

ORDINANCE NO. 2013-02

**AN ORDINANCE OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
PANORAMIC HEIGHTS ENVIRONMENTAL REGULATIONS
WITHIN AND ADJACENT TO THE PANORAMIC HEIGHTS SUBDIVISION**

WHEREAS, the United States Environmental Protection Agency (the EPA) conducted a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) removal action pursuant to an Action Memorandum dated June 30, 2009, at the American Lead and Zinc Mill Site (the Site), in Ouray County, which includes the Panoramic Heights Subdivision; and

WHEREAS, the CERCLA removal action sought to remove, and in some instances cover with uncontaminated soil, mine waste materials, which materials are visually distinct from other soils, appearing as fine-grained soil that is red to yellow in color; and

WHEREAS, although the CERCLA removal action was conducted to protect human health and the environment in accordance with the National Contingency Plan (40 C.F.R. Part 300), mine waste remains in the Panoramic Heights Subdivision under a barrier of clean soil, and orange construction fencing separates the mine waste from the clean barrier soil. Contact with mine waste material could result in unacceptable human exposure to lead and arsenic; and

WHEREAS, EPA excavated at least 18 inches in depth of mine waste if it exceeded cleanup target levels or was visually identified as mine waste. The excavated mine waste material was moved into a mine waste repository (an engineered storage area); and

WHEREAS, where post-excavation sample results showed the residual or remaining wastes left in place to be above the EPA cleanup target levels of 750 parts per million (ppm) for lead and 130 ppm for arsenic, orange construction fencing was placed on top of residual waste material to demarcate the remaining contamination. If any future excavation encounters such fencing, it means there is contaminated mine waste material below the fencing. If future excavation encounters fine-grained soil that is red to yellow in color, it is mine waste; and

WHEREAS, as a component of the CERCLA removal action, the EPA constructed a mine waste repository (Repository) within the footprint of an existing tailing impoundment at the Site to contain excavated mine waste. The Repository was constructed in the drainage within and adjacent to the northwest portion of the Panoramic Heights Subdivision. The Repository was constructed with an 18-inch soil layer over the mine waste. There is no orange construction fencing on top of mine waste in the Repository; and

WHEREAS, Colorado Revised Statutes 25-15-320(3)(b) authorizes the Colorado Department of Public Health and Environment to waive the requirement for an environmental covenant for parcels of land where the owner does not grant an environmental covenant under C.R.S. 25-15-320 and where the County, City, or municipality having jurisdiction over the affected land has enacted an ordinance or resolution imposing the relevant environmental use restrictions; and

WHEREAS, Ouray County has jurisdiction over the Panoramic Heights Subdivision and adjacent lands where contaminated mine wastes exist and Ouray County seeks to enact an Ordinance to implement the required environmental use restrictions that will protect human health and the environment and maintain the EPA CERCLA removal action; and

WHEREAS the Board of County Commissioners of Ouray County seeks to adopt this ordinance to control and regulate residual mine waste contamination and mine waste material in the Panoramic Heights Subdivision and areas immediately adjacent thereto pursuant to authority granted in Colorado Revised Statutes 29-20-104, and C.R.S. 30-11-101, et seq.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO:

Section 1. Title.

This ordinance shall be known and referred to as the Panoramic Heights Environmental Regulations Within and Adjacent to the Panoramic Heights Subdivision.

Section 2. Authority to Promulgate Ordinance.

The Board of County Commissioner has authority to regulate land use, development and activities in hazardous areas pursuant to Colorado Revised Statutes 29-20-104, and to adopt and enforce ordinances and resolutions regarding health, safety and welfare pursuant to C.R.S. 30-11-101, et seq.

Section 3. Purpose.

The Board of County Commissioners of Ouray County, Colorado finds and declares that mine waste within and adjacent to Panoramic Heights subdivision poses a threat to the health, safety, and welfare of the citizens of Ouray County, Colorado.

Section 4. Scope of Ordinance.

This Ordinance shall apply within the subdivision known as Panoramic Heights, as more particularly described on the plat recorded at reception number 118053 and the Repository, as more particularly described on the plat recorded at reception number 207634.

Section 5. Regulation of Excavation Activities.

A. Identification of contaminated material.

1. Within the Panoramic Heights subdivision but outside the Repository, where EPA post-excavation sample results showed the residual or remaining wastes to be above cleanup target levels of 750 ppm for lead and 130 ppm for arsenic, orange construction fencing was placed on top of residual waste material to demarcate the remaining contamination zone. If any excavation uncovers orange construction fencing, it means there is contaminated material below the fencing.
2. If excavation does not uncover orange construction fencing but the material excavated is visually identified to be mine waste material (fine-grained soil red to yellow in color), such material shall be considered contaminated.
3. Within the Repository, mine waste material was consolidated, graded, and topped with at least 18 inches of a clean soil cover. Any material below the 18-inch cover shall be considered contaminated. No orange construction fencing was used within the Repository to demarcate the boundary between clean soil cover and the contaminated mine waste.

B. Prohibited Excavation and Activities Within the Repository and Panoramic Heights.

1. Except as provided in Section B2 below, no tilling, excavation, grading, construction, or any other activity that disturbs the ground surface is permitted within the Repository without the prior written consent of EPA and the Ouray County Land Use Department ("OCLUD").
2. Limited excavation no deeper than 18 inches and that involves no more than one-half cubic yard of material is permitted within the Repository for planting trees, for placing poles for structures up to 200 square feet, and for fence posts. If mine waste materials are encountered during any such limited excavation, such materials will be handled in accordance with the requirements of Section C, below. Limited excavations within the repository shall be repaired or reclaimed in a manner that does not cause or contribute to erosion or deterioration of the cover of the Repository and maintains the proper functioning of the drainage features of the Repository.

3. The surface of the Repository may be utilized as long as such use does not cause or contribute to erosion or deterioration of the cover of the Repository and such use does not interfere with the proper functioning of the drainage features of the Repository.
4. Within the Repository, motorized vehicle traffic that would cause or contribute to erosion or deterioration of the cover of the Repository or interfere with the proper functioning of the drainage features of the Repository shall be restricted to prescribed roads and parking areas as shown in the plat recorded at reception number 207634, and even then such vehicle traffic cannot cause or contribute to erosion or deterioration of the cover of the Repository or cannot interfere with the proper functioning of the drainage features of the Repository.
5. Excavation within the Repository or Panoramic Heights prior to issuance of a building permit shall require an excavation permit from OCLUD. Road or driveway excavation within the platted area of Panoramic Heights is included in activities that must have prior approval from OCLUD.

C. Permitted Excavation.

If tilling, excavation, grading, construction, or any other activity that disturbs the ground surface ("excavation") within areas of Panoramic Heights not within the Repository or the limited excavation, described in Section B2 above, allowed within the Repository, results in soil disturbance at such depths that the orange construction fence is encountered or excavation results in uncovering or exposure to material that is visually identified as mine waste material, the contaminated mine waste material shall be handled in the manner set forth in this section to prevent potential migration of and exposure to contaminated materials.

1. Removal of contaminated material from work area. Contaminated material removed from any excavation area shall be bagged and sealed and placed in proper bins for disposal with municipal waste to the local solid waste disposal facility (landfill).
 - a. If the quantity is too great to be placed with common household trash, it may be hauled by truck to the local solid waste disposal facility (landfill). During such transport or haulage, there shall be no release of any contaminated material from the truck to the environment.
 - b. Orange construction fencing shall be placed within the excavation on top of the newly excavated surface (not necessary for bedrock) to re-establish the visual demarcation between clean and contaminated material.
 - c. The excavation shall be backfilled with clean soil above the construction fencing.
2. Return of contaminated materials to work area. Contaminated materials may be excavated for work operations and returned back to the same excavation when work is complete as follows:
 - a. Excavated contaminated material shall be kept separate from clean soil.
 - b. Excavation shall be done cautiously to prevent cross contamination.
 - c. Excavated waste material shall be placed on a surface that prevents cross-contamination of clean surfaces. For example, waste could be placed on plastic sheeting to prevent contamination of sod, dirt roadways or other surfaces.
 - d. Excavated contaminated material shall be returned to the excavated area first so that returned contaminated material is at minimum depth of 18 inches below ground surface.
 - e. Orange construction fencing shall be placed over the top of the contaminated material to establish the visual demarcation between clean and contaminated material.

- f. A minimum of 18 inches of clean soil shall be placed at the surface, and the surface shall be contoured to eliminate erosion as set forth in Section 4.D below.

D. Erosion Control Measures.

1. After completing the excavation and backfill operations as described above, measures shall be taken to prevent erosion.
 - a. Seeding or planting of sod is acceptable, and the sod must be maintained as set forth in 4.D.2. below.
 - b. The placement of hard surfaces (pavement, paving stones, gravel) is also acceptable, so long as such hard surfaces are maintained in accordance with 4.D.2. below.
2. Vegetation and hard surfaces shall be maintained to prevent erosion and exposure of subsurface mine waste material.

E. Technical Assistance.

1. Detailed information about the EPA CERCLA removal action can be found in the American Lead and Zinc Mill Residential Soils Removal Report, dated December 16, 2010, a copy of which, in Portable Document Format (PDF), can be viewed at the Ouray County Land Use Department.
2. If soil excavation plans are more involved than addressed by this ordinance, the property owner shall contact:
 - a. Environmental Protection Agency, 303-293-6312 or 1-800-227-8917 (toll free in the EPA Region 8 states) and ask to speak to the Unit Chief, Emergency Response Unit, Office of Ecosystems Protection and Remediation regarding technical assistance at the American Lead and Zinc Mill Site, Ouray County, Colorado.
3. Technical assistance shall be sought prior to initiating excavation.

F. Personal/Worker Safety.

1. Persons conducting excavations within Panoramic Heights subdivision shall use caution and follow all acceptable procedures to sufficiently reduce potential exposure to contaminated material when working in and around contaminated mine waste material (the "work zone"). Persons conducting excavations shall establish and implement the following practices to minimize exposure to contaminated materials.
 - a. Dust suppression. Persons shall keep soil damp during work to eliminate dust. During windy conditions, *i.e.* in excess of 20 miles per hour, work shall be discontinued and steps taken to cover all contaminated materials exposed to wind so that they cannot become airborne.
 - b. Hygiene.
 1. Prior to covering any contaminated materials with the orange construction fence and the clean soil, all persons conducting excavations in a work zone shall scrub, brush, or otherwise clean boots and clothes to remove contaminated material and shall handle all contaminated materials in accordance with Section 5.C above (material shall be either covered by the orange construction fence and clean soil cover or disposed to the landfill). Such scrubbing shall occur every time the person leaves the work zone.
 2. Persons who work within the work zone shall wash their hands and handle all contaminated materials in accordance with Section 5.C above (remain below the orange construction fence and clean soil cover or disposed to the landfill). All such persons should wash again after leaving the work zone to remove remaining contaminated soil.
 - c. Food. No person conducting excavations shall eat or drink anything while in the work zone.

- d. Decontamination of equipment. All persons conducting excavations shall clean equipment of contaminated materials prior to removal of the equipment from the work zone. All contaminated material must be handled in accordance with Section 5.C above (returned to the hole and placed below the orange construction fencing and clean soil cover or shall be disposed to the landfill).

Section 6. Violations and Penalties.

A. Violation of any provision of this Ordinance shall be a Class 2 petty offense and upon conviction, shall be punishable as follows:

1. For the first violation, a fine of not less than \$50.00 and not more than \$150.00, except that if a penalty assessment is issued as provided by Section 6.A.4, the fine shall be the minimum.
2. For a second offense by the same person, the person shall be assessed a fine of not less than \$150.00 and not more than \$500.00 except that if a penalty assessment is issued as provided by Section 6.A.4, the fine shall be the minimum.
3. For a third or any subsequent offense thereafter by the same person, the person shall be punished by a fine of not less than \$500.00 but not more than \$1,000.00 for each separate offense.
4. Violations of this Ordinance may also be enforced through the penalty assessment procedure pursuant to Colorado Revised Statute 16-2-201, as the same may from time to time be amended, requiring the defendant to appear at the place, time and date specified or, in lieu thereof, to pay the specified fine in person or by mail at the place and within the time specified in the notice. Payment of the specified fine shall constitute acknowledgment of guilt of the offense charged.
5. When imposing a fine under this Ordinance, the court shall separately state, as a part of the total fine, the surcharge specified in Colorado Revised Statute 24-4.2-104(1). The defendant shall also pay court costs and docket fees.

B. Whenever it finds that any person has been in violation of any requirement of this Ordinance, the County, and/or the Colorado Department of Public Health and Environment (CDPHE) pursuant to the Intergovernmental Agreement Regarding Ouray County Ordinance #2013-02, may, in addition to seeking fines pursuant to Section 6.A., issue an order identifying the factual and legal elements of such violation and requiring the person to comply with any such requirements remedying the violation. Alternatively, CDPHE and or the County may bring suit in district court for injunctive relief, enforcement of the Ordinance, and recovery of attorneys' fees and costs for any enforcement action.

Section 7. Prosecution.

A. All prosecutions pursuant to Section 6.A. for all offenses under this Ordinance shall be by the Seventh Judicial District, District Attorney according to the Colorado County Court Rules of Criminal Procedure in the Ouray County Court or by the Colorado Department of Public Health and Environment, in accordance with the terms of Intergovernmental Agreement Regarding Ouray County Ordinance #2013-02. The simplified county court procedures set forth in part 1 of article 2 of title 16, Colorado Revised Statutes, shall be applicable to the prosecution of violations of Section 6.A. of this Ordinance.

B. All prosecutions pursuant to Section 6.B. shall be in accordance with the requirements set forth in C.R.S. 25-15-320(3)(b)(III).

Section 8. Severability.

If a Court of competent jurisdiction shall hold any part of this Ordinance void or unconstitutional, such part shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions of the Ordinance.

Section 9. Disposition of Fines, Fees, and Forfeitures.

All fines and forfeitures obtained through enforcement actions initiated under Section 6.A. for violations of the provisions of this Ordinance shall be paid into the treasury of Ouray County upon payment of said fines and forfeitures.

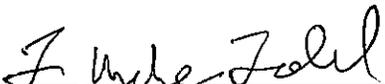
Section 10. Effective Date.

This Ordinance shall be in full force and effect 30 days after publication of the Notice of Adoption in the Ouray County Plaindealer, or on or before NOVEMBER 11, 2013.

INTRODUCED AND FIRST READING on SEPTEMBER 10, 2013 and first reading continued until OCTOBER 2, 2013 and on such date ordered published in the *OURAY COUNTY PLAINDEALER*.

Published on SEPTEMBER 12, 2013.

Board of County Commissioners
Ouray County, Colorado



F. Mike Fedel, Chair



Lynn M. Padgett, Vice-Chair



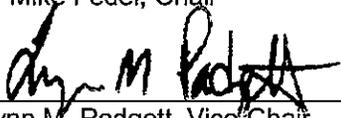
Don Batchelder, Commissioner Member

ADOPTED ON SECOND AND FINAL READING on OCTOBER 2, 2013.

Board of County Commissioners
Ouray County, Colorado



F. Mike Fedel, Chair



Lynn M. Padgett, Vice-Chair



Don Batchelder, Commissioner Member

CERTIFICATION BY OURAY COUNTY CLERK AND RECORDER:

I, Michelle Nauer, Clerk and Recorder of Ouray County and Clerk to the Board of County Commissioners, do hereby attest and certify that this Ordinance was

INTRODUCED AND READ ON SEPTEMBER 10, 2013 AND CONTINUED TO OCTOBER 2, 2013,
AND READ AND ORDERED PUBLISHED AT SUCH REGULAR MEETING OF THE BOARD OF
COUNTY COMMISSIONERS.

THE ORDINANCE WAS PUBLISHED IN FULL IN THE *OURAY COUNTY PLAINDEALER* ON
SEPTEMBER 12, 2013.

ADOPTED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS ON
OCTOBER 2, 2013, AFTER THE SECOND AND FINAL READING OF THE ORDINANCE.

PUBLISHED AFTER ADOPTION IN THE *OURAY COUNTY PLAINDEALER* ON
THE 10th DAY OF OCTOBER, 2013.



Michelle Nauer
Michelle Nauer
Clerk and County Recorder