



## COLORADO

Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

May 30, 2018

Kevin Hall, AICP  
Assistant City Manager  
City of Durango  
949 E. 2<sup>nd</sup> Avenue  
Durango, CO 81301

RE: City of Durango Lightner Creek Sheltering Area Plan

Dear Mr. Hall:

The Colorado Department of Public Health and Environment (CDPHE) first heard news of the City's plan to provide a temporary sheltering location for homeless individuals at the former Durango Uranium Mill Tailings Site from an email message sent to the U.S. Department of Energy (DOE) from a concerned citizen on March 27, 2018. Then, on April 4, 2018, we heard that the City Council had adopted an Emergency Ordinance regarding this issue. The City did not consult with CDPHE or DOE prior to making this decision. Following the passage of the ordinance, I contacted the City to discuss this issue further because CDPHE was concerned that potential risks had not been evaluated under this new use scenario. In addition, we were contacted by the media regarding the City's plans.

As you know, the former mill site was remediated under the Uranium Mill Tailings Remedial Action Project however; at the completion of the remediation at the site, an Environmental Covenant was placed on the property because residual radioactive material was left in place and the cleanup did not meet unrestricted use levels. The City was formally notified of the environmental condition of the property via the Property Annotation attached to the Quit Claim deed. The following is an excerpt from the annotation:

The EPA regulations also allow for contaminated materials to be left in place where removal would pose a clear and present risk of injury to workers or would produce environmental harm that is excessive compared to the health benefit achieved. These cases are called Supplemental Standards. Supplemental standards were applied to areas on the slope of Smelter Mountain, the banks of the Animas River, and to an area beneath the lead slag. The Supplemental Standards areas are identified on the attached map.

The proposed sheltering area is located proximal to the Supplemental Standards area on the slope of Smelter Mountain. Erosion may have transported contaminated materials from the slope onto the area at the base of Smelter Mountain.

In addition, the final disposition of mill sites acquired by the State must comply with the requirements of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. UMTRCA requires that the State, with the concurrence of the Secretary and the Commission, may -

- (A) sell such lands and interests,
- (B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity with such State) for permanent use by such State or entity solely for park, recreational, or other public purposes.



Clearly, when the mill site was donated to the City, it was meant for recreational use. The radon mitigation requirement for "habitable structures" was included in the environmental covenant and the deed in case a potentially habitable building like a restroom or concession stand were constructed as part of the recreational use of the property. The State has required radon mitigation systems for permanent structures on the Durango South Parcel, Rifle Mill sites and the Gunnison Mill site. The use restriction should not be construed as a tacit approval for residential use of the property. Sheltering individuals overnight on the former mill site goes beyond the anticipated recreational use and the potential exposure to the sheltered individuals will exceed the anticipated exposure in a recreational use scenario. Also note that while the State and DOE have approved industrial and commercial reuse of former mill sites, no former uranium mill tailings sites in Colorado have been approved for residential or overnight uses.

According to the Nuclear Regulatory Commission (10 CFR 20.1402) and CDPHE (6 CCR 1007-1 Part 4.61.2):

"A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent (TEDE) to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA)."

Since overnight sheltering was never anticipated for this property, we advised the City of Durango to perform a risk assessment to document that this new use scenario will not result in unacceptable risk to human health, in accordance with the 25 mrem/yr limit above. We recommended that the risk assessment be conducted by an independent, qualified firm, and be based on current site conditions/data. We offered to review the risk assessment for the City and to assist with scoping the requirements for the assessment.

As indicated in your email message I received on May 11, 2018, it is my understanding that the City does not plan to do any construction and therefore the City is not seeking State or DOE approval of the sheltering plan. In addition, you stated, "[i]n regards to past discussions pertaining to the suitability of the site for overnight sheltering, the City does not consider the use of the site to be incompatible with, or contrary to, the conditions of the property transfer quit claim deed or environmental covenants. As such, the City is not intending to undertake any supplemental environmental studies for the site. If CDPHE is interested in providing additional information or environmental studies pertaining to the site, the City is willing to take this information under advisement."

While we appreciate your efforts to keep us better informed about the issues affecting the use of this property, CDPHE does not intend to undertake the risk assessment on the City's behalf. In addition, please be advised that this letter does not constitute approval of the City's plans. The City undertakes this effort at its own risk and should the City's actions result in a violation of the terms of the Environmental Covenant placed on the property, CDPHE reserves its enforcement rights.

Sincerely,



Monica D. Sheets  
Remediation Program Manager  
Hazardous Materials and Waste Management Division

