

TO: file

FROM: Dave Anderson, AICP

DATE: September 20, 2022

RE: Title 15 Amendment – Environmental Concerns

15.1.04.020 Definitions

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“Adjoining Properties”: as defined by ASTM 1527-21 or current; specifically, any real property or properties the border of which is contiguous or partially contiguous with that of the subject property, or that would be contiguous or partially contiguous with that of the subject property but for a street, road, or other public thoroughfare separating them.

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“Constituents of Concern”: Specific chemicals that are identified for evaluation in the site assessment process.

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“Environmental Professional”: A person who meets the criteria and qualifications as set forth pursuant to 40 CFR 312.00, and as reprinted in Appendix X2 of the ASTM Standard E1527-21. Also, a person who meets the criteria and qualifications for conducting environmental work beyond the Phase I Environmental Site Assessments as set forth by DEQ and the United States Environmental Protection Agency.

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“Hazardous Waste or Hazardous Substance”: a constituent of concern, chemical, waste or contaminant in any form such as gas, vapor, liquid, fluid, solid, water or soil which is regulated or listed by the Utah County Health Department, the DEQ, or the United States Environmental Protection Agency. A hazardous waste includes petroleum, petroleum by-products and other chemicals and biological hazards by definition.

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“Phase I Environmental Site Assessment or Phase I ESA”: a Phase I Environmental Site Assessment is a comprehensive non-invasive inquiry of on-site and off-site environmental factors and land use encumbrances which may impact a target property or which has impacted a target property. A Phase I Environmental Site Assessment is an inquiry which seeks to identify recognized environmental conditions according to ASTM E1527-21. A Phase I Environmental Site Assessment is further defined by ASTM E1527-21 or current, up-to-date ASTM International Standards. A Phase I Environmental Site Assessment is an inquiry which also meets the standards of the federal All Appropriate Inquiry (AAI) standards, pursuant to the Final Rule at 40 CFR Part 312. A Phase I

successfully provides for the defense of innocent landowners, contiguous property owners and Bona Fide Prospective Purchasers (BFPP) against the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"Phase II Environmental Site Assessment or Investigation": an invasive study or inquiry of the target property and/or surrounding properties which is conducted after the Phase I Environmental Site Assessment has been completed or when environmental issues are suspected. A Phase II Investigation usually includes but is not limited to the collection and analysis of vapor, soil, water and solids samples. Sampling may include but is not limited to vapors, subsurface soil, groundwater, surface waters and impoundments, landfills, above ground materials and soils, and hazardous wastes. A Phase II may include studies necessary to further characterize issues at a property including but not limited to wetlands, potential archaeological and historical sites, endangered species or hazardous materials inventory.

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"Remediation or Mitigation": cleanup or other methods used to remove or contain a toxic spill or hazardous materials from a property or site. Any actions taken to clean up or mitigate a property after contaminants or hazardous wastes have been identified on the property.

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"Responsible Party": a person or business that is responsible for a hazardous site; whenever possible, EPA requires Responsible Parties, through administrative and legal actions, to clean up the sites they have contaminated. The party, parties, entities and/or individuals who are responsible for the environmental issues associated with the land to be developed.

15.2.24 Environmental Protection

15.4.24.010 Inspections and Enforcement

15.4.24.020 Phase I Environmental Site Assessments

15.4.24.030 National Environmental Policy Act (NEPA)

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15.4.24.050 Phase II Environmental Site Investigation

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15.4.24.070 Phase II ESI Oversight

15.4.24.080 Contaminant Release Reporting

15.4.24.190 Remediation and Mitigation

15.4.24.010 Remediation and Mitigation Oversight

15.4.24.110 Fees, Costs, Financial Assurance, Responsible Party

The purpose of Title 15 Part 5 of the Spanish Fork City Municipal Code is to protect life, human health and the environment of Spanish Fork City. For the matters not governed by Spanish Fork City or Utah County, then the rules and regulations of the Utah Department of Environmental Quality and the United States Environmental Protection Agency shall be the environmental ordinances of Spanish Fork City or whichever rule is the more stringent, as allowed by federal and state law.

15.4.24.010 Inspections and Enforcement

- A. Inspections and Enforcement.
 - 1. Spanish Fork City or an environmental professional appointed by the City may inspect all work products pursuant to the provisions of Part 5 for adequate compliance.
- B. Asbestos and Lead.
 - 1. Spanish Fork City adheres to the Utah County and Utah Division of Air Quality standards and rules for asbestos and lead inspections and abatement. An asbestos and lead inspection or survey is required prior to the demolition of any infrastructure.
 - 2. An excavation permit, a Certificate of Occupancy or other construction and demolition authorizations shall not be issued until such time that all of the requirements of Title 15 Part 5 have been met.
- C. Diverting or Discharging of Groundwater.
 - 1. Contaminated groundwater or groundwater suspected of contamination may not be dewatered, diverted or discharged without proper testing, permitting, and treatment. The groundwater contaminant plume must be properly characterized prior to dewatering, pumping, diverting or discharging groundwater as determined by the appropriate DEQ and US EPA Guidelines.
 - a. This section does not supersede routine environmental investigations.

15.4.24.020 Phase I Environmental Site Assessments

- A. A Phase I Environmental Site Assessment is an inquiry conducted by an environmental professional pursuant to the federal AAI standards and American Society for Standards and Materials (ASTM) International Standard E1527-21 or the most current, ASTM International and AAI standards.
- B. A Phase I Environmental Site Assessment is required by the City:
 - 1. Prior to any new developments or expansions of an existing development.
 - 2. At the request of the City.
 - 3. At the request of another government agency.
 - 4. Prior to the acquisition or annexation of any land and/or infrastructure by the City.
- C. The City requires the assessment of non-ASTM issues as defined by ASTM E1527-21, including but not limited to:
 - 1. Business Environmental Risk (BERs) as defined in ASTM E1527-21.
 - 2. Wetlands
 - 3. Asbestos
 - 4. Lead
 - 5. Wells and groundwater
 - 6. Paleontology and archaeology
 - 7. Historic structures
 - 8. Threatened and Endangered species
 - 9. Ecological resources
 - 10. Indoor air quality or industrial hygiene

11. Drinking water
 12. Mold
 13. Radon
 14. Emerging contaminants or controlled substances
 15. Waste vehicle tires
- D. The City requires additional inquiries into agricultural, ranch and farm land environmental issues. In addition to the routine ASTM questionnaire, the City requires additional interrogatories regarding agricultural environmental issues and may include but are not limited to:
1. Pesticide mixing stations
 2. Banned or outdated pesticides
 3. Inventory of agrichemicals
 4. Veterinarian supplies
 5. Improper storage of agrichemicals
 6. Feedlots
 7. Effluent ponds
 8. Methane issues
 9. Livestock Dipping Vats, and pesticides particularly toxaphene
 10. Suspected or Lost wells
 11. Locate current and former buildings both at FARM HQ and outbuildings
 12. Historical Building issues
 13. Old or abandoned cemeteries
 14. Asbestos and lead in old buildings
 15. Wetland acreages
 16. Well inventory and water rights.
 17. Well water quality data
 18. Nitrate in groundwater
 19. Heating oil tanks
 20. Waste oil tanks
 21. Drums
 22. Hidden landfills
 23. Above ground petroleum storage tanks
 24. Dairy
 25. Septic Tank/leach field status
 26. Underground tanks
 27. Repair shops
 28. Drains
 29. Wash stations
 30. Waste drums, tanks and other debris discarded on lands
 31. Cisterns
 32. Hazardous wastes
 33. Waste vehicle tires

- E. Whereas the current ASTM Standard E1527-21 does not require recommendations in the Phase I ESA; however, generally, the City desires a recommendations section in the Phase I ESA report.
 - 1. If no additional work or investigations are necessary or recommended, then it should be so stated in the report.
- F. The City may from time-to-time request to be added as a User of the Phase I Environmental Site Assessment depending on the circumstances and shall be determined on a case-by-case basis by the City and the appointed environmental professional.
- G. A Phase I ESA may be used within one (1) year prior to the transaction associated with the property with the provision that certain components are updated within 180 days prior to the date of the transaction. Components requiring upgrading according to ASTM E1527-21 are:
 - 1. Interviews.
 - 2. Searches for land title encumbrances.
 - 3. Reviews of regulatory databases.
 - 4. Visual inspections of the subject property and adjoining properties.
 - 5. Declaration of the environmental professional responsible for the assessment or update.

15.4.24.030 National Environmental Policy Act (NEPA)

- A. The City and all contractors shall comply with NEPA. The usage of federal monies, lands or other assets of the federal government in any given transaction can potentially trigger regulations pursuant to NEPA.

15.4.24.040 Phase I ESA Oversight

- A. The City or it's consultant may review all Phase I ESA reports prior to final approval of the report by the City. Additional site work or revisions of the report may be required.

15.4.24.050 Phase II Environmental Site Investigations

- A. A Phase II Environmental Site Investigation is conducted upon the identification of potential environmental issues, potential recognized environmental conditions, or upon the identification of recognized environmental conditions.
 - 1. A Phase II Environmental Site Investigation may or may not necessarily be conducted subsequent to a Phase I ESA.
- B. A Phase II Environmental Site Investigation work plan must be submitted to the City for review and approval.
- C. The City adheres to industry best practices and standards and to the rules for site investigations pursuant to those set forth by the Utah Department of Environmental Quality (DEQ) and the US EPA.
- D. For sites regulated pursuant to the Utah Division of Environmental Response and Remediation (DERR) petroleum underground storage tank (PST) and above ground petroleum storage tank (APST) programs, the City adheres to the standards and rules of DERR.
 - 1. The Environmental Professional shall be a certified Groundwater and Soil Sampler.

2. Sample results shall be compared to DERR Initial Screening Levels for residential usage or Tier 1 criteria where approved by DERR and the appointed environmental professional.
 3. Samples will be collected according to the June 1, 2021 Utah Petroleum Storage Tank Environmental Media Sampling Handbook or current.
- E. For sites unrelated pursuant to the DERR tank programs, then Phase II investigations will be conducted pursuant to the standards, rules and practices of DEQ and the US EPA. Screening level standards are as follows:
1. Groundwater results will be compared to US EPA Maximum Contaminant Levels (MCLs).
 2. Soil samples shall be compared to US EPA Regional Screening Levels (RSLs).
 3. For those chemicals for which groundwater MCLs are not provided, then groundwater results are compared to the tap water screening levels under the US EPA RSLs for the residential usage exposure scenario.
 4. US EPA RSL guidelines for cumulative risk exposure to multiple contaminants when each individual contaminant may be under the RSLs.
 5. Vapors shall be compared to the US EPA Vapor Intrusion Screening Level guidance and standards.
 6. Releases from heating oil tanks, agricultural tanks, small tanks and other unregulated tanks will be regulated by the Division of Water Quality or the DERR by virtue of the written Memorandum of Understanding between the two agencies.
- F. Collect samples for analysis of semi-volatile organic compounds and total petroleum hydrocarbon fractionation at non-underground storage tank (UST) sites. Include polycyclic aromatic hydrocarbons (PAHs) in the analyses at non-UST sites.
- G. Address vapor intrusion.
- H. Collect samples for additional analyses appropriate to the location and history of location.
- I. Collect sufficient samples to demonstrate land usage is safe for residential or industrial usage.
- J. A Health and Safety Plan (HASP) shall be written and posted on site at all times during the investigation.
- K. All Occupational Safety and Health Administration (OSHA) regulations shall be followed during Phase II Investigations.

15.4.24.060 Constituents of Concern

- A. In addition to the sampling and analysis for the wide array of constituents of concern required for adequate characterization of any plume at any given parcel, a Phase II Environmental Site Investigation must also include the following additional analyses:
1. Hexavalent chromium when samples for hazardous metals are collected and analyzed.
 2. Semi-volatile compounds including polycyclic aromatic hydrocarbons when any petroleum contamination is suspected.
 3. Total petroleum hydrocarbon fractionation when any petroleum contamination is suspected.

15.4.24.070 Phase II ESI Oversight

- A. The City may take such action as necessary to supervise, verify, or inspect any Phase II investigation work to confirm work is conducted adequately to protect human health and the environment. All work may be reviewed by a third-party environmental professional as appointed by the City. Any incurred City costs will be paid for by the developer.

15.4.24.080 Contaminant Release Reporting

- A. All contaminant release reporting to the appropriate agencies must follow county, state and federal laws.

15.4.24.090 Remediation and Mitigation

- A. Remediation and Mitigation is required;
 - 1. When requested by the City.
 - 2. Prior to development.
 - 3. Where appropriate as determined by the City, in some circumstances, remediation may occur concurrently with development work if pre-approved by the City.
 - 4. When residential screening levels have not been achieved in a residential exposure risk scenario.
 - 5. When commercial screening levels have not been achieved in a commercial exposure risk scenario.
 - 6. When residential screening levels have not been achieved on commercial sites where adjoining properties are residential in usage.
 - 7. When required pursuant to any jurisdictional government agency.
 - 8. Human health and the environment may be affected as determined by the City's appointed environmental professional.
- B. A remedial action plan (RAP) or corrective action plan (CAP) must be approved by the City.
- C. Vapor intrusion into existing and future structures must be addressed pursuant to DEQ and US EPA guidelines.
 - 1. Excavation and removal of subsurface debris and contaminants does not necessarily eliminate vapor hazards.
 - 2. Systems which mitigate vapor intrusion are routinely incorporated into building construction plans.
 - 3. Groundwater can be a source of vapors for vapor intrusion into buildings.
- D. Sites regulated pursuant to DERR PST program shall be investigated and remediated pursuant to the DEQ PST corrective action program;
 - 1. Remediation is typically conducted by a State Certified PST Consultant.
 - 2. Sampling is typically conducted by State Certified Groundwater and Soil Sampler.
- E. All other sites not regulated under the PST program shall be investigated and remediated pursuant to DEQ and US EPA rules and guidelines. Under such circumstances, screening levels are as follows;
 - 1. US EPA MCLs for groundwater.
 - 2. US EPA RSLs for residential exposure risk scenarios.
 - 3. US EPA RSLs for industrial/commercial risk scenarios.

- 4. US EPA RSL guidelines for cumulative risk exposure to multiple contaminants when each individual contaminant concentration may be below the RSLs.
- F. Remedial Actions are to be properly and legally conducted pursuant to all local, county, state and federal environmental laws.
- G. All final remedial and mitigation reports shall be legally defensible and are subject to review and approval by the City's appointed environmental professional.
- H. A Health and Safety Plan (HASP) shall be written and posted on site at all times during the investigation.
- I. All OSHA regulations shall be followed during remedial actions.

15.4.24.100 Remediation and Mitigation Oversight

- A. The City may take such action as necessary to supervise, verify, or inspect any remedial action and mitigation work to confirm work is conducted adequately to protect human health and the environment. All work may be reviewed by a third-party environmental professional as appointed by the City.

15.4.24.110 Fees, Costs, Financial Assurance, Responsible Party

- A. The responsible party to Municipal Code Title 15 Part 5 shall be liable to the City for all costs incurred as a result of supervision or verification.
- B. For purposes of this section, costs incurred by the City shall include, but shall not necessarily be limited to, the following: actual labor costs of city personnel, including benefits and administrative overhead; costs of the equipment operation; costs of any contract labor and materials.
- C. The remedies provided for by this section shall be in addition to any other remedies provided by law.
- D. City requires financial assurance from the responsible party that sufficient funds are available for the completion of any investigation and/or remedial action plan in its entirety including but not limited to escrow holdings and bonds.
- E. Development or other work cannot proceed until the City has a written commitment from the responsible party for reimbursing the City for environmental costs and fees and for providing financial assurances such as a bond or escrow.