalt, concrete, stone, or wood, and including building and other permanent structures.
- F. "Permanent remedy" means the remedial action plan specified by the EPA pursuant to its ROD for the Site and any subsequently adopted amendments thereto.
- G. "Permanent repository" means a location on Jacob Smelter Operable Unit as designated by the EPA to be utilized for the permanent storage of contaminated soil and material originating within the boundaries of the Site.
- H. "Person" means an individual, Partnership, corporation, association, company, landowner, tenant, occupant, contractor, subcontractor or any public body or political subdivision.
- I. "Site" means the area in the Town of Stockton boundaries as designated by the United State Environmental Protection Agency (EPA) as Operable Unit 2 (OU2) pursuant to the Comprehensive Environmental Response, compensation, and Liability Act, U.S.C. Section 9601 et seq., as amended and as depicted on the official map maintained by the development services division and signed by an official of the EPA.
- J. "Uncontaminated soil or material" means soil or material containing concentration of lead and arsenic less than 200 mg/kg (ppm) and 70 mg/kg (ppm) respectively for vegetable gardens and less than 500 mg/kg (ppm) and 70 mg/kg (ppm) arsenic for all other areas.
- K. "Vegetative cover" means plant life, including but not limited to grass, trees, shrubs, vines, and sod, planted or installed in such a manner so as to prevent or minimize the exposure of ground soil.

1.40 PROHIBITED ACTIVITY

No person shall undertake or conduct or cause to undertake or conduct any activity or development within the Site without first complying with the procedures and performance standards as provided in this chapter.

1.50 PERMITS REQUIRED

No person shall undertake or conduct any activities or development within the Site involving the excavation of more than one cubic yard or soil without first obtaining a permit from the Town of Stockton. Activities or development involving excavation of less than one cubic yard of soil shall not require a permit but shall be subject to the requirements as set forth in Section 1.70 of this chapter.

1.60 PERMIT PROCEDURES

- A. All permits shall be applied for on a form provided by the Town of Stockton. A fee shall be assessed in accordance with the building permit fees schedule. Each applicant for a permit shall at a minimum provide the following information.
 - 1. The location and nature of the proposed activity or development.
 - 2. The depth of any proposed excavation and volume of soil or material to be excavated or disturbed.
 - 3. The dimensions of all surface areas to be disturbed.
 - 4. The volume of soil or other material to be backfilled on site.
 - 5. The volume of soil or other material proposed to be disposed of off the excavation site.
 - 6. The duration of any exposure of soil or material excavated from below a hard surface cover.
 - 7. The applicant's plans for identification and segregation of clean fill and uncontaminated soil or material from contaminated soil and material during the period of activity or development.

8. The applicant's plans for backfilling with uncontaminated soil or material.
9. The applicant's plans for insuring compliance with the performance standards as set forth in section 1.70 of this chapter.
10. Such additional information as determined by the Town of Stockton and the Tooele County Health Department utilizing the performance standards as set forth in Section 1.70 of this chapter

1.70 PERFORMANCE STANDARDS

The following performance standards shall be adhered to and applied to all activity or development within the Site so as to maintain and ensure the integrity of the permanent remedy.

- A. Any disturbed soil or material originating from below a hard surface cover that is to be stored above ground shall be securely contained and covered with a durable non-permeable tarp so as to prevent the leaching of contaminated material onto or into the surface soil. Where such storage is to extend beyond fourteen calendar days, stored soil or material excavated from below the hard surface cover shall be securely fenced to a height of not less than six feet in addition to being covered as herein required. All soil or material excavated from below a hard surface cover, unless as noted below, shall be removed to the permanent repository within the Jacob Smelter Tailing Operable Unit 1 upon approval by the Tooele County Health Department. Disturbed soil or material need not be removed to the permanent repository if the Tooele County Health Department finds that the contamination of the soil or material is less than the 500 mg/kg (ppm) of total lead and less than 70 mg/kg (ppm) arsenic.
- B. No contaminated soil or other material shall be removed, placed, stored, transported, or disposed of outside the boundaries of the Site without having first obtained any and all necessary state and/or federal transportation and disposal permits.
- C. All activity or development shall be accompanied by dust suppression measures such as the application of water or other soil surfactant to minimize the creation and release of dust and other particulate into the air.
- D. No vegetation shall be planted or cultivated within the boundaries of the Site except in established and designated garden beds. Clean fill and uncontaminated soil used in vegetable garden beds shall not be borrowed or taken from any other area within the Site.

1.80 SOIL TESTING.

The Town of Stockton or the Tooele Health Department may require any person undertaking to conduct activity or development within the Site to test any soil or material to establish its total lead (Pb) and arsenic (As) content for purpose of determining the application of any of the provisions of this chapter. All testing shall utilize and adhere to protocols established or approved by the EPA.

1.90 INSPECTION AND MAINTENANCE OF PERMANENT REMEDY.

In addition to all other requirements as set forth in this chapter, the following additional requirements shall apply to the use and maintenance of all lands within the Site, including but not limited to lawns, play areas, and parking lots.

- A. All areas within the Site shall be subject to inspection by the Town of Stockton and the Tooele County Health Department in order to enforce the provisions of this chapter. Inspections shall be done with the consent of the property owner or occupant. If consent is denied, inspection shall be obtained pursuant to a warrant.

- B. All unremediated areas under hard surface cover within the Site shall be maintained with a hard surface cover. Except as allowed pursuant to a duly obtained permit issued under this chapter, no person shall alter any part of a hard surface cover absent prior notice to the Town of Stockton.
- C. Any fence, wall, or other barrier installed to limit or prevent access to contaminated areas within the Site shall be maintained in such a manner so as to insure its effectiveness against trespass or other intrusion.

1.100 APPEALS

- A. Any person adversely effected or aggrieved by a decision of the Town of Stockton or the Tooele County Health Department made pursuant to this chapter may appeal such decision to the Town Council. Said appeal shall be filed in writing, and in triplicate, stating the reasons for the appeal with Tooele County Health Department within ten days following the date upon which the decision is made.
- B. The Tooele County Health Department shall notify the Town Council of the date of review, in writing, at least seven days proceeding the date set for hearing so that the record may be prepared for the hearing.
- C. The Town Council, after proper review of the decision of the Tooele County Health Department may affirm, reverse, alter or remand for further review and consideration any action taken by the Town of Stockton or the Tooele County Health Department.

1.110 SEVERABILITY.

If any provision or clause of this chapter or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses or applications hereof which can be implemented without the invalid provision, clause or application hereof. To this end, the provisions and clauses of this chapter are declared to be severable.

SECTION II In accordance with Section 96211 (e) of Title 42 of the United States Code, this ordinance shall not require or be construed to require the obtaining of a permit by any agency employee, or contractor of the United States for that portion of any removal or remedial action conducted entirely within the Site where such action is selected and carried out in compliance with the provisions of CERCLA, 42 U.S.C. Section 9601, et seq., and the permanent remedy.

SECTION III This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinance repealed or amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

SECTION IV This ordinance shall become effective fifteen days after its passage and upon at least one publication in a newspaper published and having general circulation in Tooele County, except that the following provisions of the ordinance shall become effective and apply to any given parcel or land has been certified by the Remedial Project Manager for the EPA fully remediated in accordance with the permanent remedy and written notice thereof has been provided to the affected landowners. The Environmental Protection agency's written notice to the affected landowners shall cite the following:

- (1) Section 1.70, Performance Standards, Vegetable and Flower Gardening or Cultivation;
- (2) Section 1.90, Inspection and Maintenance of Permanent Remedy.

Approved and Adopted this 8th day of May, 2000

Bany J. Shaw
Mayor

ATTEST:

Ellen L. Montagne
Clerk