

**STATE OF
COLORADO**

Means - DNR, Russ <russ.means@state.co.us>

*M-2012-028***Apache Tailings Pile, Leadville**

1 message

Gander - CDPHE, Craig <craig.gander@state.co.us>

Fri, Aug 9, 2013 at 12:23 PM

To: mtaalimited@rocketmail.com

Cc: Doug Jamison <doug.jamison@state.co.us>, Kiefer Linda <kiefer.linda@epa.gov>, Amanda Redd <adminservices@leadville-co.gov>, Scott Schultz <Scott.Schultz@state.co.us>, Russ Means - DNR <russ.means@state.co.us>

Dear Mr. Layne,

I am responding to your voice message this morning requesting that I send you the City of Leadville ordinance that requires CDPHE written approval prior to excavating, or performing other activities as described therein, on a Superfund Site engineered remedy within the City of Leadville, including the Apache Tailings Pile.

Please don't hesitate to contact me with any questions you may have.

Thanks,

Craig

Craig R. Gander

Project Manager, Superfund & Brownfield Programs
Colorado Dept. Public Health & Environment
HMWMD-RP-B2
4300 Cherry Creek Drive S.
Denver CO 80246-1530

[303-692-3449](tel:303-692-3449)fax [303-691-7878](tel:303-691-7878)craig.gander@state.co.us**RECEIVED**

AUG 09 2013

GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY**City of Leadville 2013 IC Ordinance FINAL signed.pdf**

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CITY OF LEADVILLE, COLORADO
Ordinance 3, Series of 2013

AN ORDINANCE OF THE CITY OF LEADVILLE, COLORADO AMENDING THE LEADVILLE MUNICIPAL CODE AND ADOPTING REGULATIONS CONCERNING INSTITUTIONAL CONTROLS FOR THOSE PORTIONS OF OPERABLE UNITS 3, 5, 6, 7, 8, AND 9 WITHIN THE CALIFORNIA GULCH SUPERFUND SITE LOCATED WITHIN THE CITY AND SETTING PENALTIES FOR FAILURE TO COMPLY WITH SUCH REGULATIONS

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.*, and the National Contingency Plan 40, C.F.R. Part 300, the U.S. Environmental Protection Agency ("EPA") has selected remedies for the various operable units of the California Gulch Superfund Site ("Site") where EPA has determined that institutional controls are necessary as a supplement to engineering controls, to manage waste left in place, to comply with applicable State laws, and to protect human health and the environment; and

WHEREAS, certain operable units of the Site, specifically operational units 3, 5, 6, 7, 8, and 9 lie partially within the boundaries of the City; and

WHEREAS, the Board of County Commissioners of the County of Lake, Colorado ("Board"), previously amended the Lake County Land Development Code ("LDC") to meet the requirements of the various EPA Records of Decision or Action Memorandum that require institutional controls for the Site to prevent contaminated soils from being handled improperly, and to assist the EPA in deleting the Site from the National Priorities List ("NPL"); and

WHEREAS, the County, through its Building Division, under intergovernmental agreement with the City ("IGA"), has historically enforced the LDC provisions applicable to the OUs within the City; and

WHEREAS, the IGA for building services between the City and the County is no longer in effect; and

WHEREAS, the purpose of this Ordinance and the regulations adopted hereby is to establish institutional controls similar to those enacted by the County applicable within the Site on those portions of OUs 3, 5, 6, 7, 8, and 9 lying within the City; to meet the requirements of the various EPA Records of Decision or Action Memoranda that require institutional controls; to implement the requirements designed to prevent contaminated soils from being handled improperly, and to assist the EPA in deleting the Site from the NPL; and

WHEREAS, the City is authorized pursuant to Section 31-15-401, C.R.S., to exercise its police powers to promote and protect the health, safety, and welfare of the community and its inhabitants; and

WHEREAS, the City Council has determined that this Ordinance furthers the public health, safety, convenience and general welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO:

Section 1. Section 15.04.020 of the Leadville Municipal Code, concerning amendments to the International Building Code, is hereby amended by the addition of a new subsection numbered 36, to read as follows in its entirety:

36. IBC Section 1803, entitled "Excavation, Grading and Fill" is amended by adding a new subsection 1803.7 to be entitled "Compliance with Institutional Controls" which shall read as follows:

1803.7 Compliance with Institutional Controls. Excavations and grading within those portions of Operational Units 3, 5, 6, 7, 8, and 9 of the California Gulch Superfund Site ("Site") lying within the City shall comply with the provisions of Chapter 15.36 of the City of Leadville Municipal Code.

Section 2. The Leadville Municipal Code is hereby amended by the addition of a new Chapter 15.36, entitled "Institutional Controls for the California Gulch Superfund Site" which shall read as follows in its entirety:

Chapter 15.36
INSTITUTIONAL CONTROLS FOR THE CALIFORNIA GULCH SUPERFUND SITE

Sections:

- | | |
|-----------|---|
| 15.36.010 | General provisions. |
| 15.36.020 | Definitions. |
| 15.36.030 | Variances not allowable. |
| 15.36.040 | Best Management Practices informational handout. |
| 15.36.050 | Institutional Controls for OU3, OU5, OU7 and OU8 and penalty for violation. |
| 15.36.060 | Institutional Controls for OU9 and penalty for violation. |

15.36.010 General provisions.

A. These regulations are necessary to comply with U.S. Environmental Protection Agency requirements for institutional controls for the various operable units of the California Gulch Superfund Site located partially within the City.

B. Enactment of these regulations is required by the U.S. Environmental Protection Agency in order to achieve deletion of the various operable units from the National Priorities List.

C. The implementation of these institutional controls which regulate excavation and building activities within certain locations of the California Gulch Superfund Site will ensure that various Site remedies remain protective of human health and the environment and may also minimize the disturbance, transfer, inhalation and ingestion of contaminated soils, thus potentially lessening any risk posed by certain portions of the Site to the public health and safety.

15.36.020 Definitions.

The following terms as used in this Chapter shall have the assigned meaning:

"California Gulch Superfund Site" or "Site" shall mean those areas within the City that are designated as the California Gulch Superfund Site by the EPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, as amended. EPA added the California Gulch Superfund Site to the National Priorities List in 1983. In 1994, the site was divided into 12 geographically based areas, also called operable units or OUs.

"Engineered Remedy" means an EPA approved clean up action that is designed, built or managed, pursuant to a Record of Decision, to address contaminated areas of a Superfund site. Engineered remedies shall remain intact in order to protect the integrity of the remedy and generally cannot be disturbed or constructed upon. The engineered remedies subject to institutional controls for certain operable units of the California Gulch Superfund site will be defined by a map accessible in the Lake County Building and Land Use Department, Lake County Clerk and Recorder's Office, the Lake County Assessor's Office, and the City Clerk's Office.

"EPA" shall mean the U.S. Environmental Protection Agency

"Institutional Control" or "IC" means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land or resource use and/or by providing information that helps modify or guide human behavior at a site.

"National Priorities List" or "NPL" means the list of hazardous waste sites eligible for long-term remedial action financed under the federal Superfund program. EPA may delete a final NPL site if it determines that no further response is required to protect human health or the environment. Partial deletions may also be conducted at Superfund sites.

"Non-Engineered Remedy" means an EPA approved remedy comprised of a geographical area of an OU that does not include an engineered remedy. Non-engineered remedies may require proper management of potentially contaminated materials in order to protect the integrity of the remedy and to prevent human and environmental exposure. The non-engineered remedies subject to institutional controls for certain OUs of the California Gulch Superfund site will be defined by a map contained in the

Lake County Building and Land Use Department, Lake County Clerk and Recorder's Office, the Lake County Assessor's Office, and the City Clerk's Office.

"Operable Unit" or "OU" means a designated geographically based area within the California Gulch Superfund Site.

"Operable Unit 3" or "OU3" means the OU fully described by the EPA Record of Decision for Operable Unit 3, dated May 6, 1998. Generally, OU3 encompasses several different slag piles and historic rail yards, including the Harrison Avenue slag pile and a portion of the Mineral Belt Trail.

"Operable Unit 5" or "OU5" means the OU fully described by two EPA Records of Decision for Operable Unit 5, dated September 29, 2000, and October 31, 2000. Generally, OU5 encompasses the ASARCO Smelter/Colorado Zinc-Lead Mill Site - smelter sites around Leadville and one mill site. The smelter sites include the EGWA sites (Elgin Smelter, Grant/Union Smelter, Western Zinc Smelter, and Arkansas Valley South Hillside Slag Pile) and the AV/CZL sites (Arkansas Valley Smelter and Colorado Zinc-Lead Mill).

"Operable Unit 6" or "OU6" means the OU fully described by the EPA Record of Decision for Operable Unit 6, dated September 25, 2003. Within the City, OU6 consists of the western portion of the Penrose Mine Waste Pile that was consolidated and capped in 1996, and also the Stray Horse drainage conveyance along 5th Street and the portion of Starr Ditch between 5th Street and California Gulch.

"Operable Unit 7" or "OU7" means the OU fully described by the EPA Record of Decision for Operable Unit 7, dated June 6, 2000. Generally, OU7 consists of the Apache Tailing Impoundment that was consolidated and capped in 2002.

"Operable Unit 8" or "OU8" means the OU fully described by the EPA Record of Decision for Operable Unit 8, dated September 2000. Generally, OU8 consists of the 500 year floodplain that is located between the Yak Water Treatment Plant and the point where the gulch enters the Arkansas River. Work on this operable unit was completed in 2002 including removal of tailing, non-residential soils and channel stabilization.

"Operable Unit 9" or "OU9" means the OU fully described by the EPA Record of Decision for Operable Unit 9, dated September 2, 1999 and the Explanation of Significant Differences dated September, 2009. Generally, OU9 consists of those portions of the Site where the land use is residential or that are currently owned as residential/populated areas and as low-density residential areas.

15.36.030 Variances not allowable. These institutional control regulations shall not be subject to any authority to vary the building or zoning regulations of the City. No variances are permitted from this Chapter of the Code.

15.36.040 Best Management Practices informational handout. Each applicant for a City building permit within the boundaries of OU3, OU5, OU6, OU7, OU8, and the six mine waste piles within the City in OU9 of the California Gulch Superfund Site will be provided with a handout from the City Building Services Department or provider regarding Lake County Best Management Practices for managing potentially contaminated soils in the City and Lake County. Each applicant shall be obligated to sign a document attesting to the fact that he/she has received, read and understood the Lake County Best Management Practices handout. No building permit shall be issued without the applicant's written acknowledgement provided to the City Building Services Department or provider.

15.36.050 Institutional Controls for OU3, OU5, OU6, OU7, and OU8 and penalty for violation.

A. Engineered remedies. It shall be unlawful to erect, construct, reconstruct, alter or modify the footprint of any building, structure or improvements on land, including excavation, within an engineered remedy in OU3, OU5, OU6, OU7, or OU8 of the California Gulch Superfund Site without prior notification and approval from the Colorado Department of Public Health and Environment. Written proof of approval from the Colorado Department of Public Health and Environment shall be a condition precedent to issuance of a building permit by the City Building Services Department or provider. The applicant shall submit a written request for approval to the Colorado Department of Public Health and Environment with a copy to the City Building Services Department or provider, each via certified mail. The Colorado Department of Public Health and Environment will provide an initial response within ten (10) days of receipt of the written request and will use best efforts to coordinate with landowners to provide a timely resolution of the request. Applicants are solely responsible for obtaining written approval from the Colorado Department of Public Health and Environment.

B. Non-engineered remedies. It shall be unlawful to excavate and remove any earthen materials including, but not limited to, native dirt, native soil, mine waste rock or mine tailings, slag, flue dust, or smelter waste from the owned parcel on an EPA non-engineered remedy, in excess of ten (10) cubic yards in OU3, OU5, OU6, OU7, or OU8 of the California Gulch Superfund Site without prior written approval from the Colorado Department of Public Health and Environment. Written approval from the Colorado Department of Public Health and Environment is a condition precedent to issuance of a building permit by the City Building Services Department or provider. The applicant shall submit a written request for approval to the Colorado Department of Public Health and Environment with a copy to the City Building Services Department or provider, each via certified mail. The Colorado Department of Public Health and Environment will provide an initial response within ten (10) days of receipt of the written request and will use best efforts to coordinate with landowners to provide a timely resolution of the request. Applicants are solely responsible for obtaining written approval from the Colorado Department of Public Health and Environment.

C. Violations and penalty.

1. It shall be unlawful to erect, construct, reconstruct, alter or modify the footprint of any building, structure or improvements on land, including excavation, within an engineered remedy in OU3, OU5, OU6, OU7, or OU8 of the California Gulch Superfund Site without prior notification and written approval from the Colorado Department of Public Health and Environment.
2. It shall be unlawful to remove any earthen materials including, but not limited to, native dirt, native soil, mine waste rock or mine tailings from the owned parcel of an EPA non-engineered remedy in excess of ten (10) cubic yards in OU3, OU5, OU6, OU7, or OU8 of the California Gulch Superfund Site without prior written approval from the Colorado Department of Public Health and Environment.
3. Failure to provide prior notification and written approval from the Colorado Department of Public Health and Environment for these otherwise prohibited activities is a violation of this Code and subject to a penalty of a fine of up to One Thousand Dollars (\$1000.00). Additionally, the infraction shall be reported to the Colorado Department of Public Health and Environment by a letter from the City Building Services Department or provider.

15.36.060 Institutional Controls for Six Mine Waste Piles Located in OU9 and penalty for violation.

A. Six Mine Waste Piles Located within the City in OU9 of the California Gulch Superfund Site. EPA issued an Explanation of Significant Differences in September 2009 ("ESD") to document significant differences to the Record of Decision ("ROD") for OU9. The September 2009 ESD documents EPA's decision to require institutional controls for a total of seventeen mine waste piles within OU9 that have soils at the surface under the 3500 parts per million lead residential action level, but below the surface may have lead contamination exceeding the residential lead action level. EPA designated the seventeen mine waste piles as engineered remedies in the ESD. EPA has prepared a map that identifies the six OU9 mine waste piles that exist within the City. Those piles are identified as numbers 12, 13, 18, 33, 34, and 329. This map will be located in the Lake County Building and Land Use Department, Lake County Clerk and Recorder's Office, the Lake County Assessor's Office, and the City Clerk's Office.

B. Engineered Remedies. It shall be unlawful to erect, construct, reconstruct, alter or modify the footprint of any building, structure or improvements on land, including excavation, within an engineered remedy in OU9 of the California Gulch Superfund Site without prior notification and written approval from the Colorado Department of Public Health and Environment. Written proof of approval from the Colorado Department of Public Health and Environment is a condition precedent to issuance of a building permit by the City Building Services Department or provider. The applicant shall submit a written request for approval to the Colorado Department of Public Health and Environment with a copy to the City Building Services Department or provider, each via certified mail. The Colorado Department of Public Health and Environment will provide an initial response within ten (10) days of receipt of the written request and will use best efforts to coordinate with landowners to provide a timely resolution of the request. Applicants are solely responsible for obtaining written approval from the Colorado Department of Public Health and Environment.

C. Violation and penalty.

1. It shall be unlawful to erect, construct, reconstruct, alter or modify the footprint of any building, structure or improvements on land, including excavation, within an engineered remedy in OU9 of

the California Gulch Superfund Site without prior notification and written approval from the Colorado Department of Public Health and Environment.

2. Failure to provide prior notification and written approval from the Colorado Department of Public Health and Environment for these otherwise prohibited activities is a violation of this Code and subject to a penalty of a fine of up to One Thousand Dollars (\$1000.00). Additionally, the infraction shall be reported to the Colorado Department of Public Health and Environment by a letter from the City Building Services Department or provider.

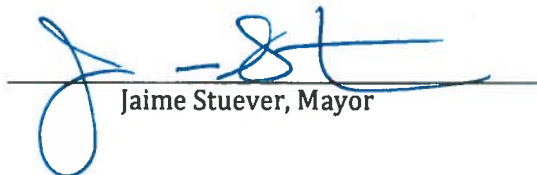
Section 3. Remaining provisions. Except as specifically amended hereby, all other provisions of the Leadville Municipal Code and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. Severability. Should any one or more sections or provisions of this ordinance enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this ordinance the intention being that the various sections and provisions are severable.

Section 5. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code provision heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to the taking effect of this ordinance.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED in full on first reading this 2nd day of April, 2013.

CITY OF LEADVILLE, COLORADO


Jaime Stuever, Mayor

ATTEST:


Joseph Swyers, City Clerk

Published in full in *The Herald Democrat*, a newspaper of general circulation in Leadville, Colorado, on the 11th_ day of April, 2013.

Passed and adopted on final reading and ordered published by title only with amendments on the 7th day of May, 2013.

CITY OF LEADVILLE, COLORADO


Jaime Stuever, Mayor

ATTEST:


Joseph Swyers, City Clerk

Published by title only with any amendments in *The Herald Democrat*, a newspaper of general circulation in the City of Leadville, Colorado, on the 16th day of May, 2013.

