

Salt Lake Valley Health Department

Health Regulation

#14

**WATERSHED
REGULATION**

**Adopted by the Salt Lake Valley Board of Health
December 3, 1981**

**Amended:
December 3, 1992,
December 7, 2006**

**Under Authority of Section 26A-1-114
Utah Code Annotated, 1953, as amended**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. The purpose of this regulation is to regulate the use and occupancy of watersheds within Salt Lake County in a manner that will protect and promote the public health, safety, and welfare; prevent damage to property; prevent the spread of disease; prevent the creation of nuisances; prevent air and water pollution; and promote conditions that contribute to the preservation and protection of drinking water quality.
- 1.2. It shall be unlawful for any person not to comply with any rule or regulations promulgated by the Department, unless expressly waived by these rules and regulations.

2. DEFINITIONS

For the purposes of this regulation, the following terms, phrases, and words shall have the meanings herein expressed:

- 2.1. “Aquifer” shall mean a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.
- 2.2. “Department” shall mean the Salt Lake Valley Health Department (SLVHD).
- 2.3. “Director” shall mean the Director of the Salt Lake Valley Health Department or his or her designated representative.
- 2.4. “Director of Public Utilities” shall mean the Director of the Salt Lake City Department of Public Utilities, or his or her designee.
- 2.5. “Owner” shall mean any person who alone, jointly, or severally with others:
 - 2.5.1. has legal title to any property, premise, dwelling, or dwelling unit, with or without accompanying actual possession thereof; or
 - 2.5.2. has charge, care, or control of any property, premises, dwelling, dwelling unit, dog, or wastewater disposal system as legal or equitable owner or agent of the owner, or an executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.
- 2.6. “Permitted watershed dog” shall mean a dog wearing a tag properly issued by Salt Lake County Division of Animal Services which authorizes the dog to be in the watershed.
- 2.7. “Person” shall mean any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, municipal corporation, county, city, political subdivision, or any legal entity recognized by law.

- 2.8. "Pollution" shall mean such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid or gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
- 2.9. "Putrescible" shall mean organic matter that has a tendency to decompose with the formation of foul smelling by-products.
- 2.10. "Reservoir" shall mean any natural or artificial lake or pond except a storm water detention basin.
- 2.11. "Salt Lake City Watershed Area" shall mean the watershed area supplying water to the residents of Salt Lake City or the Salt Lake City Water System for drinking or residential uses, including but not limited to:
- 2.11.1. All of the Big Cottonwood Watershed area lying east of the Salt Lake City water intake, which is located east of Wasatch Boulevard in the mouth of said canyon;
 - 2.11.2. All of the Parley's Canyon and Mountain Dell Canyon watershed area lying north and east of the Salt Lake City Mountain Dell Reservoir Dam;
 - 2.11.3. All of the City Creek Canyon watershed area lying north and east of the Salt Lake City, City Creek Treatment Plant sludge beds;
 - 2.11.4. All of the Little Cottonwood Canyon watershed area extending 50 feet on either side of Little Cottonwood Creek east from the Little Cottonwood Creek radial gate intake structure, which structure is located approximately 600 feet west of Wasatch Boulevard, east to the intersection of Little Cottonwood Road and North Fork of Little Cottonwood road, and all of the watershed area in Little Cottonwood Canyon lying east of the intersection of Little Cottonwood Road and North Fork of Little Cottonwood Road, including the town of Alta;
 - 2.11.5. All of the Emigration Canyon watershed area that contributes water to Emigration Creek from Burr Fork and Killyon Canyon above a point at the intersection of Emigration Canyon Road and Emigration Canyon Lane;
 - 2.11.6. Any other watershed area designated by law, either existing or to be defined in the future by the governing authority of Salt Lake City.
- 2.12. "Salt Lake County Watershed Area" shall include:
- 2.12.1. The watershed areas included in subsection 2.10;
 - 2.12.2. Deaf Smith Canyon Creek and tributaries;

- 2.12.3. Bell Canyon Creek and tributaries from Bell's Canyon reservoir to headwaters;
- 2.12.4. Little Willow Creek and tributaries from Draper Irrigation Company diversion to headwaters;
- 2.12.5. Big Willow Creek and tributaries from Draper Irrigation Company diversion to headwaters; and
- 2.12.6. The South Fork of Dry Creek and tributaries from Draper Irrigation Company to headwaters.
- 2.13. "Service dog" shall mean any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability when serving in that capacity.
- 2.14. "Sewage" shall mean human or animal wastes carried by water or other liquid from a dwelling, business building, institution, industrial establishment, or agricultural, recreational, or other location including, but not limited to, sewer systems, septic tanks, privy vaults, and cesspools, including any groundwater, surface water, and storm water that may be mixed with these wastes.
- 2.15. "Solid waste" shall mean garbage, trash, rubbish, junk, asbestos waste, hazardous waste, infectious waste, industrial waste, inert waste, construction and demolition waste, dead animals, sludge, liquid or semi-liquid waste, used oil, other spent, or discarded materials, or materials stored or accumulated for the purpose of discarding; materials that have served their original intended purpose, or waste material resulting from industrial manufacturing, mining, commercial, agricultural, household, institutional, recreational, or other activities. Solid waste does not include solid or dissolved materials in domestic sewage or in irrigation return flows, or discharges for which a permit is required under state or federal regulations.
- 2.16. "Wastewater" shall mean sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state. Intercepted groundwater which is uncontaminated by wastes is not included.
- 2.17. "Watercourse" shall mean both ephemeral and perennial, natural and artificial streams, ponds, lakes, or wetlands.
- 2.18. "Watershed area" shall mean the entire area in any canyon above the intake of a waterworks system within which water drains into any stream, tributary, or aquifer within Salt Lake County, including the anti-degradation segments of each stream identified as such in the Utah State Water Quality Standards.
- 2.19. "Watershed superintendent" shall mean an official who, under the executive direction of the applicable governmental entity, has charge of a watershed.

2.20. “Waterworks system” shall mean any facility used to divert surface or underground water into a system for distribution to drinking water users, including but not limited to diversion works, treatment or appurtenant facilities, plants, aqueducts, pipes, and other distribution facilities.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

3.1.1. This regulation is promulgated by the Salt Lake Valley Board of Health as authorized by Section 26A-1-121(1), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.

3.1.2. The Department is empowered to enforce this regulation as authorized by Section 26A-1-114(1)(a), in all incorporated and unincorporated areas served by the Department, Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.

3.2. It shall be unlawful for any person not to comply with any regulation promulgated by the Department unless granted an express variance by the Salt Lake Valley Board of Health.

3.3. Compliance with this regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.

3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.

3.5. Nothing in this regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. Although Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are less strict, municipalities and other governmental entities may adopt standards stricter than those set out herein. It is not the intent of the Department to preclude cities of the first class from regulating their watershed.

3.6. Verbal or contractual obligations shall not diminish or remove the owner’s or other responsible person’s obligation to comply with this regulation.

3.7. **Severance.** If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this regulation.

4. SUBSTANTIVE PROVISIONS

4.1. Joint Authority in Watersheds.

- 4.1.1. The Director of the Salt Lake Valley Health Department and the Director of Public Utilities shall have joint enforcement and regulatory authority within the Salt Lake City Watershed area.
- 4.1.2. The Director shall have primary regulatory authority in watershed areas within Salt Lake County other than the Salt Lake City Watershed area.

4.2. **Prohibited Acts.** Except as provided in other sections of these regulations, it shall be unlawful for any person:

- 4.2.1. To pollute or allow pollution of any water in the watershed area or in any waterworks system;
- 4.2.2. To knowingly and intentionally interfere with the Director when in the lawful discharge of duties as herein prescribed;
- 4.2.3. To dispose of wastewater or any other solid wastes within the watershed area, except wastewater may be disposed of by connection to public sewerage or to a Department approved onsite wastewater disposal system;
- 4.2.4. To operate any type of motor vehicle, including but not limited to an automobile, motorcycle, ATV, four wheeler, trail bike, dune buggy, motor scooter, snowmobile, jeep, or truck upon any property within the watershed area except:
 - (i) Upon a highway or roadway open for public use;
 - (ii) Upon private property on trails in existence on January 1, 2007, or at other locations with the prior approval of the Director, and in either case only if the operator of such vehicle is the owner or person in lawful possession of the property or if the operator obtains written permission from the owner or person in lawful possession of the property; (written permission shall be in the possession of the operator otherwise the operator shall be presumed to be in violation of this section);
 - (iii) Upon public property, if the operator of such vehicle first obtains written permission from the public entity that owns the property; (written permission shall be in the possession of the operator otherwise the operator shall be presumed to be in violation of this section);

- (iv) Upon private property used for residential purposes if the vehicles are there at the express or implied invitation of the owner or person in lawful possession of the property;
 - (v) If an emergency vehicles is responding to an emergency; or
 - (vi) If the vehicle is operated by a public official or servant on official business.
- 4.2.5. To deposit any human excreta within the watershed area other than into a toilet connected to a public sewer system or into a Department approved onsite wastewater disposal system or holding tank as outlined in Salt Lake Valley Health Department Regulation #13, Wastewater Disposal. Other existing methods of disposal may be approved provided they do not create any health hazard or pollution problem. Vault privies, chemical privies, composting toilets, and privies connected to holding tanks may be permitted with written approval of the Director for non-residential uses provided the waste from those systems is disposed of in a manner allowed by State rule and Department regulations.
- 4.2.6. To construct, use, or maintain any cesspool(s) for disposal of human waste anywhere within the watershed area;
- 4.2.7. To throw or deposit into any toilet vault any material except human waste and toilet paper;
- 4.2.8. To reconstruct or remove any toilet or privy in the watershed without authorization from the Director;
- 4.2.9. To allow a dog to enter or to take a dog into, whether loose or on a leash, the watershed area, except as allowed under part 4.3.3 of this regulation.
- 4.2.10. To permit any cattle, horses, sheep, hogs, or other domestic animal(s) to run at large within the watershed area except by permit obtained from the United States Forest Service and the Director of Public Utilities. Under no circumstances shall a domestic animal(s) be permitted to run at large within 1,000 feet of any watercourse or source of water supply within the watershed area;
- 4.2.11. To camp overnight, except in areas posted as campgrounds for overnight camping. Such areas shall be open for camping only during the camping season established by the United State Forest Service or governing entity. This shall not prohibit camping in conjunction with backpacking if the campsite is maintained over 200 feet from any water source, one half mile from any road, and 200 feet from any trail;
- 4.2.12. To litter the watershed areas;

- 4.2.13. To bathe, swim, or wash clothes, diapers, eating or cooking utensils, or other objects in any spring, marsh, watercourse, water source, or reservoir;
- 4.2.14. To move dirt into a water source or disturb vegetation in a manner which causes or promotes erosion and contamination of a water source.
- 4.2.15. To dispose of any dead animal, garbage, manure, compost, or other solid waste into any spring, marsh, watercourse, water source, reservoir, or into or upon the ground; except for game entrails buried 6 inches deep, at least 200 feet from any road, trail, or watercourse; or
- 4.2.16. To violate Section 17.04.375 of the Salt Lake City Code, which prohibits, without a permit, the outdoor use, storage (amounts greater than 100 pounds), and transportation (amounts greater than 100 pounds except on I-80) of herbicides, pesticides, and fertilizers in Salt Lake City watershed areas.

4.3. Requirements and Procedures For Keeping Dogs within Watershed Areas.

- 4.3.1. The prohibition of dogs within watersheds specified in part 4.2.9 shall not apply to service dogs, permitted watershed dogs, search and rescue dogs, or to dogs used in law enforcement work while acting in their respective official capacities. Owners of these dogs, however, shall properly dispose of any fecal matter deposited by the dog.
- 4.3.2. Dogs licensed in the town of Alta may be maintained by their owners within the corporate limits of that community.
- 4.3.3. The keeping of a permitted watershed dog within Salt Lake County watershed areas shall occur only in accordance with the following requirements:
 - (i) The applicant shall submit to the Salt Lake County Division of Animal Services certification of property ownership, or if lessee, written owner approval.
 - (ii) The applicant shall submit for Department approval the proposed method of housing the dog in the watershed. All permitted watershed dogs shall be kept in an appropriate enclosure, i.e., a walled or fenced area on the owner's property. The enclosure shall be maintained at least 100 feet away from any watercourse and in no event less than 50 feet away from the watercourse.
 - (iii) Dog enclosures located within watershed areas are subject to inspection by the Department and shall be kept clean and sanitary at all times.

- (iv) Applicant shall submit to the Department the proposed method of animal waste disposal. Fecal waste shall be disposed of daily in an approved way, to prevent contamination of the watershed area.
 - (v) Applicant shall sign a written statement signifying that he or she agrees to the following:
 - a. The enclosure used for the keeping of the dog shall be maintained clean and sanitary at all times.
 - b. All dog fecal waste shall be cleaned up daily and disposed of in an acceptable way.
 - c. The dog shall not be allowed off the owner's property, even if it is on a leash, except when it is entering or leaving the property to or from a vehicle. At these times, the animal shall be on a leash.
 - d. The dog shall be fitted with a subdermal identification microchip and shall wear permitted watershed dog designation tags issued by Salt Lake County Animal Services at all times.
 - e. The applicant is subject to Salt Lake County Animal Control Regulations and Department Watershed Regulations.
 - (vi) The applicant shall pay a special permit fee to the Salt Lake County Division of Animal Services for the keeping of the animal in the watershed area. Prior to the issuance of such permit, the applicant shall also submit to the Division of Animal Services a surety bond or cash in the amount of \$100.00 to ensure compliance with these regulations. Any dog permit holder who is found to be in violation of this regulation, shall forfeit his dog permit and the required bond. The permit holder may also be subject to other fines and penalties as required by law. Should an applicant whose permit and bond have been forfeited desire to apply for another such permit, the same fee shall be required, but the required bond shall be in the sum of \$300.00. After a second forfeiture, the required bond shall be \$500.00.
- 4.3.4. When conditions permit, dogs may be transported in an automobile through watershed areas on I-80, Emigration Canyon Road, SR-65 (East Canyon Road), SR-224 (Guardsman Pass Road), and SR-190 (Big Cottonwood Canyon Road) if Guardsman Pass Road is open.
- 4.3.5. Animals may be allowed in the watershed for limited special events when a permit is issued by the Salt Lake Valley Health Department and the Director of Public Utilities.

- 4.3.6. Whenever any unauthorized cattle, horse(s), sheep, hog(s), or other animal(s) are found within the watershed area, the Director shall request that the Municipal or County department having animal control jurisdiction of the watershed area take the animal(s) to the nearest shelter.

4.4. Closure of Sewage Disposal Systems.

- 4.4.1. A sewage disposal system or privy within the watershed area shall be closed immediately if it is unsanitary or does not comply with the requirements of applicable ordinances or regulations. Such facilities may not be used until they conform to the requirements of applicable ordinances or regulations.
- 4.4.2. It shall be unlawful for any person to use or maintain any facility closed in accordance with the provisions of this section.

4.5. Subdivision and Individual Construction on Watershed Areas.

- 4.5.1. **Department Approval for Water-Using Facilities and Wastewater Disposal Systems.** It shall be unlawful for any person, without first obtaining written approval from the Director, to construct, provide, use, or maintain any privy, chemical toilet, composting toilet, or similar receptacle; or a wastewater disposal system; a public pool as defined in Salt Lake Valley Health Department Regulation No. 2 or private residential swimming pool as defined in Salt Lake Valley Health Department Regulation No. 2 within a watershed area. The Director shall issue written approval only upon compliance with all applicable Department regulations and upon the condition that facilities will not endanger the sanitary condition of the drinking water supply.
- 4.5.2. **Approval Required for Subdivision and Individual Construction.** It shall be unlawful to grade, excavate, disturb, or to record any subdivision or to construct any house, building, or other structure in a watershed area without first obtaining a building permit and written Department approval.
- 4.5.3. **Approved Drinking Water Supply Required.** All applicants requesting individual building permits in the watershed area shall submit to the Department an availability letter from a public water supply system or the required documents for an individual water system as required in Salt Lake Valley Health Department Regulation #11, Individual Water Systems. Applicants for building permits within the Salt Lake City Watershed Area shall also submit to the Department a letter from the Director of Public Utilities stating that the applicant has received water available through a water sales agreement with Salt Lake City for the project.
- 4.5.4. **Building Near Water Source Prohibited.** Unless otherwise approved, it shall be unlawful for any person to build any house, cottage, cabin, or other structure to be occupied by people within 50 feet of any watercourse or source of drinking water

within the watershed area or within the watercourse buffer area established by the Department. Unless otherwise approved, it shall be unlawful for any person to build any kennel, stable, barn or other structure to be occupied by animals, any onsite wastewater disposal system, or any holding tank within 100 feet of any watercourse or source of drinking water within the watershed areas or within the watercourse buffer area established by the Department. In extraordinary cases, relief from the 50 foot requirement for human inhabited structures may be granted by the Director and the Director of Public Utilities or watershed superintendent over the impacted watershed, based upon a written application demonstrating that:

- (i) No reasonable alternative is available based on property boundaries in existence as of January 1, 2007;
- (ii) Groundwater and surface waters will be protected from runoff or contamination; and
- (iii) Specific conditions or requirements deemed necessary by the Director and the Director of Public Utilities or watershed superintendent will be followed.

5. RESERVED.

6. INSPECTIONS & INVESTIGATIONS

6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.

6.2. Authority for Department to Enter Premises.

6.2.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the division of Occupational and Professional Licensing.

6.2.2. **Unregulated Commercial Premises.** The Department may enter upon the premises of unregulated commercial properties upon the consent of the owner or otherwise responsible party or upon a warrant issued by a court.

6.2.3. **Private Dwellings.** Inspections of private dwellings are made by consent of owner or otherwise responsible party or upon a warrant issued by a court.

6.2.4. **Consent by License or Permit:** The Department may require licensees or permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the license or permit may result in the suspension or revocation of the license or permit.

6.3. The owner or other responsible person may request information gathered by the Department during an investigation, inspection or review as authorized by the Government Records Access and Management Act, §§ 63-2-101 to 63-2-1001 Utah Code Ann., 1953 as amended.

7. **ENFORCEMENT MECHANISMS.** If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this regulation or that the property owner or otherwise responsible party is not in compliance with this regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

7.1. **Criminal Enforcement Actions.** The Department may recommend criminal prosecution for environmental violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the District Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors.

7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;

7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance or it involved a pattern of conduct or a common attitude of illegal conduct;

7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the department;

7.1.4. The degree to which prosecution might deter future violations;

7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;

- 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
- 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
- 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.

7.2. **Civil Enforcement Actions.**

- 7.2.1. The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

7.3. **Administrative Actions.**

- 7.3.1. The Department may, at its discretion, issue a Notice of Violation & Order of Compliance (NOV).
- 7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.
- 7.3.3. **Contents of NOV.** The NOV shall:
 - (i) Describe the property and the persons believed to be in violation;
 - (ii) Describe the violation;
 - (iii) Describe remedial action that will comply with the provisions of this regulation;
 - (iv) Set a reasonable time for the performance of any required remedial action(s);
 - (v) Describe the procedure to contest the NOV and the time limits for such a contest; and
 - (vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. **Challenging an NOV.** As detailed in the SLVHD's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. **Departmental Conference, Settlement Agreements, and Stipulations & Orders.**

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the Department. No hearing officer will be present. The process of requesting a Departmental Conference are more fully described in the SLVHD's Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the District Attorney's Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. **Hearings & Appeals.** Parties Aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the SLVHD's Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the SLVHD's Adjudicatory Hearing Procedures.

7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.

7.4.2. Any variances allowed by the Department to the requirements of this regulation shall be only by written approval of the Board.

7.4.3. **Exercise of Physical Control.** The Department may establish, maintain, and exercise physical control over property and over individuals as the Department

finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it.

- 7.4.4. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES

8.1. Criminal Penalties.

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended.
- 8.1.2. Each day such violation is committed or permitted to continue shall constitute a separate violation.
- 8.1.3. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

8.2. Civil & Administrative Penalties.

- 8.2.1. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may also be imposed by the Hearing Officer. Penalties may be assessed according to the following factors:

- (i) The violator's history of compliance or non-compliance;

- (ii) The violator's economic benefit of non-compliance;
- (iii) The documented costs associated with environmental or health damage;
- (iv) The violator's degree of willfulness or negligence; and
- (v) The violator's good faith efforts to comply and cooperate.

8.2.2. The Director may multiply the penalty by the number of days the violation occurred

8.3. Recovery of Investigation & Abatement Costs

8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

9. EFFECTIVE DATE.

9.1. These rules and regulations shall become effective upon its enactment by the Salt Lake Valley Board of Health.

APPROVED AND ADOPTED this _____ day of _____, 2006.

SALT LAKE VALLEY BOARD OF HEALTH

By: _____
William S. Kidder, D.D.S.

ATTEST:

By: _____
GARY L. EDWARDS, M.S.
Executive Director
Salt Lake Valley Health Department