



Environmental Health Code

Chapter 5

Contaminated Property

Board of Health Resolution No. 2010 – 4225

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SECTION 1: Purpose and Authority

The Tacoma-Pierce County Board of Health (BOH) finds that the health, safety, and welfare of Pierce County citizens will be promoted by the regulation of hazardous chemical, material, and biological agents associated with clandestine drug manufacturing, use, storage, or distribution.

- A. The purpose of these regulations is to protect the public health by:
1. Ensuring that the contamination of soil, sediment, soil gas/vapor, groundwater, surface water, structures, and air caused by the manufacture, use, storage, or distribution of a controlled substance, is properly remediated to meet the requirements of this chapter.
 2. Minimizing the risk to public health and the environment from hazardous chemical, material, or biological agents released at clandestine drug manufacturing, use, storage, or distribution sites.
 3. Establishing the process and procedure for the investigation, determination of unfit for use, the remediation of contamination, enforcement, and the determination of refit for reuse of clandestine drug manufacturing labs, use, storage, or distribution sites in Pierce County.
 4. Establishing fees and penalties for the implementation and enforcement of this chapter.
- B. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the owner of the clandestine drug manufacturing labs, use, storage, or distribution site. No provision and no term used in this chapter is intended to impose any additional duty whatsoever upon Tacoma-Pierce County Health Department (Health Department), or any of its officers or employees. In the event of an inconsistency between state law and the provisions of this chapter, the state law shall control.
- C. These regulations are adopted by the BOH in accordance with the authority granted in Chapter 70.05 RCW and Chapter 64.44 RCW, Chapter 246-205 WAC, and *Tacoma-Pierce County Board of Health Resolution # 2005-3726*, and to establish minimum requirements for the investigation, determination of unfit for use, the remediation of contamination, enforcement, the determination of refit for reuse of clandestine drug manufacturing labs, use, storage, or distribution sites, and fees associated with administering the provisions of this chapter. Nothing contained in these rules and regulations shall be construed to prevent the health officer from requiring compliance with higher standards than those contained in these rules and regulations.
- D. The health officer shall enforce this chapter and any standards promulgated by the BOH relative to this chapter. The BOH is empowered to develop standards and remediation guidelines, and contractor certification guidelines necessary for implementation of this chapter, consistent herewith. The BOH delegates the authority to develop standards and remediation guidelines, and contractor certification guidelines to the health officer.
- E. These rules and regulations apply to all areas under the jurisdiction of the Health Department.

SECTION 2: Definitions

All words used in this chapter shall have their common definition, as used in context, unless a specific definition is set forth herein, RCW 66.44.010, or in WAC 246-205-010. The definitions set forth in RCW 66.44.010 and in WAC 246-205-010 are incorporated herein by reference. The definitions set forth in this RCW 66.44.010 shall control, followed by the definitions set for in this chapter, followed by the definitions in WAC 246-205-010, and finally, the common definition. The definitions used in this chapter are intended to be used specific to this chapter and should not be used for defining words, terms, or phrases in any other chapter or section of the Environmental Health Code, unless specifically indicated otherwise in the text. Additional definitions of general application may be found in Chapter 1 of the Environmental Health Code.

Accredited Analytical Laboratory: A laboratory accredited by the State of Washington for the analyte of concern.

Pierce County Authorized Decontamination Contractor: Any person or persons who decontaminates, demolishes, or disposes of contaminated property as required by this chapter, who is certified by the Washington State Department of Health as provided for in RCW 64.44.060, Chapter 246-205 WAC, registered under Chapter 18.27 RCW, and who is certified by the health officer as provided for in Section 8 of this chapter.

Contaminated or Contamination: The degradation of any component of the environment by the release of a substance into the environment in sufficient quantity to impair its usefulness as a resource, or pose a public health and/or environmental threat; or property is polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to the provisions of Chapter 246-205 WAC and this chapter is not "contaminated."

Exposure: Subjection of an organism to the action, influence, or effect of a hazardous chemical, biological or physical agent.

Fit for Use: The Health Department has determined that a property does not pose a significant public health threat and does not pose a significant risk of a threatened release.

Hazardous Chemicals: The following substances associated with the illegal manufacture of controlled substances: (a) Hazardous substances as defined in RCW 70.105D.020; (b) Precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans; and (c) The controlled substance or substances being manufactured, as defined in RCW 69.50.101.

Hazardous Material: A substance (solid, liquid, or gas) that when released is capable of creating harm to people, the environment, and property, as defined in WAC 296-305-01005.

Health Officer: The health officer of the Tacoma-Pierce County Health Department as provided for in RCW 70.05.050 or his/her designee.

Property: Any real or personal property that is involved in or affected by the unauthorized manufacture, use, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings,

parcel of land, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, or any structure, and all contents thereof.

Property Owner: A person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

Refit for Reuse: The health officer has determined the property has been remediated pursuant to RCW 64.44, WAC 246-205, and this chapter; the property does not pose a significant public health threat, and does not pose a significant risk of a threatened release.

Release for Reuse Health Order: A document signed by the local health officer, in accordance with WAC 246-205-590, to be recorded in the real property records of the auditor or, if the property is a vehicle or vessel, with the department of licensing.

Release: Any spilling, leaking, emitting, or discharging of a hazardous material, chemical or substance from a storage structure, process, or facility, or other operation or activity, into or onto soil, sediment, soil gas/vapor, air, water, groundwater, or other natural or man-made structures or materials.

Remediation: To remove or treat contamination and contaminated media to meet the requirements of WAC 173-340, or this chapter, whichever is more protective of public health and the environment.

Sample Plan: A site specific plan for collecting environmental samples at properties for the purpose of assessing hazardous chemical contamination from the illegal manufacture, use, distribution, or storage of a controlled substance, or collecting any samples at a property determined to be Unfit for Use.

Sharps or Sharps Waste: All hypodermic needles, syringes with needles attached, solid needles, IV tubing with needles attached, scalpel blades, and lancets that have been removed from their original sterile packages.

Significant Risk: The health officer has determined that an enhanced potential for hazardous chemical, material or biological exposure exists at a property that is unsecure and/or vacant, and is located adjacent to or near sensitive environments, or has a high potential for trespass due to property location adjacent to or near residences or public places such as parks or schools. Those chemical or biological hazard exposures include, but are not limited to: threatened release of hazardous chemicals, sharps, and human waste or bodily fluids that are not treated, stored or secured in an approved manner to minimize exposure or release to the environment.

Threatened Release: A hazardous chemical, material or biological agent is stored in a manner that is likely to cause a release or exposure. Open containers, containers not approved to hold hazardous chemicals, material or biological agents or containers not approved to hold the hazardous chemical, material or biological agents they currently hold are considered to be causing a threatened release and/or exposure.

Unfit for Use: The Health Department has determined that a property does pose a significant public health threat and/or does pose a significant risk of a threatened release.

Vehicle or Vessel: Personal property as defined by RCW 46.04.670 and RCW 88.02.010.

Warrant: A court order permitting administrative inspection and collection of samples pursuant to RCW 66.44.020 and RCW 69.50.502 as applicable.

Work Plan: A site specific plan submitted by an authorized contractor that defines the proposed method for assessment and remediation of soil, sediment, soil gas/vapor, groundwater, surface water, structure(s), and/or air contamination caused by the manufacture, use, storage, or distribution of a controlled substance; or through the declaration of Unfit For Use pursuant to Section 5.A.2 of this chapter.

SECTION 3: Notification to Department

A. Law Enforcement Notification

Pursuant to RCW 64.44.020, whenever a law enforcement agency becomes aware that property may be contaminated by hazardous chemicals that agency shall report the potential contamination to the health officer.

B. Property Owner Notification

If a property owner believes that their property is contaminated with hazardous chemicals, from the illegal manufacture, use, distribution, or storage of a controlled substance, the property owner shall contact the health officer about the possible contamination.

C. Pierce County Authorized Decontamination Contractor Notification

If a Pierce County Authorized Decontamination Contractor believes that a property is contaminated with hazardous chemicals, from the illegal manufacture, use, distribution, or storage of a controlled substance, they shall contact the health officer about the possible contamination.

SECTION 4: Investigation

A. Health Officer's Duties Upon Notification

1. Within one working day of receiving notice of possible contamination, the health officer shall cause a posting of a written warning on the premises or property in accordance with RCW 66.44.020 and WAC 246-205-520.
2. Within fourteen days of notification, the health officer shall enter, inspect, and/or collect environmental samples and survey at reasonable times the property that has been identified as possibly being contaminated by a hazardous chemical in accordance with WAC 246-205-530 and WAC 246-205-531. The Health Department may require the property owner to obtain environmental samples pursuant to Section 4 C. of this chapter.

B. Property Access

When meeting the requirements of Section 4.A of this chapter, if the health officer is unable to obtain consent to enter property, the health officer may seek a warrant for legal entry in accordance with the requirements of RCW 66.44.020 and RCW 69.50.502 as applicable.

C. Pierce County Authorized Decontamination Contractor Investigation

Pierce County Authorized Decontamination Contractors must submit the analytical results of environmental sampling to the Health Department within twenty four hours of notification from the accredited analytical laboratory. In order for sample results to be considered valid by the Health Department, the collection of analytical environmental samples shall meet the requirements in this section.

Pierce County Authorized Decontamination Contractors collecting environmental samples at properties for the purpose of assessing hazardous chemical contamination from the illegal manufacture, use, distribution, or storage of a controlled substance shall meet the following requirements:

1. Submit a sample plan to the Health Department that meets the requirements outlined in the Health Department's Remediation Requirements.
2. Receive written confirmation from the Health Department that the sample plan has been approved.
3. Conduct sampling activities in accordance with the submitted and approved sample plan.

SECTION 5: Determination, Reporting, and Notice

A. Determination of Unfit for Use

1. If environmental sample data collected pursuant to Section 4 of this chapter, indicates hazardous chemical contamination is present on the property in concentrations greater than the Decontamination Standards, pursuant to WAC 246-205-540, the health officer shall determine the property is Unfit for Use, pursuant to RCW 64.44.030, and the Tacoma-Pierce County Board of Health Resolution 2005-3726.
2. If a site investigation, pursuant to Section 4 of this chapter, indicates that biological hazards, or hazardous chemicals associated with the manufacture, use, storage, or distribution of a controlled substance, are posing a significant risk and/or a threatened release on a property, the health officer may determine the property Unfit for Use.
3. Property that has been declared Unfit for Use shall be remediated pursuant to Section 6 of this chapter.

4. If the health officer determines that property is Unfit for Use, the health officer shall post and cause to be served an order prohibiting use of all or portions of the property in accordance with RCW 64-44-030, WAC 246-205-540, and WAC 246-205-560.
5. If the health officer determines that property is Unfit for Use, notice will be provided in accordance with WAC 246-205-550 to the Washington State Department of Health by email or telephone within one working day, and in writing within ten working days.
6. If the health officer determines that property is Unfit for Use, then the health order shall be filed with the Pierce County Auditor and/or the Washington State Department of Licensing, pursuant to RCW 64.44.030 and RCW 64.44.045.

B. Determination of Fit for Use

The health officer shall determine that a property is Fit for Use if an investigation pursuant to Section 4 of this chapter indicates that environmental sample concentrations meet or are below the Decontamination Standards, pursuant to WAC 246-205-545, and a significant risk of a threatened release does not exist on the property. Upon a determination that the property is Fit for Use, the health officer shall document his or her findings in accordance with WAC 246-205-540(3).

SECTION 6: Decontamination

A. Work Plan Submittal

Owners of property determined to be Unfit for Use shall employ the services of a Pierce County Authorized Decontamination Contractor to develop and submit a site specific work plan.

B. Work Plan

A work plan shall be submitted by an authorized contractor and shall meet the requirements established in the Health Department's Methamphetamine Contaminated Property Site Remediation Requirements (Remediation Requirements).

C. Remediation

All work associated with the decontamination, unless otherwise specified in the submitted work plan and approved by the Health Department, shall be performed by authorized supervisors and workers employed by the Pierce County Authorized Decontamination Contractor who submitted the work plan.

D. Fees

1. The Health Department may charge a fee and/or hourly rate as necessary to recover any costs incurred in administering this chapter as provided in RCW 70.05 and 64.44.

2. All fees shall be paid at the time of the work plan submittal. The work plan will not be accepted until all fees are paid. Issuance of a Fit for Use recording by the Health Department shall not be completed unless all fees and costs incurred by the Health Department in enforcing the provisions of this chapter have been paid.
3. Additional hourly charges may be added to the fee amount if the review, oversight and enforcement of the provisions of this chapter by the Health Department exceeds four (4) hours. Fee amounts will be determined by the current Fee Schedule, as adopted by the BOH.

E. Time Line

1. A work plan submitted by a Pierce County Authorized Decontamination Contractor shall be submitted to the Health Department within 120 days of the property being determined Unfit for Use, pursuant to Section 5 of this chapter, and RCW 64.44.050. A cumulative hourly fee shall be assessed against the property owner(s) on a monthly basis until a work plan is submitted by a Pierce County Authorized Decontamination Contractor.
2. If the property remains unfit for use for a period of 120 days from the date that the property was determined to be unfit for use, the Health Department may pursue a Warrant of Abatement, pursuant to Chapter 1 of the Environmental Health Code.
3. The remediation, in accordance with an approved work plan submitted by a Pierce County Authorized Decontamination Contractor, shall be complete within 90 days of the Health Department's approval of the work plan. The health officer may approve an extension if a Pierce County Authorized Decontamination Contractor submits a written request. A written request for an extension shall be submitted to the Health Department and contain the following elements:
 - a. A description of the circumstances causing the delay;
 - b. A description of the current property condition;
 - c. A summary of completed remedial activities;
 - d. Copies of documentation pertaining to any sample collection and analysis, waste disposal receipts, and professional service receipts;
 - e. A description of all modifications to the original approved work plan; and
 - f. A proposed time line for the completion of the remediation.
4. If, after 90 days, the remediation is not complete and a written request for an extension is not submitted to the Health Department, the approval of the submitted work plan shall be revoked.

F. Authorization

1. Pierce County Authorized Decontamination Contractors shall be responsible for ensuring that the remediation proposed in the submitted work plan is by permission of the property owner, the property owner's legal guardian, or the property owner's representative.
2. Pierce County Authorized Decontamination Contractors shall be responsible for securing all required permits and adhering to all federal, state, and local regulations applicable to conduct the remediation described in the submitted work plan.
3. The Health Department's approval of a work plan does not constitute a legal determination regarding landlord-tenant law or property rights.

G. Post Assessment

1. The health officer shall verify that the proposed remedial activities expressed in the submitted and approved work plan have been completed to the satisfaction of the health officer. The verification shall include a final inspection and, if required, post decontamination confirmation sampling.
2. In the event that post decontamination confirmation sampling is required, the Pierce County Authorized Decontamination Contractor shall follow the procedures established in the Remediation Requirements.
3. The Pierce County Authorized Decontamination Contractor shall submit a final report at the completion of the remediation, and once all required post decontamination confirmation samples have been collected and analyzed in accordance with the Remediation Requirements.
4. The contents of the final report shall contain all the elements outlined in the Remediation Requirements.

SECTION 7: Post Remediation Determination

If the health officer determines that a final report submitted by a Pierce County Authorized Decontamination Contractor adequately documents that remediation of the property has occurred in accordance with the approved work plan, and a final inspection verifies the documentation contained within the final report, then the health officer shall issue a "Release for Reuse" health order in accordance with WAC 246-205-590 to be recorded in the real property records of the auditor or, if the property is a vehicle or vessel, with the department of licensing. Copies shall be sent to the property owner, the city or county local building or code enforcement department, and the Washington State Department of Health.

SECTION 8: Pierce County Authorized Decontamination Contractors

A. Certification and Performance Standards:

1. Pierce County Authorized Decontamination Contractors, workers, and supervisors shall meet the requirements of certification, certification renewal, and the performance standards pursuant to WAC 246-205.
2. The health officer may authorize contractors who are registered as provided for in RCW 18.27, and meet the requirements established in the Health Department's Authorized Decontamination Contractor Requirements (Contractor Requirements), as developed by the health officer. Contractors certified in this manner are granted the authority and are subject to the requirements of a Pierce County Authorized Decontamination Contractor provided for in this chapter.
3. Pierce County Authorized Decontamination Contractors shall notify the health officer of previously undiscovered hazardous chemicals, areas of potential contamination, a condition that poses a threatened release, and any other potentially hazardous condition that the submitted and approved work plan does not specifically address.

B. Health Officer's Duties

1. The health officer shall develop the Health Department's Authorized Decontamination Contractor Requirements (Contractor Requirements) in accordance with this chapter.
2. The health officer shall report all violations of this section to the Washington State Department of Health.
3. The health officer may revoke the Health Department's certification under Section 8.A.2. of a Pierce County Authorized Decontamination Contractor, provided for in Contractor Requirements, if it is determined through the Administrative Hearing process, pursuant to Chapter 1 Pierce County Environmental Health Code that a violation of Section 8 of this chapter has occurred.
4. If the Health Department has revoked its certification; contractors, supervisors, and workers may become re-certified after a term of one year has passed since the Health Department's certification was revoked, pursuant to Contractor Requirements.

SECTION 9: Hearings

A. Health Order Hearing Time Line and Process

1. Pursuant to RCW 66.44.030, written requests for a hearing to contest an order declaring property to be unfit (order) must be received within ten (10) days of service pursuant to Section 5 A.4. of this chapter. Only those persons who are entitled to notice of the order may request a hearing (hereafter referred to as "petitioner").
2. In the request for a hearing the petitioner must cite the specific order or section of an order they wish to challenge.

3. The hearing shall be held within not less than twenty days or more than thirty days after serving the health order, unless mutually agreed to by petitioner and the Health Department.
4. During the hearing the petitioner must cite the specific reasons why they believe the health officer's action is arbitrary and capricious, or unlawful. The petitioner shall have the burden of showing that the property is decontaminated or fit.
5. If the owner or person wishes the health officer to consider technical reports or exhibits, the owner or person must submit such materials with the hearing request or during the hearing. Reports or exhibits submitted after the hearing shall not be considered.
6. The health officer shall prohibit use of the property as long as the property is found to be contaminated.

B. Decision

1. The Health Department's order may be rescinded or modified if and only if the health officer finds that the order is unlawful, or arbitrary and capricious. The health officer may not order changes that would (a) jeopardize the public health or (b) appear to authorize actions contrary to the laws of the State of Washington.
2. Pursuant to RCW 64.44.030, the health officer's decision will be final unless the owner or any person having an interest in the property seeks further review through the appeals commission established pursuant to RCW 35.80.030.

SECTION 10: Enforcement

Any person found to be in violation of this chapter shall be subject to the provisions of Chapter 1 of the Environmental Health Code.

SECTION 11: Severability

The provisions of this section are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter or the invalidity of the application thereto to any person or circumstance shall not affect the validity of its application to other persons and circumstances.