

Excerpted from the Powell County Zoning & Development Regulations

VI-F. Superfund Overlay District - This District covers the area contaminated by mining and smelting wastes from operations further upstream in the Butte and Anaconda areas. The contaminated areas lie along the Clark Fork River and the Valiton Ditch, which lies east of the Clark Fork River. Maps of the Superfund Overlay District are available at the Powell County Planning Department.

VI-F-1. Purpose - The purpose of establishing this Overlay District is to implement the Growth Policy by protecting public health and safety while allowing appropriate development activities in the Powell County portion of the Clarks Fork Superfund Site.

This purpose will be accomplished by:

- a. Assuring that future land use in the Superfund Overlay District is compatible with the presence of potential contaminants and the various remedial actions required to isolate those potential contaminants from the environment.
- b. Requiring that any development in this Overlay District be preceded by soil testing and, if approved, employ construction practices that are consistent with the permanent protection of the environment and public health.

The requirements of this overlay district also serve as institutional controls in the context of the federal Superfund law. The federal government recognizes the use of institutional controls as appropriate and necessary in Superfund areas. The preamble to the Revised National Contingency Plan (53 CFR 51394 et seq.) states:

“EPA expects to use institutional controls such as water use and deed restrictions to supplement engineering controls as appropriate for short and long-term management to prevent or limit exposure to hazardous substances, pollutants, or contaminants. Institutional controls may be used during the conduct of the RI/FS (Remedial Action/Feasibility Study) and Implementation of the Remedial Action and, where necessary as a component of the completed remedy. (at 300.430(a)(1)(iii)(D))”

VI-F-2. Development on Sites Containing Soil Caps or Other Barriers or Structures Required by Superfund Laws

- a. (Reserved)
- b.

VI-F-3. Development On Sites Where No Remedial Structures Have Been Installed

- a. Where no remedial structures exist, the total arsenic content of any soil to be excavated or graded shall be determined, and that information shall be submitted with the application for a Conditional Use Permit (CUP). All testing shall follow the protocols of the U.S. Environmental Protection Agency.
- b. If soil testing shows levels of arsenic exceeding the permissible levels for the proposed use that are established in section VI-F-4., the developer shall present a plan for the reduction of those levels. The remedies proposed may include, but are not limited to, tilling the soil, mineral or chemical treatment of the soil, a clean fill cap, an impermeable barrier, or others. Before approving a proposed remedy, Powell County shall consider its practicability and costs as well as its long term effectiveness in isolating contaminated or potentially contaminated soil or materials from the environment.

- c. Dust suppression measures may be required whenever a new arsenic reduction remedy is constructed. The administrator may require air quality monitoring, at the developer's expense, to ensure the effectiveness of the dust suppression measures.
- d. Arsenic reduction remedies shall be sited and designed to minimize erosion caused by surface runoff. Erosion control techniques may include any effective combination of paving the surface, diverting runoff, and planting.
- e. Only clean fill shall be imported into the Superfund Overlay Zone or any site within the Superfund Overlay Zone. The import of more than one cubic yard of fill requires explicit approval as part of a Conditional Use Permit, and such a permit shall be approved only where the specific sources of the fill is identified and approved as providing "clean fill". Imported fill is subject to random testing to check compliance with this performance standard.

VI-F-4. Conditional Use Permit Required -- All use changes and development in the Superfund Overlay Zone are subject to the securing of a Conditional Use Permit. All applications for a CUP or variance in the Superfund Overlay Zone shall include the following additional information beyond that which is required for any CUP or variance.

- a. A detailed grading plan showing the depth of all proposed excavations and the volume of soil to be moved.
- b. Where no remedial structures exist on a site, the application materials shall include arsenic tests, as required by Powell County, and detailed plans (if necessary) for achieving compliance with the maximum arsenic level allowed for the proposed use. The permissible arsenic levels are as follows:

<i>Use</i>	<i>Permissible Arsenic Level</i>
residential areas	250 ppm
commercial/industrial areas	500 ppm
agricultural/recreational areas	1,000 ppm

- c. Powell County may contract for the professional assistance needed to ensure the adequacy of applications materials and compliance with the performance standards adopted in this chapter. The actual cost of such assistance shall be the responsibility of the developer and no certificate of compliance shall be issued where these costs have not been reimbursed to the county.

VI-F-5. Wells - A development certificate shall be required to drill or dig a well in the Superfund Overlay Zone. Prior to the issuance of a completion certificate of any well in this overlay district, it shall be tested for coliform bacteria, arsenic, barium, cadmium, chromium, copper, lead, mercury and nitrate and the results of the tests submitted to Powell County. No certificate of compliance shall be issued for any well in which the water exceeds state water quality standards for the proposed use.

VI-F-6. Notice to Purchasers - Before any parcel or any interest in any parcel, in the Superfund Overlay Zone is conveyed, the following statement shall be placed on the deed, contract for sale, or other instrument of conveyance: "This parcel is within a Superfund site. A permit must be obtained before any development or construction covered by these regulations is initiated."