

## **ENVIRONMENTAL CONTAMINATION ORDINANCE**

### **AN ORDINANCE ESTABLISHING PUBLIC HEALTH PROTECTION RELATED TO LEAD, CADMIUM, TRICHLORO-ETHYLENE AND OTHER IDENTIFIED CONTAMINANTS**

SECTION 1. PURPOSE. The purpose of this ordinance is to provide for regulation of use, and mandatory testing of soil on designated properties located within the County. Certain Regulated Contaminants, as herein defined, have been identified in soil and in groundwater on both residential and commercial properties within the County. Most, if not all of these residential properties known to have been contaminated have been remediated to site-specific standards. Very few commercial properties have been remediated. New residential construction continues in areas of possible contamination. Regulated Contaminants pose a real threat to the health and well-being of individuals who are exposed to soil and water having elevated levels of the contaminants. In particular, children are at risk from long-term exposure to such Regulated Contaminants causing brain dysfunction and possible death. The County has identified certain areas where the Regulated Contaminants exceed allowable levels in residential yard soil or in groundwater. Such areas have been identified by the U.S. Environmental Protection Agency (EPA) and Missouri Department of Natural Resources (MDNR). This statute is intended to protect the general health of citizens, particularly children, from unnecessary exposure to contamination.

SECTION II. AUTHORITY. This ordinance is enacted pursuant to Section 192.300, R.S.Mo., and is not in conflict with any rules or regulations authorized by the State Department of Health & Senior Services.

SECTION III. ADOPTION OF RULES AND AMENDMENTS. The Jasper County Health Department shall promulgate rules to require testing of soil and groundwater in private wells, which can be more restrictive than state guidelines per R.S.Mo. § 192.290.

SECTION IV. APPLICABILITY. For the purposes of well testing requirements these regulations apply to all real property in the County. For soil testing requirements these regulations apply to the Superfund designated areas that generally include properties from Kansas State Line on the West to County Road 170 on the East and Newton County Line on the South to Highway M on the North. For soil testing, areas within these boundaries that are known to be non-contaminated will be exempted from the requirements of this ordinance. These areas will be designated using existing EPA and MDNR testing data and supplemented with local testing data. These areas will be reviewed annually as EPA/MDNR continue cleanup in the county. Maps depicting these potential contamination areas will be publicly available and updated annually.

Applicability of this ordinance will cease 6 months after completion by the EPA of Operable Unit 1 remediation project, which includes remediation of all lead mining and milling wastes and soil that exceed concentrations constituting a risk to residents.

SECTION V. DEFINITIONS. The following words and phrases used within this Ordinance have the following meanings:

- 5.01 Department: The County Health Department.
- 5.02 Commission: The County Commission.
- 5.03 County: Jasper, County, Missouri, a first class county.
- 5.04 The Health Officer: The Administrator of the County Health Department or an authorized representative.
- 5.05 Contaminated Soil: soil having concentrations of Regulated Contaminants which exceed allowable levels established by the EPA, MDNR, or the State or County Department of Health.
- 5.06 Person: An individual, corporation or other legal entity.
- 5.07 Stop Order: A written order issued by the County Health Officer, or a designated representative, to stop all construction, installation, modification or occupation of any dwelling, child occupied facility or recreation area in areas of known contamination if in violation of this ordinance.
- 5.08 Required Soil Testing: Soil tests which conform to the requirements of the EPA and the MDNR for the presence of Regulated Contaminants.
- 5.09 Required Water Well Testing: Water quality tests which conform to the requirements of the EPA and MDNR for water quality testing for Regulated Contaminants.
- 5.10 Regulated Contaminants: Those contaminants in the soil or water well which are regulated by federal, state or local laws and those contaminants which the EPA or MDNR finds may be hazardous to public health. Contaminants shall specifically include: Lead, Cadmium, Arsenic, Trichloroethylene (“TCE”), and any other heavy metal, organic solvent which is known to be, or suspected to be, present in County soils or water wells and which may cause harm to human health and well-being.
- 5.11 Qualified Testing Lab: Any testing facility which has been approved by the County, EPA or the MDNR as qualified to test for the Regulated Contaminants.
- 5.12 Soil Barriers: any artificial or man-made structure, marker or indicator which has been placed in the soil for the purpose of notifying a Person of the presence of Regulated Contaminants.
- 5.13 Water Well: Any Domestic Well, High Yield Well or Multiple Family Well, as defined at 10 CSR 23-1.030, or converted Test Wells authorized under 10 CSR 23-6.020. Water Wells do not include public drinking water systems, or private lines accessing public drinking water systems which are regulated pursuant to 10 CRS 60-1.010.
- 5.14 Dwelling: either:

- (a) A dwelling, including attached structures such as porches and stoops;  
or
  - (b) A dwelling unit in a structure that contains more than one separate residential dwelling unit and in which each such unit is used or occupied or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
- 5.15 Child Occupied Facility: a building or portion thereof visited regularly by the same child who is six or fewer years of age including, but not limited to, day care centers, preschools and kindergarten classrooms. For the purposes of this subdivision, “visited regularly” means a minimum of two visits on different days within any week, provided that each visit lasts at least three hours and the combined weekly visits last at least six hours and the combined annual visits last at least sixty hours.
- 5.16 Recreational Area: areas such as parks or ball fields where children are likely to congregate. This includes the portions of commercial or industrial properties that offer recreation areas where children are likely to congregate.

SECTION VI. PROHIBITIONS. No person shall:

- 6.01 Construct a dwelling or dwelling unit or other child occupied facility or recreational area as defined in this ordinance without first determining whether the property upon which the activity is to occur is property which has previously been identified as having soil contamination or which has been partially remediated for any Regulated Soil Contaminant.
- 6.02 Remove soil/mining waste from any contaminated mining site or chat pile for use in violation of EPA/MDNR standards for use as identified in EPA Mine Waste Fact Sheet dated February 2003 and other relevant documents.
- 6.03 Sell, assign, give or otherwise transfer real property without providing written notice to the buyer, assignee or transferee of the presence and concentration of Regulated Contaminants in the soil or groundwater if testing has occurred.
- 6.04 Sell, assign, give or otherwise transfer real property with a water well as defined herein without first conducting Required Testing for groundwater, and providing written results from a qualified testing lab to the Department and to the buyer, assignee or the transferee.
- 6.05 Falsify, tamper with, alter, purify or cause any activity to occur which will materially affect test samples nor falsify, tamper with or alter soil or water test results.
- 6.06 Knowingly withhold any information from the Department regarding soil or water test sampling or test results.
- 6.07 Inhabit a new structure before properly abating all identified soil hazards in accordance with EPA standards as identified in EPA document *Superfund Lead Contaminated Residential Sites Handbook*, August 2003, Directive # OSWER 9285.7-50 and summarized in Attachment A of this ordinance.

## SECTION VII. PERMITS.

- 7.01 Building Permit: any person wishing to establish a dwelling, child occupied facility or recreation area on property within Jasper County shall apply to the County for a Building Permit except for property within political jurisdictions which issue building permits with the minimum requirements of all State and County requirements for the issuing of building permits. A permit will be issued when all county offices which govern property use have approved the permit application.
- 7.02 The Department shall provide to the applicant the information necessary to perform Required Testing of the soil and/or water prior to disturbance, including the contaminants for which testing is required, a detailed description of the method of acquiring and shipping soil samples, a list of approved Testing Labs, information pertaining to the possible human health hazards of Regulated Contaminants in soil or water. Additionally, requirements for remediation of contaminated soils in accordance with EPA guidelines will be provided by the County.

## SECTION VIII. POWERS AND AUTHORITY OF INSPECTORS, AND INSPECTION PROVISIONS.

- 8.01 The Department reserves the right to establish and modify inspection procedures and standards for construction as necessary due to changes in Missouri statutes, rules, regulations best practices, manufacturers recommendations and precedence.
- 8.02 The Department, Health Officer or a representative of the Health Officer shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this ordinance. This shall include facilities permitted by another government entity. The Department has the right to enter property at any reasonable time if there is the suspicion of a violation of this ordinance.
- 8.03 Any person conducting, or having conducted on their behalf, any Required Testing as defined in this ordinance shall provide the test results to the Department of Health within five (5) days of receiving the test results. If the Department of Health reasonably determines that a health hazard exists, based on the provided test results, the Department shall have the right to conduct additional testing. Further, the Department shall have the responsibility as required by law to provide to the public any soil or water test results in their possession upon request.

## SECTION IX. ENFORCEMENT

- 9.01 Any person found to be violating any provision of this ordinance in allowing the violation on their property shall be served by the Department with a written notice and/or Stop Order, stating the nature of the violation and providing a reasonable time limit, normally not to exceed 90 days, for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violation.
- 9.02 If violations of this ordinance continues the Department may require closure of any property which the Department believes may present a health hazard until such time as Required Testing may be performed to determine the presence of Regulated Contaminants. The Department may suspend or revoke any permits, including building permits, issued to any person violating this Ordinance until such time that the person complies with the Ordinance. All violations must be corrected before a permit can be issued or reinstated.
- 9.03 Any person who continues any violation beyond the time limit provided for in Section 9.01 may be charged with a class A misdemeanor and upon conviction thereof shall be fined as otherwise provided by law. Each day in which any violation continues shall be deemed a separate offense.
- 9.04 Any person violating any of the provisions of this ordinance or allowing violation(s) on their property shall be liable to the County for expenses, loss or damage incurred by reason such violation.

## SECTION X. APPEALS.

- 10.01 Any person aggrieved by any decision of the County Health Officer or Department may appeal to the Appeals Board by filing a written application with the County Health Officer within thirty (30) days after being notified of the decision which is the subject of the appeal.
- 10.02 The Appeals Board shall schedule a hearing on appeal, and shall give the person notice of the date of hearing at least ten (10) days prior to the hearing date and give the person reasonable opportunity to be heard.
- 10.03 Appeal hearings to the Appeal Board shall be conducted in accordance with the Commission's adopted rules and procedures. The Appeal Board shall consist of one County Commissioner, the Administrator, one Environmental Health Specialist, one soil scientist and one Citizen at Large. The Commissioner shall chair the board. The Administrator shall schedule the board hearings and determine the personnel makeup on the board. The decision of the Appeal Board is final unless overruled by a court of law. If the ruling of the Appeal Board is taken to court and the ruling prevails, any and all legal costs and personnel costs shall be paid by

the Appellant.

SECTION XI. SEVERABILITY.

- 11.01 If any article, chapter, section, clause or phrase of this regulation is, for any reason, held to be invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this regulation.
- 11.02 No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Department.