



**SNOHOMISH HEALTH DISTRICT
RESOLUTION OF THE BOARD OF HEALTH**

03-19

RESOLUTION NUMBER: 03-19

RESOLUTION SUBJECT: ADOPTION OF SNOHOMISH HEALTH DISTRICT SANITARY CODE CHAPTER 11.4 - SUPPLEMENTAL RULES AND REGULATIONS REGARDING DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING OR STORAGE SITES AND RELATED FEE SCHEDULE

WHEREAS properties that are the site of illegal drug manufacturing or storage are increasing in number, and the associated chemicals used, stored, and produced therein pose a threat to the safety and health of innocent members of the public, particularly vulnerable children, and to future occupants of contaminated properties; and

WHEREAS the Board of Health of the Snohomish Health District is empowered pursuant to Revised Code of Washington (RCW) 70.05.060 (3) to "Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;" and

WHEREAS the Health Officer of the Snohomish Health District is empowered pursuant to RCW 70.05.070 (2) to "Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;" and

WHEREAS Chapter 64.44 RCW and Chapter 246-205 Washington Administrative Code (WAC), adopted by the State Board of Health, require the local health officer to: (1) inspect properties suspected of being contaminated by hazardous chemicals used in the manufacture of illegal drugs; (2) declare the property unfit for use if contaminated; and (3) prohibit use of contaminated property; and

WHEREAS RCW 64.44.070 empowers the Board of Health and the Health Officer with the authority to "...exercise such powers as may be necessary to carry out this chapter;" and

WHEREAS the Health Officer of the Snohomish Health District is empowered pursuant to RCW 43.70.190 to "...bring an action to enjoin a violation or the threatened violation of any of the provisions of the public health laws of this state or any rules or regulation made by the state board of health...or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW...;" and

WHEREAS WAC 246-205-560 provides that a local Health Officer's Order shall describe the penalties for noncompliance with the Order; and

WHEREAS increasing numbers of properties contaminated due to illegal drug manufacturing or storage are diverting limited resources of the Snohomish Health District from other historical and emerging public health issues; and

WHEREAS the Board of Health of the Snohomish Health District is empowered pursuant to RCW 70.05.060 (7) to "Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services;" and


WHEREAS WAC 246-205-570 (6) states that "The property owner shall be responsible for...costs incurred by the local health officer resulting from the enforcement of this chapter;" and

WHEREAS it is in the public interest to provide a process to authorize the Health Officer to decontaminate, close, secure, vacate, board up, remove, dispose of or demolish contaminated property and otherwise enforce the provisions of Chapter 64.44 RCW and Chapter 246-205 WAC to protect public health, safety, and welfare;

NOW, THEREFORE the Board of Health of the Snohomish Health District:

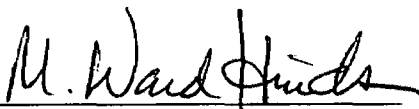
1. Adopts Snohomish Health District Sanitary Code, Chapter 11.4, *Supplemental Rules and Regulations Regarding: Decontamination of Illegal Drug Manufacturing or Storage Sites*; and
2. Adopts the following fee schedule that will be subject to periodic review and will be published in the Snohomish Health District fee schedule as approved by the Board of Health:
 - a. Decontamination Workplan Review - \$520 (Stationary property), \$340 (Vehicle)
 - b. Inspection of Suspected Contaminated Property Requested by Property Owner - \$300 and analytical sample costs
 - c. Health District Enforcement Costs - \$60/hour
 - d. Out of Pocket Enforcement Costs - including but not limited to analytical fees, legal fees, hearing examiner fees, contractor costs of barricading or otherwise securing contaminated properties and contractor fees
 - e. Step One Appeal of the Health Officer's Order - \$180

ADOPTED this 18th day of November, 2003.



Jack Blackwell, Chair
Board of Health

ATTEST:



M. Ward Hinds, MD, MPH
Health Officer

CHAPTER 11.4

SUPPLEMENTAL RULES AND REGULATIONS
REGARDING: DECONTAMINATION OF ILLEGAL
DRUG MANUFACTURING OR STORAGE SITES

I. AUTHORITY AND PURPOSE

A. Authority

The Board of Health of the Snohomish Health District adopts this Chapter pursuant to Chapters 43.20, 64.44, 70.05, and 70.46 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.

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 and by providing a just and practicable method for decontaminating property where these hazardous chemicals commonly are present. In addition to the requirements established in Chapter 64.44 RCW and Chapter 246-205 WAC, this Chapter establishes additional requirements for decontamination, abatement, assessment of costs and enforcement of the same.

II. APPLICABILITY

This Chapter shall apply to any site defined as an illegal drug manufacturing or storage site in WAC 246-205-010. This Chapter shall also apply to any property that exceeds the decontamination standards as defined in WAC 246-205-541.

III. DEFINITIONS

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

- A. Approved: Approved in writing by the Health Officer.
- B. Board of Health: Snohomish Health District Board of Health.
- C. Health District: The Snohomish Health District.
- D. Health Officer: The Health Officer or the Health Officer's authorized representative, of the Snohomish Health District.
- E. Order: Health Officer's Order prohibiting use of property determined to be contaminated.

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- F. Notice and Order to Correct Violation: Health Officer's Order requiring correction of violations of the Order, including imposition of civil penalties for violation of the Order. Hereinafter may be referred to as Notice.
- G. Nuisance: A public or common nuisance shall be considered as that which is set up, maintained or continued so as to be injurious to the health, or an obstruction to the use of property by interfering with the health, safety, or life of any considerable number of persons.

IV. INSPECTIONS AND RIGHT OF ENTRY

The Health Officer is authorized to make such inspections and take action as may be required to enforce the provisions of this Chapter, Chapter 64.44 RCW and Chapter 246-205 WAC. The Health Officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated. If entry is refused the Health Officer shall have recourse to all remedies provided by law to obtain entry.

V. HEALTH OFFICER DETERMINATION AND ISSUANCE OF ORDER

The requirements for site postings, inspection, determination of contamination, and issuance of the Health Officer's Order prohibiting use of contaminated property are in Chapter 64.44 RCW and Chapter 246-205 WAC.

The process and timeline for appealing an Order shall be pursuant to Snohomish Health District Sanitary Code, Chapter 11.4. The filing of a Request For An Appeal for a hearing will operate as a stay from the requirement to perform corrective action ordered by the Health Officer while the hearing is pending, except:

- A. There shall be no stay from the requirement in the Order prohibiting use, occupancy or the moving of any property.
- B. There shall be no stay from the requirements of immediate compliance where the Order has been designated an Emergency Order by the Health Officer.

VI. DECONTAMINATION

A. Applicability

The requirements in this Section are in addition to the decontamination requirements in Chapter 64.44 RCW and Chapter 246-205 WAC. The requirements in this Section 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 246-205-531 and 246-205-540, including property found contaminated and unfit for use by the Health Officer prior to the effective date of this Chapter.

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B. Decontamination or Disposal Required

1. The owner, occupant, any person in control of any contaminated property, or any person responsible for contaminating the property, are required to decontaminate or dispose of the contaminated property. Decontamination or disposal of property shall be done in accordance with this Chapter, Chapter 64.44 RCW, Chapter 246-205 WAC, all Orders of the Health Officer, and shall comply with all applicable federal, state, and local laws, regulations, procedures and guidelines.
2. Any decontamination or disposal activities shall be performed through the services of a decontamination contractor certified by the Washington State Department of Health unless otherwise authorized by the Health Officer.
3. Prior to commencing any decontamination or disposal activities a decontamination workplan must be submitted to and approved by the Health Officer unless otherwise authorized by the Health Officer. Any deviations from the workplan must be approved in advance by the Health Officer.
4. Timelines for the performance of decontamination or disposal of property subject to the Order shall be as follows, unless otherwise approved by the Health Officer:
 - a. Contaminated property, excluding motor vehicles, trailers, and boats, shall be decontaminated or disposed of within forty-five (45) days of notification of contamination by the Health Officer.
 - b. Contaminated motor vehicles, trailers, and boats shall be decontaminated or disposed of within thirty (30) days of notification of contamination by the Health Officer.

C. Decontamination Work Plans

All decontamination contractors certified by the Washington State Department of Health and other persons performing decontamination or disposal operations approved by the Health Officer, shall use the Washington State Department of Health's Workplan Template, as amended, unless otherwise approved by the Health Officer.

VII. SECURING PROPERTY AND ABATEMENT

- A. The property owner or other persons to whom the Order was directed shall take all necessary action to maintain the property, secure against entry by closing, boarding up, fencing, barricading, locking or otherwise securing the property.

In the event that the property owner or other persons to whom the Order was directed do not comply, the Health Officer may take all necessary actions to maintain the property, secure against entry by closing, boarding up, fencing, barricading, locking, or otherwise securing the same.

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- B. Once an Order is issued by the Health Officer relative to the subject property, the Health Officer shall thereafter be entitled to enter or access such property as reasonably necessary for the sake of further inspections, posting the property, securing the property, and/or abating the condition. This right of access shall expire at such time as the property has been subjected to an approved decontamination.
- C. The Health Officer may prohibit the moving or removal of vehicles or any other personal property and may secure such property by attachment of a locking device or any other means to prevent the property from being removed.
- D. If the property owner or other persons to whom the Order was directed have failed to decontaminate or dispose of contaminated property as ordered by the Health Officer, the Health Officer may direct or cause the property to be decontaminated, closed, vacated, boarded up, removed, disposed of or demolished, pursuant to this Chapter, Chapter 64.44 RCW and Chapter 246-205 WAC.

VIII. ASSESSMENT OF COSTS

- A. Any costs incurred by the Health District in assessment and enforcement of the provisions of this Chapter, Chapter 64.44 RCW and Chapter 246-205 WAC, may be collected by any appropriate administrative fee or legal remedy.
- B. Any costs, including actual administrative costs and actual attorney's fees and costs, incurred by the Health District in securing property or abating the condition of the property may be collected by any appropriate legal remedy. These costs may be assessed against the property, the persons to whom the Order was directed, and the owners of the property upon which the cost was incurred.
- C. Notice of 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 upon considering the condition of the property and the circumstances of the person violating the provisions of this chapter. 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.

IX. VIOLATIONS AND CIVIL PENALTIES

A. Violations

- 1. Violations of this Chapter may be addressed through a civil penalty as provided in Sections IX.B.
- 2. Each violation of this Chapter shall be a separate and distinct offense.
- 3. Any property that is declared contaminated or unfit for use is an unlawful public nuisance.

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4. Once the Order has been issued, the city or county in which the contaminated property is located may take action to condemn or demolish property or to require the property be vacated or the contents removed from the property, pursuant to RCW 64.44.040.

B. Civil Penalties

1. Violators of the provisions of this Chapter shall be assessed a monetary penalty as provided for in the following section.
2. The following are considered violations of the provisions of this Chapter:
 - a. Occupying or Permitting Occupation of Property Declared Contaminated: Any person who occupies or permits or authorizes the occupation of any property ordered vacated pursuant to this Chapter, Chapter 64.44 RCW, or Chapter 246-205 WAC shall be assessed a monetary penalty of \$100 per day;
 - b. Removing or Allowing to be Removed Property Declared Contaminated: Any person who removes or allows to be removed any property declared contaminated pursuant to this Chapter, Chapter 64.44 RCW, or Chapter 246-205 WAC shall be assessed a monetary penalty of \$250 per item removed. The removal of a trailer, vehicle or boat shall be assessed a monetary penalty of \$1000 per occurrence;
 - 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 Chapter, Chapter 64.44 RCW, or Chapter 246-205 WAC shall be assessed a monetary penalty of \$250;
 - d. Obstructing Employees or Agents of Health District: Any person who obstructs any enforcement officer, employee or agent of the Health District carrying out the duties prescribed in this Chapter, Chapter 64.44 RCW, or Chapter 246-205 WAC shall be assessed a monetary penalty of \$250;
 - e. Failure to Comply with Decontamination Requirements, Section VI: Any person who violates the decontamination requirements, unless otherwise authorized by the Health Officer, shall be assessed a monetary penalty of \$250;
 - f. Failure to Report Contamination: If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned and subsequently fails to report possible contamination to the Health Officer upon gaining such knowledge, shall be assessed a monetary penalty of \$100.

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X. NOTICE AND ORDER TO CORRECT VIOLATION.

- A. Issuance: Whenever the Health Officer determines that a violation of this Chapter has occurred or is occurring, he/she may issue a written Notice and Order to Correct Violation 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 the provision of this Chapter that 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 Chapter shall be a separate and distinct offense; and
 6. A statement that the enumerated violations cited per Section X.B.3 have resulted in the issuance of civil penalties as described in Section IX.B.
- C. Service of Order: The Notice and Order to Correct Violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the Notice and Order to Correct Violation by first class and certified mail postage prepaid, return receipt requested, to such person at his/her last known address.
- D. 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.
- E. 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 Violation procedures contained in this Chapter.
- F. Enforcement of Notice and Order to Correct Violation: If, after any Notice and Order to Correct Violation is duly issued by the Health Officer, the person to whom such notice is directed fails, neglects, or refuses to obey such Notice, the Health Officer may:

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1. Cause such person to be prosecuted under this Chapter; and/or
2. Institute any appropriate action to collect a penalty assessed under this Chapter; and/or
3. Abate the health violation using the procedures of this Chapter; and/or
4. Pursue any other appropriate remedy at law or equity under this Chapter.

XI. OTHER POWERS RESERVED – EMERGENCY ORDERS

Nothing in this Chapter shall limit the authority of the Health Officer to act under any other legal authority. The powers conferred by this Chapter shall be in addition to and supplemental to the powers conferred by any other law. If the Health Officer determines immediate action is necessary to protect the public health and safety or the environment, such actions may be taken or be ordered to be taken and any person to whom such Order is directed shall comply immediately.

XII. SEVERABILITY

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

XIII. EFFECTIVE DATE

The effective date of this Chapter shall be November _____, 2003.