

Salt Lake County Health Department

Health Regulation

#8

**AUTOMOTIVE DISMANTLER/RECYCLER &
SCRAP METAL RECYCLING FACILITIES**

Adopted by the Salt Lake County Board of Health

December 7, 2017

**Under Authority of
Utah Code Ann. Section 26A-1-114**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. The purpose of this regulation is to ensure that automotive dismantling and/or recycling and scrap metal recycling activities minimize impacts on air, water, land or soil, and will also not cause any nuisance noise, or other environmental pollution that poses an immediate threat to human health and the environment.
- 1.2. This regulation applies to any person engaged in the act of automotive dismantling and/or recycling and scrap metal recycling for the purpose of dismantling, wrecking, shredding, compacting, crushing or otherwise destroying the vehicles for reclaimable parts or scrap material.
- 1.3. This regulation applies to any person who acquires five (5) or more salvage vehicles in any twelve (12) month period with the intent to engage in automotive dismantling and/or recycling for the purpose of salvaging vehicles and/or parts to be sold or recovered for reuse for profit.

2. DEFINITIONS

For the purpose of this regulation, the following phrases, terms, and words shall have the meanings given in this section:

- 2.1. “Automotive Dismantler” shall mean a person who acquires, sells, or deals in vehicles, including non-repairable vehicles, subject to Utah registration for the purpose of dismantling, wrecking, shredding, compacting, crushing or otherwise destroying the vehicles for reclaimable parts or scrap material.
- 2.2. “Automotive Dismantling/Recycling Facility” shall mean a lot or portion thereof, tract or parcel of land, structure or business, to be used, maintained or operated by an automotive dismantler.
- 2.3. “Applicant” shall mean the person or persons applying for a permit or approval pursuant to the requirements of this regulation.
- 2.4. “Board of Health” shall mean the Salt Lake County Board of Health.
- 2.5. “Commodity” shall mean a reasonably interchangeable good or material, bought, sold, or traded freely as an article of commerce.
- 2.6. “Contamination” shall mean a condition resulting from any alteration of the physical, chemical, or biological properties of any environmental media such as air, surface water, groundwater, and soil, or the release or discharge of any liquid, 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, welfare, or the environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, other domesticated animals, wild animals, birds, fish or other aquatic or botanic life.

- 2.7. "Department" shall mean the Salt Lake County Health Department.
- 2.8. "De Minimis fluids" shall mean any residual fluids left inside containers, pumps, machinery, pipes, automobiles, vehicles, and other equipment after all practices commonly employed to remove said fluid from that type of container have been completed "De minimis fluids" does not refer to accumulations of fluids that pose an immediate threat to human health and the environment.
- 2.9. "Director" shall mean the Director of the Salt Lake County Health Department or his or her designated representative.
- 2.10. "Discharge" shall mean the accidental or intentional releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any solid waste or solid waste constituents, including leachate, into or on any air, land, or water.
- 2.11. "Dust" shall mean any particulate matter from soils, minerals, ash or other material capable of being suspended in air.
- 2.12. "Hazardous waste" shall mean solid waste, or a combination of solid wastes which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious or incapacitating irreversible illness, or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed, or otherwise managed, or any solid waste listed as a hazardous waste under Utah Administrative Code R315-2-10 & 11, Utah Hazardous Waste Management Rules, or any solid waste that exhibits a characteristic of a hazardous waste as defined in Utah Administrative Code section R315-2-9, Utah Hazardous Waste Management Rules. The definition of "Hazardous waste" contained in Utah Administrative Code R315-301-2 is hereby adopted and incorporated by reference.
- 2.13. "Incineration" shall mean the controlled thermal process by which materials are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of materials for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Utah Administrative Code R315-15, Standards for the Management of Used Oil.
- 2.14. "Incinerator" shall mean a device used for incineration of materials that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.
- 2.15. "Litter" shall mean a quantity of uncontained paper, plastic, glass, or other solid waste.
- 2.16. "Operator" shall mean any person who owns, leases, operates, or manages an automotive dismantling/recycling facility or a scrap metal recycling facility.
- 2.17. "Owner" shall mean any person who alone, jointly, or severally with others:

- 2.17.1. has legal title to a scrap metal facility with or without accompanying actual possession thereof, or
- 2.17.2. has charge, care, or control of any automotive dismantling/recycling facility or scrap metal recycling facility as legal or equitable owner, agent of the owner, lessor or lessee, or is an executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.
- 2.18. "Permit" shall mean a written form of authorization in accordance with this Regulation.
- 2.19. "Permittee" shall mean the person who has received a permit from the Department for the operation of an automotive dismantling/recycling or a scrap metal recycling facility.
- 2.20. "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, institutions, bureaus, agencies, municipal corporations, counties, cities, political subdivisions, or any legal entity recognized by law.
- 2.21. "Pollution" shall mean the condition caused by the man-made presence in or on surface water, groundwater, soil, or air of any solid waste or substance derived therefrom in such quantity, or such nature and duration, or under such condition that the quality, appearance, or usefulness of the water, soil, land, or air is significantly degraded or adversely altered.
- 2.22. "Scrap metal recycling facility" shall mean a facility which accepts and processes metal by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product of prepared scrap metal for sale or use for remelting purposes. A scrap metal recycling facility is not a solid waste management facility.
- 2.23. "Used oil" shall mean any oil refined from crude oil, or any synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyant, lubricating greases, electrical insulating, and dialectic oils.
- 2.24. "Vector" shall mean an animal or insect capable of transmitting the causative agent of human disease.
- 2.25. "Vehicle" shall mean any motor vehicle, trailer, water vessel, railroad car, or airplane.
- 2.26. "Waste Residue" shall mean any solid waste or product remaining after processing occurs that cannot be recycled or returned to market by the processing facility. Waste residue shall be disposed of at a landfill or other processing facility permitted to accept that waste.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

- 3.1.1. This Regulation is promulgated by the Salt Lake County Board of Health as authorized by Utah Code Ann. § 26A-1-121(1), and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.1.2. The Department is empowered to enforce this Regulation in all incorporated and unincorporated areas served by the Department as authorized by Utah Code Ann. § 26A-1-114(1) (a), and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.2. Except as otherwise provided for, 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 County Board of Health.
- 3.3. Compliance with this Regulation does not constitute a defense if a person 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. However, Departmental Regulations supersede other existing local and county standards, Regulations and ordinances pertaining to similar subject matter that are inconsistent.
- 3.6. **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. SCRAP METAL AND AUTOMOTIVE DISMANTLER/RECYCLER PROVISIONS

4.1. Permit Review.

- 4.1.1. **Department Approval and Permits Required.** No person shall cause to construct or operate an automotive dismantler/recycler or scrap metal recycling facility without written approval and a corresponding valid Automotive Dismantler/Recycler Permit or a Scrap Metal Recycling Permit from the Department.

4.1.2. Permit Application and Renewal Process.

- (i) Application for an Automotive Dismantler/Recycler Permit or a Scrap Metal Recycling Permit shall be made in writing on forms furnished by the Department and shall include, with the application, the following:
 - a. Evidence of an ownership or a leasehold interest in the proposed site including a legal description of parcel boundaries that identifies the total area of the property.
 - b. Detailed plat maps or aerial photographs that accurately show facility location, boundaries, structures within ¼ mile of site boundaries, all roads, proposed or current material storage locations for automotive or scrap metal or salvage materials, stationary equipment location, fencing, shelter and sanitary facilities, utilities (both existing and proposed), drinking water source protection zones and any irregular topography.
 - c. A description of the proposed material management method, treatment, processing, or disposition of commodities or materials at the facility; including but not limited to incineration, compaction, compression, baling, shredding, grinding, tamping, separating, and classifying.
 - d. Verification that the facility is in compliance with Federal, State, and local laws, rules, ordinances, and regulations; including within the standard of other environmental permits.
 - e. A copy of a signed Notice of Intent (NOI) submitted to discharge stormwater under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities, Certification of Coverage, or Certification of No Exposure.
 - f. If purchasing metals by weight, a copy of each scale's registration by the Utah Department of Agriculture Weights and Measures.
 - g. If purchasing automobiles, the facilities National Motor Vehicle Title Information System (NMVTIS) number.
- (ii) Application for a permit required in section 4.1.1 shall be made:
 - a. Within 90 days prior to construction of a new facility;
 - b. Within 60 days after taking over an existing operation that remains in continuous operation; or
 - c. Within 30 days after notification by the Health Department that a permit is required for an operating facility.

- (iii) **Permit Duration and Renewal.** The Automotive Dismantler/Recycler Permit or a Scrap Metal Recycling Permit shall be valid only at the location stated in the application and shall be renewed annually and upon change of ownership.
- (iv) **Permit Update.** The Automotive Dismantler/Recycler Permit or Scrap Metal Recycling Permit application shall be updated when a facility changes the proposed material management method, treatment, processing, or disposition of commodities or materials at the facility; including but not limited to incineration, compaction, cutting, compression, baling, shredding, grinding, tamping, separating, and classifying.
- (v) **Planning or Zoning Approval.** Upon initial permit application, applicants shall obtain applicable planning or zoning approval from the planning or zoning authority where the automotive dismantler/recycler or scrap metal recycling facility is to be located and shall demonstrate to the Department that such approval has been granted. A permit application submitted during zoning review shall not be issued until zoning approval has been submitted to the Department by the applicant. Applicants in operation, on the date of regulation adoption, shall not be required to demonstrate to the Department planning or zoning approval.
- (vi) **Bond and Financial Assurances.** To apply for a permit to construct or operate an automotive dismantler/recycler or scrap metal recycling facility, an applicant shall acquire and file with the Department a surety bond, letter of credit or escrow in accordance with the requirements set forth in section 4.1.4 of this regulation. An applicant who desires to construct or jointly operate both an automotive dismantler/recycler facility and a scrap metal recycling facility on the same or contiguous property may construct or operate the facilities under a single bond and are not required to submit duplicate information in applying for more than one permit.

4.1.3. **Bond and Financial Assurance Requirements.**

- (i) Bonds and financial assurances shall be submitted on the Department-provided form and filed in favor of the Department ensuring that the property is free of commodities, fluids, waste residues and solid waste when a facility is closed.
- (ii) Automotive dismantler/recycler facility and scrap metal recycling facilities shall obtain a bond and financial assurance in the amount of \$50,000.
- (iii) Automotive dismantler/recycler and scrap metal recycling facilities shall provide proof that the property owner has been notified that a bond and financial assurance is required at the location.

4.2. Site Location.

- 4.2.1 A facility located within 500 feet of a residence shall be obscured by a fence at least 8 feet high with 75% screening or as otherwise required by applicable county or municipal codes.
- 4.2.2 A facility shall be constructed and/or adequate controls maintained to control dust, litter, commodities, waste residues and other solid wastes from escaping the premises.
- 4.2.3 A facility shall have a designated unloading area(s) to facilitate the unloading of automobile or scrap metal materials and commodities from customer or other vehicles bringing in automobiles or scrap metal and commodity materials to prevent impacts to public right-of-ways.
- 4.2.4 Stormwater retention ponds, areas, zones and stormwater treatment processes shall comply with manufacturer's specifications or the approving agency requirements for installation.
- 4.2.5 Signs shall be posted at the entrance of the processing facility that indicates the name, permit number, hours of operation, necessary precautions and prohibited items.
- 4.2.6 Public access to the facility shall be limited to the hours of operation.
- 4.2.7 Public access shall be restricted where hazardous materials are stored or handled. Placards are required in hazardous material storage areas.
- 4.2.8 Monitoring of stormwater runoff or discharge to wells shall be done in accordance with Utah Pollutant Discharge Elimination System (UPDES) permits or the Injection Well Program at the State Division of Water Quality.
- 4.2.9 Material management shall prevent harborage, fire hazards, explosions, dust, wind-blown materials or noise that creates environmental pollution.

4.3 Incoming Materials

- 4.3.1 Automotive and scrap metal collection vehicles, including customer and transfer vehicles shall be loaded, unloaded, and operated in a manner that minimizes dropping, leaking, sifting, blowing, or discharge of liquids, scrap metal, fluff, or other materials
- 4.3.2 Piles of material, including vehicles, recyclables, or solid waste, shall be removed or processed in a timely manner as not to become harborage for vectors or migrate off the property onto adjacent property.
- 4.3.3 Materials shall be stored in a manner that complies with state and local fire codes.

- 4.3.4 Scrap metal materials or other commodities shall not be accepted if on fire, smoking, or are at an elevated temperature that would make them likely to ignite or cause a fire.

4.4 Processing and Operations

- 4.4.1 No automotive dismantler/recycler or scrap metal recycling facility shall shred, pulverize, crush, or send to be crushed or shredded any vehicle or other item that has not been drained of fuel, used oil, antifreeze, liquid polychlorinated biphenyls with concentrations greater than or equal to 50 mg/kg, chlorofluorocarbons, or other hazardous substances where only de minimis levels remain.
- 4.4.2 Draining, capturing, storing, and disposing of any ozone depleting substances associated with collected scrap metals shall use EPA-certified equipment as per EPA Section 608 and 609 of the Clean Air Act.
- 4.4.3 Facilities that shred automobiles shall have a representative sample of the auto shredder waste residue produced from shredding automobiles, appliances, and other steel scrap sent to be analyzed on a semi-annual basis for Total Petroleum Hydrocarbons (TPH), Polychlorinated biphenyls (PCBs), and Toxicity Characteristic Leaching Procedure (TCLP) evaluation of “RCRA 8” metals. The results of this testing shall be submitted to the Department semi-annually by the last day of July and December.
- 4.4.4 Facilities shall establish procedures for draining, capturing, storing, and recycling or disposing of automotive fluids in a manner that will minimize leaks and spills. Procedures for draining, capture, storage, and disposal of used oil shall follow Utah Admin. Code R315-15, Standards for the Management of Used Oil and Utah Code Ann. §19-6-7.
- 4.4.5 All recovered fluids shall be stored in bulk storage tanks made of materials that are compatible with their contents and include acceptable methods of overfill protection or tank level gauging and general secondary containment. Each bulk container used for storage of automotive fluids will be clearly labeled with the name of each its contents.
- 4.4.6 Facilities with aggregate above ground oil storage of >1,320 gallons or greater shall develop, implement and maintain a Spill Prevention, Control, and Countermeasures Plan in accordance with 40 CFR 112 and Utah Admin. Code R315-15.
- 4.4.7 Crushing operations, whether mobile or stationary, shall be conducted on an impervious surface or use a method that prevents ground or water contamination.
- 4.4.8 During hours when the public has access, the facility shall be operated under the supervision of responsible individuals who are familiar with the requirements and operational procedures of the facility.

4.4.9 Facilities that discharge industrial stormwater to waters of the State of Utah shall have a general industrial stormwater permit and have implemented a Stormwater Pollution Prevention Plan and comply with the Utah Clean Water Act.

4.4.10 If unloading on an interior floor surface, the interior floor surfaces shall be constructed of impervious materials, and be capable of being cleaned by washing or dry-cleaning methods. If the area is equipped with floor drains or a sump pump all discharges shall be approved by the sanitary sewer district or approved by law to enter an onsite wastewater system.

4.5 Storage

4.5.1 Draining fluids from vehicles shall be done under a covered structure and on concrete or asphalt. Vehicles that are not drained of fluids to de minimis levels and are stored longer than 180 days shall be stored on concrete or asphalt. Storage for vehicles drained to de minimis fluid levels may be stored on other hard surfaces, such as road base material, gravel, compacted soil, or other approved surfaces.

4.5.2 Automotive dismantling and scrap metal recycling facilities shall follow applicable Hazardous Waste Generator requirements in Utah Admin Code R315.

4.6 Used Oil

4.6.1 Oils subject to regulation after use shall include: lubricants, hydraulic fluids, heat transfer fluids, and other similar oils used for different purposes. Specific examples of these different types of regulated used oils include: motor oils, transmission fluids, gear lubes, and hydraulic oils.

4.6.2 Used oils are prohibited from land disposal. Used oils and other free liquid waste streams shall not be sent to a landfill for disposal.

4.6.3 Used oil shall not be used for dust or weed suppression without first obtaining a permit.

4.6.4 All used oil spills shall be remediated. Used oil spills of 25 gallons or more shall be reported to the Salt Lake County Health Department. "De minimis fluid" releases, small drips or leaks of oil are not subject to the management standards.

4.6.5 Used oil filters shall be handled in accordance with Utah Code Ann. §19-6-7.

4.6.6 Used oil burners shall comply with the provisions in Utah Admin. Code R315-15.

4.7 Financial Assurance Release. Financial assurance shall not be released until documentation that final disposition of commodities, fluids, waste residues and solid waste is received and a Department inspection finding that the property is free of commodities, fluids and waste residues and solid waste.

5. LICENSES, CERTIFICATES, PERMITS AND REGULATORY FEES.

5.1 The Department may establish and collect appropriate fees for permits as set out in the Department's Fee Schedule and this Regulation. The Department may collect appropriate fees as set out in this Regulation for the performance of services. If information on a permit application changes, the applicant shall notify the Department in writing within 30 calendar days.

5.1.1 **Automotive Dismantler/Recycler and Scrap Metal Recycling Facility Permit Fee.** Any applicant who applies for an automotive dismantler/recycler or scrap metal recycling permit as required by 4.1.1 of this Regulation shall remit to the Department an automotive dismantler/recycler or scrap metal recycling facility permit fee in an amount as provided for or as approved by the Director in the Department's fee schedule.

5.1.2 **Automotive Dismantler/Recycler and Scrap Metal Recycling Facility Follow-Up Inspection Fee.** The Department will charge a follow-up fee to the owner, permit holder or other person that has an automotive dismantler/recycler or scrap metal recycling permit when conditions found during an inspection may cause or create a nuisance or hazard, to the public health, safety or welfare require a follow-up inspection to ensure compliance. The fee for an automotive dismantler/recycler or scrap metal recycling follow-up inspection shall be remitted to the Department in an amount as provided for or as approved by the Director in the Department's fee schedule.

5.2 Unless otherwise provided for in this Regulation or approved by the Director in the Department's fee standard, all fees collected by the Department are non-refundable. All licenses and permits issued by the Department are non-transferable.

5.3 Fees shall not be levied on a per weight of material sold, purchased or recycled.

5.4 Late Fees.

5.4.1 The Department may impose upon any party subject to this Regulation penalties and charges for failure to timely pay service and license or permit fees as set out in this Regulation. Attorney's fees and collection fees may also be applied.

5.4.2 Fees unpaid to the Health Department after one month of the due date will be assessed a penalty of 10% of the outstanding balance. Failure to pay the fees and additional charges after two months of the due date will be assessed an additional penalty of 15% of the outstanding balance including previous penalties. Failure to pay the fees and additional charges after 100 days of the due date will result in suspension of the permit and the right to operate.

5.5 **Denial, Suspension, or Revocation of License or Permit.** In addition to the penalties provided for in section 8.2, any permit applied for or issued pursuant to this Regulation may be denied, suspended, or revoked by the Director for any of the following reasons:

5.5.1 Failure of the application, or specifications to show that the automotive dismantler/recycler or scrap metal recycling facility will be operated or maintained in accordance with the requirements and standards of this Regulation;

- 5.5.2 Submission of incorrect or false information in the application, or specifications;
- 5.5.3 Failure to operate or maintain the automotive dismantler/recycler or scrap metal recycling facility in accordance with the application, report, and specifications approved by the Director;
- 5.5.4 Failure of the owner or operator of an automotive dismantler/recycler or scrap metal recycling facility to permit or allow the Department to conduct inspections as necessary to determine compliance with this Regulation;
- 5.5.5 Operation of the automotive dismantler/recycler or scrap metal recycling facility in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;
- 5.5.6 Violation of this Regulation;
- 5.5.7 Violation of any condition upon which the permit was issued; or
- 5.5.8 Failure to pay a permit fee or any late fees within 100 days of the permit fee's due date.

6. INSPECTIONS & INVESTIGATIONS

- 6.1. The Department, by the Director, has the authority to perform inspections, investigations, reviews, and other similar actions as necessary of any public or private establishment.
 - 6.1.1. **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 insure 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.
 - 6.1.2. **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.
 - 6.1.3. **Private Dwellings.** Inspections of private dwellings are made by consent of owner or otherwise responsible party or upon a warrant issued by a court.
 - 6.1.4. **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.
 - 6.1.5. **Inspection Frequency.** The Department shall perform routine inspections of Automotive Dismantler/Recycler facilities and Scrap Metal Recycling facilities annually.

6.1.6. **Inspection Program Transparency.** The Department shall maintain records of all inspections. The Department will make inspection records available to permit holders.

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 Department's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request appropriate relief in writing within 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 and its legal counsel. No hearing officer will be present. The process of requesting a departmental conference is more fully described in the Department'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 Department'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 Department's Adjudicative 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 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 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 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. CIVIL & ADMINISTRATIVE PENALTIES.

8.1 Civil and Administrative Penalties.

8.1.1. 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.

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

8.2. Recovery of Investigation & Abatement Costs.

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

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

9. **EFFECTIVE DATE.**

9.1. This Regulation shall become effective upon its adoption by the Salt Lake County Board of Health and the Salt Lake County Council pursuant to Utah Code Ann. § 41-6a-1642 (2).

9.2. **Sunset Provision:** This Regulation, and all permits and approvals granted pursuant to this regulation, shall expire two years from the effective date of this regulation, unless earlier amended, modified, or repealed.

APPROVED AND ADOPTED this _____ day of _____, 2017.

SALT LAKE COUNTY BOARD OF HEALTH

By: _____
BROOKE HASHIMOTO, Chair

ATTEST:

GARY L. EDWARDS, M.S.
Executive Director
Salt Lake County Health Department