

ADDENDUM TO CHAPTER 40.145

**CLEANUP OF TOXIC CONTAMINATION FROM**  
**ILLEGAL DRUG MANUFACTURE**

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<b><u>SECTION 40.145.210</u></b>	<b>Notice of judicial determination that property is unfit for use.</b>
<b><u>SECTION 40.145.220</u></b>	<b>Declaration of fitness.</b>

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**SECTION 40.145.020 Purpose.** It is the purpose of this chapter to provide a just, equitable, and practicable method, whereby property, which endangers the life, safety or welfare of the general public or any occupant or occupants of property, because of toxic chemical contamination, that may result from illegal drug manufacturing, be required to be decontaminated, vacated and secured against use, or demolished. This chapter is further intended to promote only permissible uses of property by property owners.

**SECTION 40.145.030 Cumulative effect.** Any remedy or remedies created under this chapter are intended to be cumulative with and in addition to any other remedy or remedies provided for by tribal or federal law.

**SECTION 40.145.040 Definitions.** As used in this chapter, the words and terms used herein shall have the meanings ascribed to them in those sections wherein reference to any such words or terms rises, except in instances where the context clearly indicates a different meaning.

“Illegal drug” means all substances that are produced, prepared, propagated, compounded, converted or processed, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or are used for or are the result of any such production, preparation, propagation, compounding, conversion or process, without authority of the United States Government.

“Illegal drug manufacturing site” means any property on which there is a reasonably clear possibility of contamination with chemicals or precursor chemicals associated with the manufacture of illegal drugs. The definition shall also comprehend the keeping, storage, or location of any devices, equipment, chemicals, compounds, or other articles associated with the manufacture of any illegal drug upon any property.

“Manufacture” shall have the meaning ascribed to it by [Section 453.091](#) or any subsequent revision thereto by the Ely Shoshone Tribe.

“Property” means any:

- (1) Real property, improvements on real property, or portions of the improvements;
- (2) Airplane, boat, trailer, motor vehicle or manufactured dwelling; and
- (3) Any item or the contents of any item associated with an illegal drug manufacturing site.

**SECTION 40.145.050 Applicability.** The provisions of this chapter apply to any property that is known to have been an illegal drug manufacturing site or for which there exist reasonable grounds to believe that the property has been used as illegal drug manufacturing site. This chapter is not intended to apply to property which is the object of the lawful manufacture of drugs.

**SECTION 40.145.060 Rules.** The state health officer shall be authorized to formulate and adopt any rule associated with the enforcement of this chapter, subject to the consent of the Ely Shoshone Tribal Council. Rules formulated by the state health officer shall be made and based upon consultation with the Nevada state fire marshal, the director of poison control for the State of Nevada, any environmental agency of the State of Nevada or United States Government, or any other agency or entity related to public health whose advise and information is necessary for the formulation of rules authorized under this chapter. Such rules adopted under this section shall include a statement of tolerable levels of exposure to illegal drugs. Rules formulated under this section shall also include a statement of qualifications for any contractor or other person responsible for the decontamination of property under this chapter.

**SECTION 40.145.070 Restriction on transfer of property used as illegal drug manufacturing site.** Unless a property used for the manufacture of an illegal drug has been determined fit for use pursuant to Section 40.145.150 of this chapter, no person shall transfer, sell, use, or occupy any property knowing or having reasonable grounds to believe that such was used as an illegal drug manufacturing site.

**SECTION 40.145.080 Effect of transfer of property used for the manufacture of illegal drugs.** All contracts oral or written, for the transfer, sale, use or rent of property, in violation of Section 40.145.070 are voidable at the instance of the purchaser, transferee, user or renter. This section is not intended to make voidable any promissory note or other evidence of indebtedness or any mortgage, trust deed, or other security interest were given to a person other than the person transferring, selling, suing or renting the property to induce such person to finance the transfer, sale, use or rental of the property. This section shall not impair obligations or duties required to be performed upon termination of a contract, as required by the provisions of a contract, including but not limited payment of damages or return of refundable deposits.

**SECTION 40.145.090 Transfer allowed after full disclosure.** Any property that has not been determined fit for use pursuant to Section 40.145.150 of this chapter may be transferred, sold, or rented if full written disclosure of the state health officer's determination of unfitness, relating to the property, has been given to the prospective purchaser or renter. Any such disclosure shall accompany but not be a part of the sale document nor shall the same be recorded. However, such property shall otherwise be subject to all provisions of this chapter regardless of any transfer, sale, or rent under this section.

**SECTION 40.145.100 Entry onto property.** For purpose of enforcing the provisions of this chapter, the state health officer, or his designee, shall be authorized to enter upon or otherwise inspect any property that is known to be or is reasonably suspected to be a site for the manufacturing of illegal drugs. Any inspection conducted by the state health officer, or his designee conducted hereunder shall be made upon the following conditions:

- (1) Any such entry shall be accompanied by presentation of credentials by the state health officer, or his or her designee, to the property owner, or any other person bearing rights associated with the property, including, but not necessarily limited to actual possession.
- (2) In the absence of consent to enter and inspect the property, which has been reasonably obtained from the property owner or from any other person bearing or possessing rights associated with the property, the state health officer shall procure a warrant authorizing the inspection of the property upon obtaining a warrant from a neutral or detached judge that cause exists to believe that property exists on the Ely Shoshone Reservation that has been used as a site for the manufacturing of illegal drugs and that efforts need be undertaken by the health officer to safeguard the welfare of citizens on the reservation. Such

efforts may include seizing the property, evacuation of the property, removal of contaminants, or any other measure calculated to protect the public health.

- (3) Any entry made by the state health officer under this section, and any inspection conducted by him or her thereafter, must be made at a reasonable time within reasonable limits and by use of reasonable methods.

**SECTION 40.145.110 Notice that property is unfit for use.** The state health officer, or his or her designee, or any state or federal public health official, or any law enforcement agency of the tribe, state of Nevada, or the United States Government may determine that property is not fit for use under this chapter. Any such determination is effective immediately and renders the property not fit for use. Any determination that property is not fit for use under this chapter shall be made in writing, by using a form substantially similar to that in Section 40.25.190. Notice of the determination shall be posted in a conspicuous place upon the property and shall be provided to the property owner, if known, or to any other person exercising rights associated with the property. The state health officer is authorized to require the immediate evacuation of the property if he reasonably believes that continued exposure to property will create a risk to the health or well being of any person. The state health officer, where practicable, may take custody of property and secure the same in a reasonable fashion, against contact by any person or persons.

**SECTION 40.145.120 Appeal from determination that property is not fit.** The owner of property which has been determined to be unfit, whether or not the same has been seized by the state health officer, may appeal the determination of the agency having made the determination, within thirty days of such determination. Such appeal shall be made to the tribal court of the Ely Shoshone Reservation in which the property is located consistent with the provisions of NRS 4.170 and NRS 4.370. An appeal from the determination by the tribal court as to fitness for use may be made by the property owner, the state health officer, or the agency making the determination and must be made upon compliance with the provisions of NRS Chapter 189. Any determination made under this section shall be based upon a standard of clear and convincing evidence.

**SECTION 40.145.130 Notice of judicial determination of fitness.** Any decision made by the tribal court that property is fit for use or unfit for use shall be provided by a form substantially similar to Sections 40.25.200 and 40.25.210. The determination of the court as to fitness of the property shall be effective immediately and be binding upon the parties. Notice of the decision by the court shall be provided to any person, business, or entity having interest in the matter of sale or transfer of the property including an escrow office or title company.

**SECTION 40.145.140 Use of contaminated property constitutes a public nuisance.** The owner of property, which has been deemed unfit for use, who allows the property to be used for any purpose thereafter, shall be considered to be maintaining a public nuisance. The tribal prosecuting attorney may seek abatement of the nuisance as provided for by Section 40.140 or Section 244.360 of the Nevada Revised Statutes.

**SECTION 40.145.150 Declaration of fitness.** The owner of any property deemed unfit under this chapter may seek a declaration hereunder shall be provided to the state health officer or other agency, having made the determination of unfitness, by a public health officer or certified laboratory in the State of Nevada. In the absence of reasonable objection to the declaration given the state health officer or other official, the property shall be declared fit for use and custody or control of the property shall be for use and custody or control of the property shall be restored to the property owner. A certificate of fitness, in substantial conformity with Section 40.145.220 shall be given the property owner.

**SECTION 40.145.160 Inspection of decontamination efforts.** The state health officer is authorized to perform inspections relating to the decontamination of any property deemed unfit under this chapter. If the state health officer, or his or her designee, has cause to believe that any decontamination efforts by a contractor or other person authorized hereunder to perform such duty constitutes a threat to public safety, the state health officer may suspend any such operation with or without notice. Decontamination efforts thereafter may only be undertaken when the contractor or other person has corrected any condition deemed hazardous by the state health officer or his or her designee.

**SECTION 40.145.170 Criminal penalties.** It is unlawful for any person to knowingly transfer, sell, rent, use, buy, or occupy any property that has been used as an illegal drug manufacturing site. Any person convicted under this section shall be guilty of a **Category C offense.**

**SECTION 40.145.180 Civil penalties.** Any person who uses property as an illegal drug manufacturing site shall be liable for all costs associated with decontamination of the property including reasonable attorney costs and fees. In addition to any other liability or penalty provided for by law, a person using property as an illegal drug manufacturing site must pay the actual cost of any laboratory analysis to the Ely Shoshone Tribe.

**SECTION 40.145.190 Notice that property is unfit for use.** Any notice given under this chapter, that property is unfit for use shall be made in substantial compliance with the following:

**NOTICE THAT PROPERTY IS UNFIT FOR USE**

To: \_\_\_\_\_ Property Owner, \_\_\_\_\_  
(address), and to all other persons or citizens of the Ely Shoshone Reservation, having an interest in the property.

NOTICE IS HEREBY GIVEN THAT THE PROPERTY STATED ABOVE IS NOT FIT FOR USE BY ANY PROPERTY OWNER OR OTHER PERSON HAVING AN INTEREST IN THE PROPERTY. SUCH PROPERTY HAS BEEN AND IS CONTAMINATED BY REASON OF THE PRESENCE OF

CHEMICALS, COMMONLY USED IN THE MANUFACTURE OF DRUGS. USE OF CONTAMINATED PROPERTY CONSTITUTES A PUBLIC NUISANCE. THIS NOTICE IS EFFECTIVE IMMEDIATELY.

IN ACCORDANCE WITH CHAPTER 40.145 OF THE ELY SHOSHONE TRIBAL CODE, THE STATE HEALTH OFFICER IS AUTHORIZED TO REQUIRE THE IMMEDIATE EVACUATION OF THE PROPERTY IF HE REASONABLY BELIEVES THAT CONTINUED EXPOSURE TO THE PROPERTY WILL CREATE A RISK OF HEALTH OR WELL BEING OF ANY PERSON. THE STATE HEALTH OFFICER MAY ALSO, WHERE PRACTICABLE, TAKE CUSTODY OF PROPERTY OR SECURE THE SAME IN A REASONABLE FASHION, AGAINST CONTACT BY ANY PERSON OR PERSONS.

NOTICE IS HEREBY FURTHER GIVEN THAT THE PROPERTY OWNER OR OTHER PERSON HAVING AN INTEREST IN THE PROPERTY MAY, PURSUANT TO CHAPTER 40.145 OF THE ELY SHOSHONE TRIBE CODE, APPEAL THE DETERMINATION OF THE OFFICER OR AGENCY THAT DETERMINED THAT THE PROPERTY WAS UNFIT FOR USE. SUCH APPEAL SHALL BE MADE TO THE TRIBAL COURT. AN APPEAL FROM ANY DETERMATION MADE BY THE TRIBAL COURT MAY BE MADE TO THE TRIBAL COURT CONSISTENT WITH THE PROVISIONS OF CHAPTER 189 OF THE NEVADA REVISED STATUTES.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

By: \_\_\_\_\_

Agency: \_\_\_\_\_

\_\_\_\_\_

**SECTION 40.145.200 Notice of judicial determination of fitness.** Any notice given under this chapter by a court determining the fitness of property for use shall be made in substantial compliance with the following:

**NOTICE OF JUDICIAL DETERMINATION OF FITNESS**

To: \_\_\_\_\_, Property Owner, and other person(s) having an interest in the property; described as follows: \_\_\_\_\_ (address or legal description); and,

To: \_\_\_\_\_, Officer or Agency declaring that the property is unfit.

YOU AND EACH OF YOU WILL HERE TAKE NOTICE THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, A HEARING WAS CONDUCTED IN THE ABOVE-CAPTIONED MATTER. AS A RESULT OF THE HEARING CONDUCTED, THIS COURT FINDS, BY CLEAR AND CONVINCING EVIDENCE, THAT THE ABOVE-CAPTIONED PROPERTY IS FIT FOR USE; THAT CONTAMINATION DOES NOT EXIST ON THE PROPERTY, OR HAS BEEN PROPERLY ABATED; THAT A SUBSTANTIAL RISK TO THE HEALTH OR WELL-BEING TO ANY PERSON USING OR EXPOSED TO THE PROPERTY DOES NOT EXIST OR NO LONGER EXISTS.

YOU ARE FURTHER GIVEN NOTICE THAT AN APPEAL FROM THIS DETERMINATION MAY BE MADE TO THE TRIBAL COURT, WITHIN TEN (10) DAYS OF THE ENTRY OF THIS NOTICE, AS PROVIDED FOR BY CHAPTER 189 OF THE NEVADA REVISED STATUTES.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
ELY SHOSHONE TRIBAL JUDGE

**SECTION 40.145.210 Notice of judicial determination that property is unfit for use.**  
Any notice given under this chapter by a court determining that property is unfit for use shall be made in substantial compliance with the following:

**NOTICE OF JUDICIAL DETERMINATION THAT  
PROPERTY IS UNFIT FOR USE**

To: \_\_\_\_\_, Property Owner, and other person(s) having an interest in the property; described as follows: \_\_\_\_\_ (address or legal description); and

To: \_\_\_\_\_, Officer or Agency declaring that the property is unfit.

YOU AND EACH OF YOU WILL HERE TAKE NOTICE THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, A HEARING WAS CONDUCTED IN THE ABOVE-CAPTIONED MATTER. AS A RESULT OF THE HEARING CONDUCTED, THIS COURT FINDS, BY CLEAR AND CONVINCING EVIDENCE, THAT THE ABOVE-CAPTIONED PROPERTY IS NOT FIT FOR USE; THAT CONTAMINATION EXISTS ON THE PROPERTY WHICH HAS NOT BEEN PROPERLY ABATED; THAT A SUBSTANTIAL RISK TO THE HEALTH OR WELL-BEING TO ANY PERSON USING OR EXPOSED TO

THE PROPERTY DOES NOW EXIST. THE ABOVE PROPERTY SHALL NOT BE USED UNTIL THE CONTAMINATION HAS BEEN REMOVED OR OTHERWISE ABATED AND A DECLARATION OF FITNESS HAS BEEN OBTAINED BY THE STATE HEALTH OFFICER, AS PROVIDED FOR BY CHAPTER 40.145 OF THE ELY SHOSHONE TRIBAL CODE. YOU ARE FURTHER GIVEN NOTICE THAT AN APPEAL FROM THIS DETERMINATION MAY BE MADE TO THE TRIBAL COURT, WITHIN TEN (10) DAYS OF THE ENTRY OF THIS NOTICE, AS PROVIDED FOR BY CHAPTER 189 OF THE NEVADA REVISED STATUTES.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
ELY SHOSHONE TRIBAL JUDGE

**SECTION 40.145.220 Declaration of Fitness.** Any determination by a health officer, or laboratory certified in the State of Nevada, that the property is fit for use shall be made in substantial compliance with the following:

**DECLARATION OF FITNESS**

To: \_\_\_\_\_ (Property Owner) and \_\_\_\_\_, (having an interest in the property); and \_\_\_\_\_, Agency or official declaring property unfit for use:

Property Description:

YOU AND EACH OF YOU WILL HERE TAKE NOTICE THAT THE PROPERTY DESCRIBED AS UNFIT FOR USE BY \_\_\_\_\_ (AGENCY, PUBLIC OFFICER, OR COURT MAKING DETERMINATION THAT PROPERTY WAS UNFIT), IS HEREBY FIT FOR USE AS PROVIDED FOR BY SECTION 1.14 OF CHAPTER 40.145 OF THE ELY SHOSHONE TRIBAL CODE. THIS DECLARATION IS EFFECTIVE IMMEDIATELY, ANY PROPERTY HELD OR IN THE CUSTODY OF ANY PUBLIC OFFICER, AGENCY, OR OTHER OFFICIAL, RELATING TO THE ABOVE-DESCRIBED PROPERTY SHALL BE RELEASED TO THE PROPERTY OWNER, HAVING BEEN PROPERLY DECONTAMINATED, SHALL BE RESTORED TO THE OWNER OR OTHER PERSON HAVING INTEREST IN THE PROPERTY.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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STATE HEALTH OFFICER

Or

By: \_\_\_\_\_

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Agent or Representative of

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Certified Laboratory, State of Nevada