

The SHOSHONE-BANNOCK TRIBES



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EWMP Policy for Setting Site-Specific Cleanup Standards Under the Shoshone-Bannock Waste Management Act

Section 605(D)(2) of the Shoshone-Bannock Waste Management Act (“WMA”) requires the Environmental Waste Management Program (“EWMP”) to promulgate regulations establishing the degree of cleanup that will be required at contaminated sites. Accordingly, on December 2, 2010, the EWMP promulgated the Shoshone-Bannock Tribes’ Soil Cleanup Standards for Contaminated Properties (“Cleanup Standards”). *See also* WMA § 201(B). The Cleanup Standards are intended to protect the “traditional, religious and cultural uses of Reservation lands and water” in order to protect and maintain “the way of life and traditional activities of the Tribes,” WMA § 101(B)(6).

The Cleanup Standards specify soil concentrations for over 100 hazardous chemicals, based on cleanup standards and protective values compiled for soil, indoor air, groundwater, and surface water. They are modeled after the San Francisco Bay Area Regional Water Quality Control Board Environmental Screening Levels (“ESLs”), which consider adverse environmental effects of contamination in addition to direct human health impacts. In terms of human health impacts, the Cleanup Standards are designed based on an excess lifetime cancer risk of one-in-a-million (10^{-6}) and a hazard quotient of 0.2 for non-cancer health effects. In terms of ecological concerns, they account for factors such as the leaching of contaminants into groundwater; toxicity to flora and to terrestrial and aquatic receptors (through the contamination of soil and/or groundwater discharge to surface water); sullied drinking water; and the gross contamination of groundwater and soil. Unlike the ESLs, the Cleanup Standards consist of specific numeric values instead of screening levels. A discussion of the basis for the Cleanup Standards may be found in Section 1.2 of the standards.

The EWMP believes that setting uniform cleanup standards, with provisions for waiver or alternative standards when appropriate, is the best way to protect the Tribes’ health, resources, and environment and their traditional and cultural beliefs and values. Moreover, a uniform cleanup standard eliminates or reduces the time and expense otherwise required for owners and operators to prepare detailed environmental risk assessments. Nevertheless, the EWMP recognizes that there will be circumstances when site-specific standards may be required. *See* Cleanup Standards § 4.1. As discussed in Cleanup Standards § 4.0, the EWMP will promulgate procedures for developing site-specific standards as part of the Shoshone-Bannock Waste Response Plan (“WRP”) promulgated pursuant to WMA § 603. As noted there, the WRP will be promulgated with opportunity for public participation, through the notice-and-comment rulemaking procedures set forth in WMA § 901.

The EWMP will be developing the WRP as one of its top priorities. The WRP will contain procedures for “identifying, screening, evaluating, selecting and providing response action for releases of waste,” WMA § 603(A), including procedures for the development of site-specific standards when appropriate. Although the procedures for developing site-specific standards have yet to be promulgated, the basic criteria that site-specific standards must meet are already established in Cleanup Standards § 4.1, namely, site-specific standards will be designed so as to meet a cancer risk level of 10^{-6} and a non-cancer hazard quotient of 0.2, the same as the Cleanup Standards. Moreover, in order to “ensure that human health, natural and cultural resources, and the environment will be adequately protected,” the procedure for setting site-specific standards in the WRP “will minimize deviations from the Cleanup Standards to the extent possible while taking into account specific site conditions.” Cleanup Standards § 4.1. Therefore, it is the intent of the EWMP that site-specific standards also will meet environmental standards equivalent to those set forth in the Cleanup Standards Lookup Tables, as explained in Cleanup Standards §§ 1.2, 2.1.

The EWMP intends to adhere to these criteria – a cancer risk level of 10^{-6} , a non-cancer hazard quotient of 0.2, and environmental standards equivalent to those set forth in the Cleanup Standards Lookup Tables – in any site-specific standards that may be developed before the WRP is promulgated, and is issuing this policy statement in order to clarify this intent, which is consistent with the requirements of both the WMA and the Cleanup Standards.