Regulation No. 2007-1

DECONTAMINATION OF METHAMPHETAMINE CONTAMINATED PROPERTIES

Adopted by the Bear River Board of Health
Feb 6, 2007

Updated
May 6, 2008

Under Authority of Section 26A-1-121
Utah Code Annotated, 1953, as amended

REGULATION NO. 07-01

A REGULATION OF THE BEAR RIVER HEALTH DEPARTMENT FOR THE DECONTAMINATION OF METHAMPHETAMINE CONTAMINATED PROPERTIES

WHEREAS, the Bear River Health Department, in compliance with the notice requirements established by Utah Code Ann. § 26A-1-121, finds:

A. There may be properties where hazardous or dangerous chemicals or chemical residues associated with the use or production of methamphetamine have contaminated said property; and

B. It is necessary to control the occupancy of properties where chemical residues, commonly associated with the use or production of methamphetamine may pose a risk to the public health and safety; and

C. That standards for the disposal of hazardous or dangerous and contaminated materials from contaminated properties so that the same will be safe for occupancy should be established;

NOW THEREFORE, THE FOLLOWING REGULATIONS shall be promulgated by the Bear River Health Department for Cache, Rich, and Box Elder Counties:

1.0 Authority: This Regulation is promulgated pursuant to the authority established by Utah Code Ann. § 26A-1-101, *et seq.*, (1953), as amended.

2.0 Definitions: For the purposes of this Regulation, the following terms, phrases, and words shall have the following meanings:

2.1 "Competent Sampler" shall mean State of Utah Certified Decontamination Specialist or Licensed Environmental Health Scientist.

2.2 "Department" shall mean the Bear River District Health Department.

2.3 "Director" shall mean the Director of the Bear River District Health Department.

2.4 "Methamphetamine-Use Confirmation Sampling" shall mean obtaining samples by a Decontamination Specialist to verify that concentrations of methamphetamine residue and particulates are below the State of Utah decontamination standard.

2.5 "Decontaminated" shall mean that any property contaminated by either methamphetamine production or methamphetamine use shall have the contamination of such production or use reduced below the State of Utah decontamination standard.

2.6 "Methamphetamine" shall include any material, compound, mixture, or preparation which contains any quantity of methamphetamine, its salts, isomers, and salts of its isomers.

2.7 "Methamphetamine-production contaminated property" shall mean property that has been identified by the Department as being contaminated with methamphetamine as the result of methamphetamine production activities. Specifically to include, but not limited to, properties regulated by Utah Administrative Code § R392-600, *et seq.*, as well as any and all other properties contaminated by methamphetamine residue or particulates, in an amount in excess the State of Utah decontamination standard brought about by the production or storage of methamphetamine on or about the property.

2.8 "Methamphetamine-use contaminated property' shall mean property that has been identified by the Department as contaminated with methamphetamine, or methamphetamine residue or particulates in an amount in excess of the State of Utah decontamination standard as the result of the use of methamphetamine on or about the property.

2.9 All other definitions contained in Utah Administrative Code § R392-600 shall apply to this Regulation, if applicable.

3.0 Isolating methamphetamine-production contaminated property and methamphetamine-use contaminated property:

3.1 Whenever it comes to the attention of the Department that property within the jurisdiction of the Department may be methamphetamine-production contaminated property or methamphetamine-use contaminated property, the Department shall require a competent sampler to determine the extent of the contamination of the property.

3.2 The competent sampler shall determine the nature and extent of the contamination of methamphetamine-use contaminated property by performing a preliminary assessment prior to decontamination activities. To conduct the preliminary assessment, the competent sampler shall follow the guidelines established by Utah Administrative Code R392-600-3(2) to the extent applicable to methamphetamine-use contaminated property as determined by the Department.

3.3 Subsequent to performing a preliminary assessment of the property, the competent sampler shall notify the property owner of the results of the assessment. If it is determined that the property is unsafe for occupancy, the property owner shall have 10 days after notification of closure or actual closure to appeal the findings of the decontamination specialist to the Department for an administrative review hearing of the decontamination specialist's findings. If the Department upholds the findings of the decontamination specialist, or if no appeal is timely taken, the property owner shall be notified that the contaminated property or portions thereof shall be kept secure against un-authorized access until a work plan has been submitted, any required permit is issued, and the property has been decontaminated of methamphetamine residue or particulates as established by this Regulation.

4.0 Confirmation Sampling:

4.1 The decontamination specialist shall conduct confirmation sampling with respect to methamphetamine-production contaminated property pursuant to the protocols established by the Utah Administrative Code R392-600 *et. seq.*.

4.2 The decontamination specialist shall conduct confirmation sampling with respect to methamphetamine-use contaminated property pursuant to the protocols established by the Utah Administrative Code R392-600 *et. seq.*, to the extent applicable, as determined by the Department.

5.0 Decontamination Procedures: For purposes of decontamination all work must be performed by a decontamination specialist who shall apply the following rules:

5.1 Prior to decontamination of methamphetamine-production contaminated property, a work plan shall be established, and shall conform to the protocols set forth by the provisions contained within Utah Administrative Code R392-600 *et. seq.*

5.2. Prior to decontamination of methamphetamine-use contaminated property, a work plan shall be established, and shall conform to the protocols set forth by the provisions contained within Utah Administrative Code R392-600 *et.seq.*, to the extent applicable, as determined by the Department.

5.3 A methamphetamine-production contaminated property shall not be reopened for human occupancy until a decontamination specialist certifies in writing, by a final report, that the property has been decontaminated. The report shall comport to the requirements established by the provisions of the Utah Administrative Code R392-600 *et. seq.*

5.4 A methamphetamine-use contaminated property shall not be reopened for human occupancy until a decontamination specialist certifies in writing, by a final report, that the property has been decontaminated. The report shall comport to the requirements established by the provisions of the Utah Administrative Code R392-600 *et. seq.,* to the extent applicable, as determined by the Department.

6.0 Powers and Duties

The Department shall be responsible for the administration of this regulation and shall:

6.1 Require the owner of the record of properties contaminated by the use or production of illegal drugs or storage of hazardous or dangerous chemicals and precursors to decontaminate the properties in order to restore them to a safe and livable condition and to their intended use;

6.2 Require the owner of the record, lessee, or occupant to secure them against unauthorized entry until they are fit for use; and properly dispose of any materials removed from such sites. If the owner, lessee, or occupant fails to secure the closed property, the Department may proceed to secure it and charge the direct costs against the property owner, lessee, or occupant. With approval of the Director, a lien may be placed against the property to recover said costs.

6.3 Issue permits and charge fees as necessary to implement the provisions, requirements, and standards of this regulation;

6.4 Make appropriate determinations or investigations and evaluate any property reasonably expected to be contaminated by methamphetamine-use, methamphetamine-production, or the storage of hazardous or dangerous chemicals. Conduct a preliminary inspection of the property, accompanied by law enforcement, if necessary, to provide for the safety of the inspector. Require preliminary testing be performed on the property and issue notices and orders as necessary to effect the purposes of this regulation;

6.5 Deny, suspend, or revoke the work plan and permit of any person that fails to comply with the requirements of this regulation, and other applicable regulations of the Department;

6.6 Close and secure structures that fail to meet the requirements of this regulation and other applicable Department regulations, and that have been found to be a threat to the public's health, safety, or welfare.

7.0 Scope

7.1 In order to ensure proper decontamination procedures, permits from the Department shall be required before decontamination begins.

7.2 In order to protect the health, safety, and welfare of the public, contaminated property shall be conspicuously posted.

7.3 The responsibilities of the Department regarding chemically contaminated property shall be:

a) Determining if contamination exists;
b) Posting the property;
c) Notifying the owner of record or occupant that occupancy is prohibited until decontamination is completed;
d) Maintaining oversight of the decontamination of the property; and
e) Authorizing re-use when deemed appropriate.
f) It shall be unlawful for any person to fail to comply with this regulation and other applicable rules, regulation and ordinances.

8.0 Department to Placard Property

8.1 If the Department is notified of potential contamination from use of methamphetamine, either from positive hair follicle test, confession of the user, or witness of use, the Department shall conspicuously post the property with "Warning" signs.

8.2 If the Department finds the property is contaminated, the Department shall designate the property unfit for use and conspicuously post the property with "No Unauthorized Occupancy" signs.

8.3 Property closed to occupancy may not be entered by anyone except those authorized by the owner of record to conduct a pre-decontamination site assessment or those permitted by the Department to conduct decontamination activities.

8.4 A "No Unauthorized Occupancy" placard shall display the following information:

a) The type of closure;
b) The Department's name;
c) The inspector's name;
d) The telephone number at the Department;
e) The address of the site;
f) The restriction of access to designated decontamination specialists or those authorized by the Department;

8.5 A "Warning" placard shall display the following information:

a) The type of closure;
b) The Department's name;
c) The inspector's name;
d) The telephone number at the Department;
e) The address of the site;
f) The warning of a possible chemical hazard and notification that entry may be unsafe;

9.0 Responsibilities of the Owner of Record

9.1 The owner of record shall, if the Department closes a property to occupancy, keep the property secured against entry by anyone except certified decontamination specialists or licensed environmental health scientist until such time as the Department receives a final report from a decontamination specialist indicating the property is no longer contaminated. This includes prohibiting the owner of record and any occupants from entering the property as well, except as included in Sections 8.3, 9.3 & 11.2 of this regulation.

9.2 The owner of record in any hearing concerning whether a property is unfit for use has the burden of showing that the property is not contaminated and is fit for use.

9.3 In the event of an emergency concerning a posted property, the advice of the contracted decontamination specialist must be followed.

10.0 Responsibilities of the Decontamination Specialist

10.1 The decontamination specialist or owner of record shall obtain a permit from the Department before proceeding with any decontamination activity on any property the Department has closed to occupancy pursuant to this regulation.

10.2 A decontamination specialist shall be certified by the Department of Environmental Quality pursuant to Utah Administrative Code R311-500 *et.seq.*, before a permit required by this regulation will be issued.

10.3 The decontamination specialist or owner of record shall obtain all required federal, state, and local permits, certificates, or other documentation including any required by the Utah Department of Health, Utah Department of Environmental Quality, U.S. Environmental Protection Agency, U.S. and Utah Occupational Safety Health Authorities, and local building and/or zoning agencies.

10.4 The decontamination specialist or owner of record shall pay any fees charged by the Department for processing an application for a permit to do decontamination work under this regulation. The fee shall cover initial inspection, preliminary testing review, review of the Work Plan, review of the final plan and one final inspection. Any additional reviews, inspections, or other requests for Department time may result in additional fees.

10.5 If during the decontamination process it becomes necessary to modify the approved plan, written application shall be made to the Department. The decontamination specialist shall have written approval from the Department before proceeding with the modified Work Plan.

11.0 Permit to Decontaminate

11.1 The decontamination specialist or owner of record shall apply for a permit from the Department to decontaminate a property the Department has deemed unfit for use due to chemical contamination.

11.2 The decontamination specialist shall not start any decontamination prior to issuance of the permit. This does not preclude a decontamination specialist from conducting a pre-decontamination site assessment with notice to the Department.

11.3 The results of any observations or laboratory analysis completed to test for contamination, prepare a bid, or Work Plan shall be given to the owner of record and copies forwarded to the Department.

11.4 Applicable fees and the required Work Plan signed by both the owner of record and the decontamination specialist shall accompany the application for a permit.

11.5 A copy of the permit shall be posted near the main entrance in an uncontaminated, conspicuous location where persons not in specialized personal protective equipment may read it safely. A copy shall be re-posted as necessary.

11.6 Permits shall expire 60 days from date of issue. A 30-day extension for an expired permit may be granted upon submission of a written request and progress summary. If after 90 days from the original issuance date of a permit the decontamination is not complete, all work on the property will cease. Application for a new permit must be accompanied by a new work plan and applicable fees will be required before work can resume.

12.0 City and County Option

Nothing in this Regulation is intended to preclude a municipality or a county from pursuing nuisance, injunctive or other remedies available. Any property suspected to be contaminated by illegal drug use or production or storage of hazardous or dangerous chemicals, however, shall be reported to the Department for a preliminary assessment before such abatement action is executed.

13.0 Exemptions

This regulation does not apply to commercial or industrial sites where a person's manufacturing process uses a hazardous or dangerous chemical, if the site is appropriately licensed, permitted, or regulated by state or federal agencies.

14.0 Enforcement

14.1 It shall be the duty of the Department to perform inspections, reviews, and other actions as necessary to ensure compliance with this regulation.

14.2 Department inspections may be made with the consent of the owner of record, occupant, or other responsible person. If consent is not granted, a search may be made pursuant to a search warrant issued by a court of competent jurisdiction.

15.0 Right to Appeal

Appeals concerning this regulation are governed by the Bear River District Health Department Appeals Procedures.

16.0 Penalty

16.1 Any person who is found guilty of violating any of the provisions of this regulation, either by failing to do those acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended. If a person is found guilty of a subsequent similar violation within two years, he is guilty of a class A misdemeanor, pursuant to Section26A-1-123, Utah Code Annotated, 1953, as amended.

16.2 Each day such violation is committed or permitted to continue shall constitute a separate violation.

16.3 In addition to other penalties imposed by a court of competent jurisdiction, any person found guilty of violating this regulation shall be liable for all expenses incurred by the Department in removing or abating any nuisance, source of filth, chemical contamination, cause of sickness or infection, health hazard, or sanitation violation including attorney's fees and costs and any administrative fees that the Department may adopt.

16.4 Compliance with this regulation is not a defense if charged with any environmental crimes or violation of any local, state, or federal law.

16.5 Prosecution under this regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.

17.0 Severability

If any provision, clause, sentence, or paragraph of this regulation or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the other, provisions or applications of this regulation. The valid part of any clause, sentence, or paragraph of this regulation shall be given independence from the invalid provisions or application and to this end the provisions of this regulation is hereby declared to be severable.

18.0 Effective Date

This regulation shall become effective May 6, 2008 as adopted by the Bear River District Board of Health.