

**THE REGULATIONS GOVERNING SOIL  
DISPLACEMENT AND DISPOSAL IN THE  
FLAT CREEK/IRON MOUNTAIN MINE  
SUPERIOR OPERABLE UNIT ONE  
SUPERFUND AREA – MINERAL  
COUNTY, MONTANA**

**2016**

**Institutional Control Program**

**Mineral County Environmental Health  
and Planning Department**

300 River Street, Superior

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## **SECTION 1 AUTHORITY, DEFINITIONS, AND SCOPE**

### **1.1 TITLE**

These regulations will be known and cited as: THE REGULATIONS GOVERNING SOIL DISPLACEMENT AND DISPOSAL IN THE FLAT CREEK/IMM SUPERIOR OU1 SUPERFUND AREA IN MINERAL COUNTY, MONTANA.

### **1.2 AUTHORITY**

The Mineral County Board of Health promulgates these regulations under the authority of Section 50-2-116(2) (c) (v), Montana Code Annotated (MCA).

### **1.3 FINDINGS**

The Mineral County Board of Health finds that:

- (1) In 1993 the Montana State Lands – Abandoned Mine Reclamation Bureau investigated the Flat Creek/Iron Mountain Mine (IMM) site and determined potential health risks and environmental risks existed. The United States Environmental Protection Agency (EPA) investigated the Superior OU1 Site and the surrounding area in 2001 and discovered contamination from 44 samples.
- (2) The EPA in 2002 conducted mitigation under an Action Memorandum to support removal of tailings with established health-based risk benchmarks under time-critical removal action.
- (3) The Superior OU1 Site requires cleanup action of mining waste contaminated soils under the Final Record of Decision (ROD), July 3, 2012, and identifies cleanup action that has been selected and approved by the EPA.
- (4) The Iron Mountain Mine in Flat Creek, formerly owned by ASARCO, was the primary source of lead, arsenic and antimony soil contamination.
- (5) Superior OU1 Site and the surrounding area, as shown on the Superior OU1 Site map attached to these regulations as Attachment A, may contain lead, arsenic and/or antimony contaminated soils.
- (6) Regulation of soil displacement within the Superior OU1 Site is necessary to prevent lead, arsenic and antimony contamination of uncontaminated areas, prevent recontamination of remediated areas, and prevent potential health risks to humans.
- (7) These regulations are necessary to protect public health and to control environmental lead, arsenic and antimony contamination within the Superior OU1 Site.

## 1.4 DEFINITIONS

**BOARD** means the Mineral County Board of Health.

**CLEANED UP** means a property has been remediated to acceptable levels of contamination using EPA approved remediation methods that involved removal and replacement of contaminated soils.

**COMMERCIAL PROPERTY OR SITES** means property or sites having profit as a chief aim, excluding daycares, schools, and agricultural property.

**CONTAMINATED SOIL** means soil containing lead, arsenic and/or antimony in excess of background concentrations, identified in the "Record of Decision of Flat Creek/IMM Superior OU1, EPA July 3, 2012.

**CUBIC YARD** means a volume of soil equal to a cube one yard long on each side, which is approximately the size of an average desk or washing machine.

**EPA** means the United States Environmental Protection Agency.

**IMM** means Iron Mountain Mine.

**INSTITUTIONAL CONTROL PROGRAM** means the oversight of soil disturbance in Superior OU1 potentially having levels of lead, arsenic or antimony contamination that pose human health concerns administered by the Mineral County Environmental Health and Planning Department and the Town of Superior.

**MG/KG** means milligram per kilogram and is approximately equivalent to parts per million (ppm).

**OUI** means Operable Unit One

**PERMIT** means the written authorization from the Environmental Health and Planning Department or the Town of Superior to disturb soil within the Superior OUI Site.

**PERSON** means any individual, corporation, company, association, society, firm, partnership, joint-stock company or any branch of state, federal or local government; or any other entity that owns, rents or leases property subject to this regulation.

**PROJECT** means a plan or proposal resulting in or requiring the displacement of more than one cubic yard of soil.

**QUALIFIED RESIDENTIAL YARD** means a yard that was in existence prior to the release of the 2012 EPA ROD on July 3, 2012, and any part of that yard has at least one section with lead concentrations at or above 400 ppm, or an arsenic concentration at or above 100 ppm or an antimony concentration at or above 130 ppm.

**RCRA** means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

**RELOCATION** means the movement of any volume of soil from one location to another location.

**REPOSITORY** means an EPA approved location for the disposition of contaminated soils.

**REPRESENTATIVE** means a person that is authorized to act as an official delegate or agent for Mineral County or the Town of Superior.

**ROD** means the July 3, 2012, EPA Record of Decision for the Flat Creek/IMM Superior Superfund Site Operable Unit 1.

**SOIL DISPLACEMENT** means the excavation or relocation of soils with visible signs of contamination. Soil displacement does not include tilling if no excess soil is removed from the area.

**SOIL SAMPLING** means the collection and analysis of surface soil samples taken either as part of the Superfund cleanup action or taken in response to meeting conditions of this permit process.

**SUPERIOR OUI SITE** means the area identified in Attachment A.

**TILLING** means to prepare land for the raising of garden crops as by rototilling or cultivating.

## **1.5 SCOPE**

- (1) These regulations apply only to parcels of land lying within the "Superior OUI Site" for the Town of Superior and Mineral County.
- (2) These regulations apply to all persons engaging in soil displacement with potential contamination within the Superior OUI Site exclusive of tilling when no soil is removed from the lot or parcel.
- (3) These regulations apply to all land use types, including but not limited to residential, commercial, recreational, right-of-ways and industrial.
- (4) These regulations do not apply to parcels where the undisturbed native soil lead levels are less than 400 mg/kg, arsenic levels are less than 100 mg/kg and antimony levels are less than 130 mg/kg.

- (5) In accordance with Section 9621(e) of Title 42 of the United States Code, nothing contained in this section or these regulations shall require or be construed to require the obtaining of a permit by any agency, employee, or contractor of the United States, the State, or the Montana Department of Environmental Quality for activities conducted entirely within the Superior OU1 Site and carried out in compliance with the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. C Section 9601, et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., and approved by the EPA.

## **SECTION 2 PERMIT PROCEDURES AND REQUIREMENTS**

### **2.1 PROHIBITED ACTIVITY**

No person shall displace soil within the Superior OU1 Site without first complying with the permit procedures and requirements as provided in this section.

### **2.2 APPLICATION PROCESS FOR PERMIT**

- (1) Application for a permit to displace soil within the Superior OU1 Site is made by completing a permit application available from the Institutional Control Program, Superior Town Hall, 105 Cedar Street or online at [townofsuperior@blackfoot.com](mailto:townofsuperior@blackfoot.com)
- (2) The applicant must submit all information required by these regulations before the Institutional Control Program representative must begin review of the application.
- (3) The applicant is required to submit information including, but not limited to:
  - a. Name and address of property owner
  - b. Name and address of applicant, if different than the property owner
  - c. Address and legal description of location of proposed activity
  - d. Description of the proposed activity
  - e. Depth of any proposed excavation
  - f. Volume of soil to be excavated or displaced
  - g. Proposed method for controlling contaminated dust
  - h. Proposed method for handling contaminated soil
  - i. Location of final disposal site
  - j. Source of replacement soil
  - k. Name of contractor or other representative, if applicable

- (4) Upon receipt of a complete application, the Institutional Control Program representative must schedule an appointment within five working days to finalize the project plan. During the appointment, the Institutional Control Program representative will develop a project timeline with the applicant or his/her representative. The project timeline will include:
  - a. Start date
  - b. Proposed end date
  - c. Proposed date and time of final inspection
- (5) Prior to permit approval, the Institutional Control Program representative must review existing soil sampling and cleanup information for the site, if any exists.
- (6) If no record of sampling or cleanup exists, the applicant or his/her representative may be required to sample soil for lead, arsenic and antimony following Institutional Control Program/EPA sampling protocol and the requirements of the 2012 ROD. Yards in existence prior to the release of the 2012 EPA ROD on July 3, 2012, will be sampled by the Institutional Control Program representative in consultation with the EPA and should be no cost to the owner.
- (7) The person doing the work must complete training for certification as described in Section 3.
- (8) Upon the applicant's compliance with the requirements of this Section, the Institutional Control Program representative must issue a permit in writing and the applicant or his/her representative must comply with the terms of the permit.
- (9) Permits are valid for two years after date of issue. If work is not completed within two years, a new permit must be obtained.
- (10) All permits issued by the Institutional Control Program representative must be in compliance with the conditions set forth in the 2012 Record of Decision and must meet the cleanup criteria for the land use identified in Table 2.2.
- (11) Emergency actions may be conducted by an applicant or his/her representative without a permit. The emergency action taken must be reported to the Institutional Control Program representative as soon as possible and by the next business day at the latest. Emergencies may include water or sewer line leaks, natural gas line leaks, hazardous waste spills and other urgent events.

### **2.3 INSPECTIONS**

- (1) Upon completion of the project, the applicant or the applicant's representative must notify the Institutional Control Program representative that the project is ready for a final inspection to determine compliance with these regulations.

- (2) Upon notification of project completion, the Institutional Control Program representative will perform a final site inspection within five working days.
- (3) During the final inspection the Institutional Control Program representative will:
  - a. Verify that work was conducted within the area described on the permit
  - b. Verify that excess soils generated by the project are properly capped or have been removed to an approved repository
  - c. Photograph the project site to document that the permit requirements were met
  - d. Verify that the work has been completed in compliance with the permit requirements by signing and dating the permit
- (4) Upon final inspection and approval of the project, the Institutional Control Program representative must file the permit and documentation of project completion in the Institutional Control Program office. Summary of information must be entered into the Soils Database by the Institutional Control Program representative and will become part of the permanent site record. The permit will be the official record of compliance with the 2012 ROD and will be maintained on file for public review.

## **2.4 PERMIT FEES**

No fees will be charged either to obtain a permit or to participate in the training or certification program held by the Mineral County Environmental Health and Planning Department.

## **2.5 CONTROL OF EXCESS SOIL DISPOSAL AND REPLACEMENT SOIL STANDARDS**

- (1) All excess soils removed from any property within the Superior OUI site that is determined by the Institutional Control Program representative to be contaminated must be transported by the applicant or the applicant's representative to one of the EPA approved repositories identified on the permit.
- (2) Excess soil from residential areas may be reused only on the property of origin if applicant demonstrates that lead concentrations are less than 400 mg/kg, arsenic levels are less than 100 mg/kg, and antimony levels are less than 130 mg/kg.
- (3) Soil brought in for replacement or backfill will meet the replacement requirements listed in Table 2-1.

**Table 2-1 Replacement Soil Requirements**

<b>Parameter</b>	<b>Requirements</b>
Lead	$\leq 20$ mg/kg
Arsenic	$\leq 15$ mg/kg
Antimony	$\leq .5$ mg/kg

## **2.6 CLEANUP ACTION LEVEL**

- (1) Soils from qualified residential yards and vacant lots developed prior to release of the 2012 ROD on July 3, 2012, will have soils excavated and disposed of when any section of a yard or site is found to have:
  - a. A soil lead concentration greater than 400 mg/kg.
  - b. A soil arsenic concentration greater than 100 mg/kg
  - c. A soil antimony concentration greater than 130 mg/kg

## **SECTION 3 CERTIFICATION PROGRAM**

### **3.1 CERTIFICATION**

- (1) Certification means that a person has demonstrated knowledge of these regulations and is able to undertake projects in compliance with these regulations.
- (2) Certification is free.
- (3) Applicants, applicants' representatives, contractors and construction workers may obtain certification from the Institutional Control Program representative. Certification is a privilege extended to an applicant, contractor or construction worker, and is not a right.
- (4) Application for certification must be in writing and must contain the name, address, and phone number of the individual and other information deemed necessary by the Institutional Control Program representative.
- (5) To become certified, an individual must attend and satisfactorily complete the Institutional Control Program's certification program:
  - a. Training will be provided by the Institutional Control Program representative on an appointment basis, as needed
  - b. Training includes, but is not limited to the following topics:

- Reducing or eliminating exposure to lead from soil during excavation
  - Information about personal protective clothing
  - Requirements for covering loads of soil prior to hauling to reduce blowing dust
  - Methods and best management practices for dust control at construction sites
  - Proper cleaning of equipment before leaving a construction site
  - Acceptable disposal or reuse of excess soil
- (6) Certification will depend upon completion of training.
- (7) Certification is valid for two years.
- (8) Certification is a prerequisite for any excavation of soil.
- (9) Any person may attend training and become certified.

## **SECTION 4 VIOLATIONS AND ENFORCEMENT**

### **4.1 VIOLATIONS**

- (1) Failure to have a permit.
- (2) Failure to post the permit at the site.
- (3) Failure to comply with the permit requirements.
- (4) Failure to allow access to Environmental Health and Planning Department staff will invalidate the permit and/or other written record of compliance with these regulations which are necessary to document that all work was completed in compliance with the 2012 ROD.

### **4.2 PENALTIES FOR VIOLATIONS**

Violations of any of the provisions of these regulations are misdemeanors and are punishable as provided for in Section 50-2-124, Montana Code Annotated.

### **4.3 INJUNCTIONS**

The County or Town Attorney may commence an action to restrain and enjoin acts in violation of these regulations. Violation of any such injunction is subject to punishment by the issuing court.

## **SECTION 5 ACCESS, APPEAL AND SEVERABILITY**

### **5.1 ACCESS RIGHTS**

- (1) Environmental Health and Planning Department staff are authorized and directed to make such inspections as are necessary to determine compliance with these regulations.
- (2) It is the responsibility of the owner, occupant, or contractor of a property to give Environmental Health and Planning Department staff free access to the property at reasonable times for the purpose of making such inspections as are necessary for determining compliance with these regulations.
- (3) No person may interfere with staff of the Environmental Health and Planning Department in the discharge of their duty.

### **5.2 APPEAL**

- (1) If a permit is denied or the Environmental Health and Planning Department determines the permit requirements have not been met, the applicant or his/her representative may appeal the denial to the Board.
- (2) A written request for an appeal must be submitted to the Environmental Health and Planning Department at least ten days prior to the next regularly scheduled Board meeting or the appeal hearing. The request must include:
  - a. A description of the proposed activity
  - b. The boundaries and location of the proposed activity
  - c. A summary of the reason for the appeal
- (3) The Board chair, in consultation with the Environmental Health and Planning Department and the Health Officer will determine whether the appeal will be heard by the Board or its designated hearing officer.
- (4) The Board or its designated hearing officer will hear the applicant's appeal and the permit requirements at a regularly scheduled Board meeting or a specially scheduled appeal hearing, whichever occurs first.
- (5) The Board or its designated hearing officer must provide a decision in writing to the property owner or his/her representative within ten working days after the hearing.
- (6) Decisions of the Board or the designated hearing officer may be appealed to District Court.

### 5.3 SEVERABILITY

In the event that any section, subsection, or other portion of these regulations is for any reason held invalid or unconstitutional, such section, subsection, or portion will be considered a separate provision of these regulations and such holding will not affect the validity of the remaining portions of these regulations which will remain in full force and effect.

## SECTION 6 REVISIONS, REPEALER AND EFFECTIVE DATE

### 6.1 REVISIONS

Revisions to these regulations may be made by the Board as needed to ensure proper administration and to allow for improved mitigation measures or procedures for protecting the previously conducted cleanup activities. The Board must hold a public hearing before any revision to these regulations.

### 6.2 REPEALER

All previous rules, regulations, resolutions and ordinances as adopted by the Mineral County Board of Health governing soil disturbances within the Superior OUI Site are hereby repealed.

### 6.3 EFFECTIVE DATE

These regulations must be in full force effective on this 16 day of May, 2016.

These regulations will be reviewed and evaluated by the Mineral County Board of Health within two years of the effective date and every two years thereafter.

  
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Duane Simons  
Chairman, Mineral County Board of Health

5-13-16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Roni Phillips  
Mayor, Town of Superior

11 May 2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Laurel Chambers, PAC  
Health Officer, Mineral County Board of Health

5-20-16  
\_\_\_\_\_  
Date

