

Proposed Regulation (Draft 6)

CLALLAM COUNTY HEALTH REGULATION No. _____, 2003

A Resolution Creating CCHR ____, Contaminated Properties from Illegal Drug Manufacturing or Storage

BE IT ORDAINED BY THE CLALLAM COUNTY BOARD OF HEALTH

Contaminated Properties from Illegal Drug Manufacturing or Storage

SECTION I. AUTHORITY AND PURPOSE.

A. Authority.

This Regulation is adopted pursuant to Chapters 64.44 and 70.05 Revised Code of Washington (RCW) and Chapter 246-205 Washington Administrative Code (WAC). All references to these RCWs and this WAC refer to the cited chapters and sections, as now or hereafter amended, and this regulation is supplementary thereto.

B. Purpose.

This chapter provides for the protection of the health, safety, and welfare of the public by reducing the potential for public contact with hazardous chemicals associated with the manufacture of illegal drugs. This chapter:

- 1) provides procedures for enforcement of the Clallam County health officer's determinations that property is unfit for use due to contamination from illegal drug manufacturing or storage
- 2) establishes requirements for contamination reduction, abatement and assessment of costs, and
- 3) creates an appeals process for orders of the health officer issued to carry out the duties specified in Chapters 64.44 and 70.05 Revised Code of Washington (RCW) and Chapter 246-205 Washington Administrative Code (WAC).

SECTION II. APPLICABILITY.

This regulation shall apply to any site defined as an illegal drug manufacturing or storage site in WAC 246-205-010. This regulation shall also apply to any property that is contaminated. This regulation shall not apply to industrial or commercial sites where a person's manufacturing process uses a hazardous chemical when licensed or regulated by state or federal agencies.

SECTION III. DEFINITIONS.

When used in this regulation, the following terms have the meanings provided below. Definitions for other terms used in this regulation that are not defined below are provided in Chapter 246-205 WAC and Chapter 64.44 RCW.

- A. Approved: Approved in writing by the Health Officer.
- B. Board of Health: Clallam County Board of Health.
- C. Environmental Health Division: The Clallam County Environmental Health Division.
- D. Health Officer: The Clallam County Health Officer appointed under 70.05.050 RCW or the Health Officer's authorized representative.
- E. Nuisance: Any act or omission that may be detrimental to public health
- F. Property: Any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including but not limited to:
 - 1. Single-family residences;
 - 2. Units or multiplexes;
 - 3. Condominiums;
 - 4. Apartment buildings;
 - 5. Motels and hotels;
 - 6. Boats;
 - 7. Motor vehicles;
 - 8. Trailers;
 - 9. Manufactured housing;
 - 10. Any ship, booth, or garden; or
 - 11. Any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.
- G. Property owner or owner: any occupant of property or person having an interest in the property as shown in the records of the Clallam County Auditor or such other governmental licensing or recording body.

SECTION IV. CONTAMINATION REDUCTION.

- A. Applicability.

The requirements in this regulation apply to contractors and property owners. The requirements in this regulation apply to property that has been found by the Health Officer to be contaminated and unfit for use pursuant to RCW 64.44.020 and 64.44.030, and WAC 246-205-540 including properties found contaminated and unfit for use by the Health Officer prior to the effective date of this regulation.

B. Sampling.

All sampling performed for an initial site assessment or following contamination reduction procedures shall be conducted by a contractor certified by the Washington State Department of Health under Chapter 246-205 WAC or a Clallam County Environmental Health Specialist using standardized sampling protocols and methodology.

C. Decontamination or Disposal Required.

1. The owner of a contaminated property shall decontaminate or dispose of the property. The owner shall decontaminate the property in accordance with Chapter 64.44 RCW and WAC 246-205-570, or dispose of the property in accordance with state and local laws. The owner of the contaminated property shall submit a decontamination plan within forty five (45) days and decontaminate or dispose of the property within sixty (60) days of notification of contamination by the Health Officer, unless alternate deadlines are approved by the Health Officer.

D. Decontamination Work Plans.

1. All decontamination activities performed by property owners, or contractors must have a Health Officer approved workplan.
2. All certified contractors and other persons approved by the Health Officer performing decontamination operations in Clallam County shall use the Environmental Health Divisions Contractor Work Plan Template for the Cleanup of Illegal Drug Manufacturing Sites, as amended, or the Washington State Department of Health's Workplan Template, as amended. These Work Plan Templates may be obtained from the Clallam County Environmental Health Division or Washington State Department of Health.

SECTION V. ABATEMENT AND ASSESSMENT OF COSTS.

- A. After all appeals have been exhausted or if no appeal is filed within the time allowed for filing an appeal as required in Section VIII, and the property owner or other persons to whom the order was directed have failed to decontaminate a contaminated property as ordered by the Health Officer under this regulation, the Health Officer may direct or cause the property to be decontaminated, closed, vacated, boarded up, removed, disposed of or demolished, and all costs thereof, including any actual administrative costs and actual attorney's fees and costs, shall be assessed against the property, the persons to whom the order was directed, or the owners of the property upon which the cost was incurred.

- B. Notice of the costs incurred shall be sent by first class and certified mail to the owners of the property upon which the costs are assessed or other persons against whom the costs are charged. The Health Officer may modify the amount, methods, or time of payment of such costs as he/she may deem just, considering the condition of the property and the circumstances of the owner. In determining any such modification, the costs may be reduced against an individual who has acted in good faith and would suffer extreme financial hardship.
- C. Any costs incurred by Clallam County abating the condition of the property may be collected by any appropriate legal remedy and shall constitute a lien on the property and the lien may be foreclosed in the same manner as real property tax liens. Costs associated with the foreclosure of the lien, including, but not limited to advertising, title report, and personnel costs, shall be added to the lien upon filing of the foreclosure action. In addition to the costs and disbursements provided by law, the court may allow the prosecuting authority a reasonable attorney's fee.
- D. Any amounts collected shall be distributed to any fund or source of funds for the program area from which payment for the work was made.

SECTION VI. NOTICE AND ORDER TO CORRECT VIOLATION

A. Issuance.

Whenever the Health Officer determines that property has been contaminated and issues an order prohibiting use he/she may issue a written notice and order to correct violations of this regulation to the property owner or to any person causing, allowing, or participating in the violation.

B. Content.

The notice and order to correct violation shall contain:

1. The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;
2. The street address or description sufficient for identification of the property upon or within which the violation has occurred or is occurring;
3. A description of the violation and a reference to that provision of the regulation which has been violated;
4. A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;

5. A statement that each violation of this regulation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation; and
6. A statement that the failure to obey this notice may result in the issuance of a notice of civil infraction and/or imposition of criminal penalties.

C. Disposal Receipts.

The notice and order to correct a violation may also include a statement requiring the person to whom the notice and order to correct violation is directed to produce receipts from a permitted solid or hazardous waste disposal facility or transporter to demonstrate compliance with an order issued by the Health Officer.

D. Service of Order.

The notice and order to correct a violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violations by first class and certified mail postage prepaid, return receipt requested, to such person at his/her last known address.

E. Extension.

Upon written request received prior to the correction date or time, the Health Officer may extend the date set for corrections for good cause. The Health Officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.

F. Supplemental Order to Correct Violation.

The Health Officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations.

G. Enforcement of Order.

If, after any order is duly issued by the Health Officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer may:

1. Cause such person to be prosecuted under these regulations; and/or
2. Institute any appropriate action to collect a penalty assessed under these regulations; and/or
3. Abate the health violation using the procedures of these regulations; and/or

Pursue any other appropriate remedy of law or equity under these regulations.

H. Written Assurance of Discontinuance.

The Health Officer may accept a written assurance of discontinuance of any act in violation of this regulation from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this regulation.

SECTION VII. VIOLATIONS, CIVIL REMEDIES, AND CRIMINAL PENALTIES.

A. Violations.

1. Violations of this regulation may be addressed through a civil remedy or punished as a criminal act as provided in Sections VII.B. and C.
2. Each violation of this regulation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.
3. Any property that is declared contaminated or unfit for use is an public nuisance.
4. This regulation may be enforced by law enforcement officers, by the Health Officer, or by the Health Officer's designee.

B. Civil Remedies.

1. The violation of any provision of this regulation is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW, as amended. The Health Officer may issue a notice of civil infraction pursuant to Chapter 7.80 RCW if the authorized representative has reasonable cause to believe that the person has violated any provision of these regulations or has not corrected the violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard, and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules.
2. Civil infractions under this regulation include, but are not limited to, the following:
 - a. Failure to Decontaminate: Any person who fails to decontaminate any property as required pursuant to this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC, has committed a Class 1 civil infraction;
 - b. Occupying or Permitting Occupation of Property Declared Unfit for Use: Any person who occupies or permits or authorizes the occupation of any property ordered vacated pursuant to this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction;

- c. Removing, Destroying, Defacing, or Obscuring a Notice: Any person who removes, destroys, defaces, obscures or otherwise tampers with any notice posted pursuant to this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction;
- d. Failure to Comply with Order: Any person who fails to comply with any order issued pursuant to this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction;
- e. Failure to Comply with a Written Assurance of Discontinuance: Any person who fails to comply with a written assurance of discontinuance issued pursuant to this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction.
- f. Failure to Comply with Approved Workplan: Any person who performs decontamination activities not in accordance with the approved decontamination workplan has committed a Class 1 civil infraction.
- h. Failure to Report Contamination: Any person who becomes aware of contamination at a property is required to report the contamination to the Health Officer, within one (1) working day, upon gaining such knowledge.

C. Criminal Penalties.

The following are crimes under this regulation:

1. Failure to Decontaminate: Any person who has previously been found by a court to have committed a violation of section VII.B.2.a. of this regulation, "Failure to Decontaminate," and fails to decontaminate the same property as required pursuant to this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC, shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 or to imprisonment in the county jail not to exceed ninety (90) days or to both fine and imprisonment. The court may also impose restitution.
2. Obstructing Employees or Agents of the Local Health Jurisdiction Any person who obstructs any enforcement officer, employee or agent of the Local Health Jurisdiction or other governmental unit in the enforcement or carrying out of the duties prescribed in this regulation, Chapter 64.44 RCW, or Chapter 246-205 WAC shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 or to imprisonment in the county jail not to exceed ninety (90) days or to both fine and imprisonment. The court may also impose restitution.

D. Other Legal or Equitable Relief.

Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of these regulations, or rules and regulations adopted under them.

E. Imminent and Substantial Dangers.

Notwithstanding any provisions of this regulation the Health Officer may take immediate action to prevent an imminent and substantial danger to the public health.

SECTION VIII. APPEALS.

A. Appeal of an Order Prohibiting Use.

Any person required to be notified of an order prohibiting use under RCW 64.44.030 may appeal the order. Such appeals will be heard by the Health Officer. Any such appeal must be made within ten (10) cdays of service of the order and the appeal will conform to the requirements of RCW 64.44.030 and this regulation. The decision of the Health Officer regarding an order prohibiting use may be appealed to the Board of Health. Any action to review the Health Officer's decision must be filed within thirty (30) days of the date of the decision. The order prohibiting use shall remain in effect during the appeal.

1. Health Officer Administrative Hearing. Any person aggrieved by an order prohibiting use may request, in writing, a hearing before the Health Officer or his or her designee. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer. Such request shall be presented to the Health Officer within ten (10) days of the action appealed. Upon receipt of such request together with any applicable hearing fees, the Health Officer shall notify the person in writing of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than twenty (20) days nor more than thirty (30) days from the date the request was received. The Health Officer will issue a decision affirming, reversing, or modifying the order prohibiting use. The Health Officer may require additional actions as part of the decision.

2. Hearing Procedures. Hearings shall be open to the public and presided over by the Health Officer. Such hearings shall be recorded. Hearings shall be opened with a recording of the time, date and place of the hearing; and a statement of the cause for the hearing. The Health Officer shall then swear in all potential witnesses. The case shall be presented in the order directed by the Health Officer. The appellant may present rebuttal. The Health Officer may question either party. The Health Officer may allow for a closing statement or summation. General rights include:

- (a) To be represented by an attorney;
- (b) To present witnesses;
- (c) To cross-examine witnesses;
- (d) To object to evidence for specific grounds

In the conduct of the proceeding the Health Officer may consider any evidence, including hearsay evidence, that a reasonably prudent person would rely upon in the conduct of his or her affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The Health Officer shall decide rulings on the admissibility of evidence, and the Washington rules of evidence shall serve as guidelines for those rulings.

Inasmuch as any appeal to the Board of Health from a Health Officer decision is a review on the record, the Health Officer shall ensure that the record generated contains testimonial and documentary evidence supporting the Health Officer's issuance of the order prohibiting use.

The Health Officer may continue the hearing to another date to allow for additional submission of information or to allow for additional consideration. Prior to closing of the hearing, the Health Officer shall issue its oral ruling unless the Health Officer determines that the matter should be taken under advisement. Written findings of fact, conclusions of law and orders shall be served on the appellant within fourteen days (14) of the oral ruling. If the matter is taken under advisement, written findings, conclusions and orders shall be mailed to the appellant within twenty one (21) days of the close of the hearing.

The appellant shall bear the burden of proof and may overcome the order prohibiting use by a preponderance of the evidence.

- 3. Appeals. Any decision of the Health Officer shall be final and may be reviewable by an appeal filed with the Board of Health through the Health Officer. Any action to review the Health Officer's decision must be filed within thirty (30) days of the date of the decision.

B. Appeal of Notice and Order to Correct Violation.

1. Stay of corrective action.

The filing of a request for hearing pursuant to this section shall operate as a stay from the requirement to perform corrective action ordered by the health officer while the hearing is

pending, except there shall be no stay from the requirement for immediate compliance with an emergency order issued by the health officer or from the requirements of an unfit for use order prohibiting use.

2. Health Officer Administrative Hearing. Any person aggrieved by a notice and order to correct violation may request, in writing, a hearing before the Health Officer or his or her designee. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer. Such request shall be presented to the Health Officer within ten (10) days of the action appealed. Upon receipt of such request together with any applicable hearing fees, the Health Officer shall notify the person in writing of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than twenty (20) days nor more than thirty (30) days from the date the request was received. The Health Officer will issue a decision affirming, reversing, or modifying the notice and order to correct violation. The Health Officer may require additional actions as part of the decision.

3. Hearing Procedures. Hearings shall be open to the public and presided over by the Health Officer. Such hearings shall be recorded. Hearings shall be opened with a recording of the time, date and place of the hearing; and a statement of the cause for the hearing. The Health Officer shall then swear in all potential witnesses. The case shall be presented in the order directed by the Health Officer. The appellant may present rebuttal. The Health Officer may ask questions. The Health Officer may allow the opportunity for a closing statement or summation. General rights include:

- (a) To be represented by an attorney;
- (b) To present witnesses;
- (c) To cross-examine witnesses;
- (d) To object to evidence for specific grounds

In the conduct of the proceeding the Health Officer may consider any evidence, including hearsay evidence, that a reasonably prudent person would rely upon in the conduct of his or her affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The Health Officer shall decide rulings on the admissibility of evidence, and the Washington rules of evidence shall serve as guidelines for those rulings.

Inasmuch as any appeal to the Board of Health from a Health Officer decision is a review on the record, the Health Officer shall ensure that the record generated contains testimonial and documentary evidence supporting the Health Officer's issuance of the notice and order to correct violation.

The Health Officer may continue the hearing to another date to allow for additional submission of information or to allow for additional consideration. Prior to closing of the hearing, the Health Officer shall issue its oral ruling unless the Health Officer determines that the matter should be taken under advisement. Written findings of fact, conclusions of law and orders shall be served on the appellant within fourteen days (14) of the oral ruling. If the matter is taken under advisement, written findings, conclusions and orders shall be mailed to the appellant within twenty one (21) days of the close of the hearing.

The appellant shall bear the burden of proof and may overcome the notice and order to correct violation by a preponderance of the evidence.

4. Appeals. Any decision of the Health Officer shall be final and may be reviewable by an appeal filed with the Board of Health through the Health Officer. Any action to review the Health Officer's decision must be filed within thirty (30) days of the date of the decision.

4. Appeal of Administrative Hearing.

- a. Any person aggrieved by the findings, conclusions or orders of the Health Officer shall have the right to appeal the matter by requesting a hearing before the Board of Health. Such notice of appeal shall be in writing and presented to the Health Officer within thirty (30) days of the Health Officer's decision. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer..
- b. The decisions of the Health Officer shall remain in effect during the appeal. Any person affected by the notice and order to correct violation may make a written request for a stay of the decision to the Health Officer within five (5) business days of the Health Officer's decision. The Health Officer will grant or deny the request within five (5) business days.
- c. Upon receipt of a timely written notice of appeal, the Health Officer shall set a time, date, and place for the requested hearing before the Board of Health and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than fifteen (15) days or more than thirty (30) days from the date the appeal was received by the Health Officer unless mutually agreed to by the appellant and Health Officer.
- d. Board of health hearings shall be open to the public and presided over by the chairman of the board of health. Such hearings shall be recorded. Board of health hearings shall be opened with a recording of the time, date and place of the hearing; and a statement of the cause for the hearing. The hearing shall be limited to argument of the parties and no

additional evidence shall be taken unless, in the judgment of the chair, such evidence could not have reasonably been obtained through the exercise of due diligence in time for the hearing before the Health Officer. Argument shall be limited to the record generated before the Health Officer unless the chair admits additional evidence hereunder.

- f. Any decision of the Board of Health shall be final and may be reviewable by an action filed in superior court. Any action to review the Board's decision must be filed within thirty (30) days of the date of the decision.

SECTION IX. SEVERABILITY.

Should any part of this regulation be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remainder.

SECTION X. EFFECTIVE DATE.

The effective date of this regulation shall be _____