

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

NO. 40108-8-II

THOMAS & CASSANDRA BROTHERTON
Appellants

vs.

JEFFERSON COUNTY
Respondent

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STATE OF WASHINGTON
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DEPUTY

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 09-2-00345-8
The Honorable Judge Theodore Spearman

**BRIEF OF RESPONDENT
JEFFERSON COUNTY**

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I. INTRODUCTION

Make no mistake. This case is about the denial of permission to develop land. On appeal is a decision of the Jefferson County Board of Health denying the Brothertons' request for a waiver from certain state and local regulations applicable to on-site septic systems or "OSS."

Under state and local OSS regulations the Brothertons ("Appellants") are not entitled to the waiver they seek, a waiver that would allow them to avoid the installation of an approved OSS sufficient in size to service their home and the newest addition to their parcel, a Park Model RV. Instead they want the wastewater from the RV to be handled by a separate holding tank.

In only three circumstances do state regulations allow holding tanks as a method for handling wastewater: emergencies, during repairs and for part-time but permanent commercial circumstances such as an RV park. None of those three circumstances apply to the Appellants' situation, which, if approved, would be both permanent and residential.

State and local regulations also bar the granting of a waiver unless the granting of the waiver would be "consistent with the standards in and the intent of these [OSS] rules." Jefferson County's Local Health Officer ("LHO"), acting within his lawful discretion, correctly decided that the Appellants' request for a waiver would not be consistent with the

standards and intent of either the state's or the County's OSS rules. The LHO reached that decision, in large part, because the Appellants' parcel contains six acres, plenty of room for an adequately-sized OSS.

Faced with the insurmountable obstacle that both state and local regulations for OSS do not in these circumstances permit a holding tank, the Appellants now attempt to convert their lawsuit into a constitutional challenge based on issues raised neither in their Complaint nor below.

II. ASSIGNMENTS OF ERROR

This Respondent did not cross-appeal so it makes no assignments of error.

III. STATEMENT OF THE CASE

Statement of Facts:

Appellants are the owners of real property located in unincorporated Jefferson County in the vicinity of Quilcene, hereinafter the Subject Property or "SP." The real property is known by its Assessor's Parcel Number 701-185-009. CP 2, Complaint ¶2.1 Plaintiffs state the SP contains about six (6) acres. CP 193.

At all times relevant to this Complaint present at the SP was a "double wide mobile home" containing two bedrooms and two baths. The SP is not served by a public sanitary sewer system and in the absence

of such a sanitary sewer a residence at that property is not considered habitable without there also being present there an approved OSS. See Jefferson County Code or “JCC” §8.15.060(1) part of Attachment #1 to this Brief and CP 165. Also present at the SP was an OSS of sufficient size to serve a residence with 2 bedrooms and one kitchen that had been approved (staff calls that “finaled”) in 1994. The Plaintiffs purchased the SP in August 2006 with the residence and approved 2-bedroom OSS in place there. CP 168-174, inclusive.

The current version of the County’s OSS code, Chapter 8.15 JCC, entitled “On-Site Sewage Code,” was adopted via Ordinance #06-0719-07 on July 19, 2007 by the Jefferson County BOH. See the first and last pages of that Ordinance. CP 175, 176. This was more than two years before the Appellants filed their Complaint on August 19, 2009. CP 1. Chapter 8.15 JCC was revised in 2007 as a direct result of the State of Washington rewriting the state OSS code and renumbering it Ch. 246-272A WAC instead of Ch. 246-272 WAC. CP 186. Of significance is that portion of the County’s OSS entitled “Purpose,” a finding of the County Board of Health explaining why the local OSS code was needed and the public policy purpose it would further, a public policy specific to Jefferson County since enhancement of environmentally sensitive areas in Jefferson County is expressly mentioned.

8.15.020 Purpose.

The purpose of these regulations is to assure protection of public health by:

- (1) Minimizing the public health effects of on-site sewage systems on surface water and ground water;
- (2) Minimizing the potential for public exposure to sewage;
- (3) Establishing design, installation and management requirements for on-site sewage systems to accommodate long-term treatment and disposal of sewage;
- (4) Enhancing protection of environmentally sensitive areas within Jefferson County; and
- (5) Complying with the intent of Chapter 246-272A WAC. [Ord. 6-07]

The person ultimately in charge of enforcing the state and local codes relating to OSS is the local Health Officer, Dr. Thomas Locke, M.D., M.P.H. CP 185-219, inclusive, generally.

Prior to October 2008 Appellants moved a recreational vehicle (a Park Model RV) onto the SP and installed a holding tank for wastewater collection, intending to have the RV serve as an additional space for family members and friends staying overnight as visitors. CP 193. Ch. 246-272A WAC and Ch. 8.15 JCC require that residential structures of this type to be connected to a permitted OSS. The lawful options available for the Brothertons were to either construct a separate OSS for the new residential structure or connect it to an existing OSS with adequate

hydraulic capacity that was fully compliant with the current OSS code. The holding tank was never a lawful OSS.

When the installation of an illegally installed holding tank came to the attention of the Environmental Health division of Jefferson County Public Health (“JCPH”), the County division charged with regulating OSS, JCPH wrote to Appellants in a “Notice and Order to Correct Violation” (or “NOCV”) dated October 17, 2008, stating “a septic permit is required per state and county codes” for the RV. CP 203, 204. The absence of such a permit is and was a violation of state and local OSS codes. The NOCV also quoted from JCC §18.15.060(3) to inform the Plaintiffs that the RV, the third bedroom, could not be served by the existing and approved 2-bedroom OSS. JCC §18.15.060(3) states in relevant part:

(3) Any new or replacement residence, or any expansion, as that term is defined in §18.15.050 of this Code, may be connected to a pre-existing [OSS] only when the pre-existing system has hydraulic capacity, sufficient vertical and horizontal separation, an adequate reserve area and satisfies all other requirements to be in compliance with current code.

See page 2 of the October 17, 2008 NOCV sent to the Appellants. CP 204.

Once the NOCV was received by the Appellants they began to exhaust their administrative remedies, i.e., they 1) unsuccessfully appealed the NOCV, 2) applied for a waiver from WAC 246-272A-0240(1)'s ban on residential holding tanks, 3) saw their waiver request denied, 4) appealed the denial of the waiver only to see that denied by the LHO and, finally, 5) had their hearing before the County's Board of Health, which affirmed the decision of the LHO to not grant the waiver the Appellants were requesting. See the Procedural History below.

Procedural History:

Date	Event	Location in record
10/17/2008	The Appellants receive a "Notice and Order to Correct Violation" (or "NOCV") from Jefferson County Public Health ("JCPH") because they have moved the Park Model RV onto the property and it is not connected to an approved OSS and is instead connected to a holding tank.	CP 203, 204
10/24/2008	Brothertons' apply for a waiver from the OSS rules, a waiver that would allow them to use a holding tank.	CP 14, 193-202, inclusive

11/20/2008	Brothertons' appeal of the NOCV is denied and validity of NOCV is upheld. County states it will take no enforcement action because waiver application is pending.	CP 205, 206
12/31/2008	LHO Tom Locke denies waiver application via a letter to the Appellants. Appellants then appealed this denial	CP 207, 208
2/5/2009	Administrative hearing held on the denial of the waiver.	CP 209 (mention)
3/25/2009	LHO Locke letter to the Brothertons denies the appeal of the denial of the waiver. Appellants decide to appeal that decision to the County's Board of Health.	CP 209-214, inclusive.
5/21/2009	County's Board of Health hears the appeal of the Appellants, see the Board minutes for that date	CP 177-184, inclusive.
5/21/2009	County's Board of Health unanimously upholds the decision of the LHO to deny the waiver request.	CP 183

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8/6/2009	LHO Locke sends letter to Appellants giving them formal notice that the County Board of Health has upheld the decision of the LHO to not grant the waiver requested.	CP 219
8/19/2009	Appellants file their "Complaint for Wrongful Governmental Conduct." The Complaint makes three allegations: 1. Invalid enactment of the statute [the local OSS regulation] because the enactment process did not comply with Ch. 34.05 RCW, also known as the Administrative Procedures Act; 2. JCC §8.15.165(2)(a)(ii) illegally conflicts with state law; and 3. The waiver denial constituted illegal discrimination in violation of federal and state constitutional rights held by the Appellants specifically, the "privileges and immunities" clause of the State Constitution.	CP 1-7, inclusive.
12/4/2009	Respondent's Motion for Summary Judgment pursuant to CR 56 is granted, Appellants' Motion for Summary Judgment pursuant to CR 56 is denied.	CP 278-280, inclusive.
1/08/2010	Appellants' Motion for Reconsideration is denied.	CP 288

The Brothertons then timely appealed to the Court of Appeals despite at least three rejections (on the merits) of their contentions.

Relevant regulatory texts:

Despite Appellants' attempts to complicate this matter, the relevant regulatory texts are both few and straightforward. They are three in number.

A waiver in the permitting context is permission to undertake an action or course of action that is otherwise specifically prohibited. The Brothertons' proposal that residential sewage be handled by collection in a holding tank with eventual removal by a professional ran directly counter to the following state regulation, found at WAC 246-272A-0240:

WAC 246-272A-0240

Holding tank sewage systems.

(1) A person may not install or use holding tank sewage systems for residential development or expansion of residences, whether seasonal or year-round, except as set forth under subsection (2) of this section.

(2) The local health officer may approve installation of holding tank sewage systems only:

(a) For permanent uses limited to controlled, part-time, commercial usage situations, such as recreational vehicle parks and trailer dump stations;

(b) For interim uses limited to handling of emergency situations; or

(c) For repairs as permitted under WAC 246-272A-0280 (1)(c)(i).

(3) A person proposing to use a holding tank

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sewage system shall:

(a) Follow design criteria established by the department;

(b) Submit a management program to the local health officer assuring ongoing operation, monitoring and maintenance before the local health officer issues the installation permit; and

(c) Use a holding tank reviewed and approved by the department.

The Brothertons needed a waiver because of Section (2) above, since their residential use from the RV was not “commercial usage,” they were not faced with an “emergency situation” and their need for a waiver was not necessitated by “repairs.”

In order to obtain the waiver the Appellants had to satisfy the LHO with respect to two distinct preconditions to the granting of a waiver, one technical and one based on public policy.

The technical preconditions to obtaining a waiver are found in WAC 246-272A-0240(3). With respect to §0240(3) the Brothertons asserted they could and would comply with the requirements of a Category A waiver, as stated in their waiver request, found at CP 22 to 33.

Waiver Request

Thomas A. and Cassandra Brotherton, owners of parcel # 701 185 009 request the Jefferson County Health Officer grant a Class A waiver per reference A to WAC 246-272A-0240(2) and allow the use of an on-site holding tank to collect and store the residential sewage from a part-time use Recreational Vehicle.

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This meant, in the broadest terms, that the Appellants would purchase and install a holding tank that was on the approved equipment list generated by the State Department of Health and that Appellants agreed to be bound by an operations and maintenance agreement for their use of the holding tank. CP 23. Guidance documents (lacking the effect of law, unlike Ch. 246-272A WAC) provide technical information to assist the waiver applicant and the LHO. CP 24 to 32 and CP 54 to 80. Compliance with the state's technical requirements does not assure the waiver applicant that the waiver will be granted because, with respect to Class A waivers, the kind sought by the Appellants, the LHO must still approve the waiver. One of the guidance documents states so expressly: "[State] DOH agreement with individual waivers approved by qualified/authorized local health department practitioners can be assumed if pre-approved review criteria and mitigation measures are applied." CP 63, first bullet under Class A. Clearly, the LHO and not the state DOH is the decision-maker regardless of whether the waiver applicant can or does satisfy the technical requirements listed in the advisory guidance documents. CP 189, at ¶29 & ¶30.

Assuming, without conceding, that the Brothertons met the technical preconditions laid out in WAC 246-272A-0240(3), the LHO for Jefferson County, acting within his discretion, determined that the

Brotherton's application for a waiver must be denied for public policy reasons. More on that below.

The Court should note that the State Department of Health does not grant waivers in part because state laws and regulations create no such mechanism and because, in larger part, the discretion to grant waivers from OSS codes has been expressly granted by the RCW and WAC to the various LHO across the state. RCW 70.05.072.

The applicable WAC also states the LHO "may" grant waivers, but only in very limited circumstances. Here is the text of WAC 246-272A-0420:

Waiver of state regulations.

(1) The local health officer may grant a waiver from specific requirements of this chapter if:

(a) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(b) **The local health officer determines that the waiver is consistent with the standards in, and the intent of, these rules;**

(c) The local health officer submits quarterly reports to the department regarding any waivers approved or denied; and

(d) Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and the intent of these rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns. If upon further review of the quarterly reports, the department

finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected. (Emphasis supplied.)

The Brothertons, as applicants for a waiver in Jefferson County, also had to satisfy the similar waiver criteria found in the Jefferson County Code, i.e., at JCC §8.15.165(2):

8.15.165 Waiver of state or local regulations.

(1) Applicability. Any person who owns or operates an OSS may apply to the health officer for a waiver from any paragraph of these regulations.

(2) Granting Requirements.

(a) The health officer may grant such a waiver if it finds that:

(i) Special circumstances exist that are not of the applicant's making;

(ii) An unnecessary hardship will occur without the waiver;

(iii) **The health officer has determined that the waiver is consistent with the standards in, and the intent of, the public health protection purpose and objectives of these rules;**

(iv) Corresponding mitigation measure(s) to assure that public health and water quality protection, at least equal to that established by these rules, is provided. (Emphasis supplied.)

Upon review of WAC 246-272A-0420 and JCC §8.15.165(2) the County's LHO, Tom Locke, used his lawful discretion to determine that the Brothertons were NOT entitled to the waiver they were seeking. LHO

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Locke did so based primarily on the strikingly similar text found in the above-listed WAC and local Code provisions. From the state code:

(b) The local health officer determines that the waiver is consistent with the standards in, and the intent of, these rules;

From the Jefferson County Code:

(iii) The health officer has determined that the waiver is consistent with the standards in, and the intent of, the public health protection purpose and objectives of these rules;

The LHO, in denying the waiver application, did not rely solely upon the “special circumstances” or “unnecessary hardship” texts of the local code, the text now challenged by the Appellants as unlawful and/or invalid.¹ Instead the LHO offered at least five reasons why he felt this waiver application was not “consistent with the standards in, and the intent of, the public health protection purpose and objective of [Ch. 246-272A WAC].” CP 208-213, generally and CP 227-231, generally. Those same pages indicate the LHO referred primarily to the WAC and not the local code when deciding to deny this waiver application. See CP 208, 209, 210, 211, 213, 216, 217 and 219. LHO Locke surveyed multiple Environmental Health directors working in other Washington counties and

¹ At CP 207, first paragraph, is a quick reference to “special circumstances” and “unnecessary hardship” as “additional considerations” within the regulatory structure applicable to the waiver application, but in no document does the LHO state that JCC §8.15.165(2) was the reason for the denial of the waiver application.

found not a single one that would have granted this waiver given the Brothertons' underlying circumstances. CP 190 at ¶39. Conversely, any references to the local OSS provisions in the many letters from the LHO to the Appellants serve primarily to inform the Appellants how to further appeal or respond to allegations by the Appellants that the LHO has misread or misinterpreted JCC §8.15.165. See, for example, CP 208 bottom, CP 211 (top), CP 218 (top). The record does not support the core assertion of the Appellants, i.e., that but-for the allegedly illegal portions of the local OSS code they would have been granted the waiver they sought.

Nor does the County concede that the challenged portions of its local OSS code, codified at JCC §8.15.165(2)(a)(i) and (ii), are ultra vires as unlawful conditions imposed beyond what the state code requires. Instead, an equally reasonable interpretation of those subsections is that they merely inform or flush out the text of JCC §8.15.165(2)(a)(iii) and that one can infer that those same phrases are implicit within WAC 246-272A-0420(1)(b).

LEGAL ARGUMENT

I-NO APPELLATE JURISDICTION EXISTS FOR THIS APPEAL BECAUSE THE APPELLANTS WERE REQUIRED TO APPEAL THE ‘FINAL LAND USE DECISION’ DENYING THEM A WAIVER VIA A LAND USE PETITION ACT PETITION AND THEY DID NOT DO SO

Since the Brothertons failed to invoke Ch. 36.70C RCW (the Land Use Petition Act or “LUPA”), this court lacks jurisdiction to hear their appeal of a “final land use decision,” the decision of the Jefferson County Board of Health affirming the LHO’s denial of their request for a waiver from certain provisions of the applicable OSS regulations. See *Harrington v. Spokane County*, 128 Wn. App. 202, 114 P.3d 1233 (2005) and RCWA 36.70C.030(1) for the proposition that decisions regarding OSS permitting are subject to LUPA.

The County relies upon *Holder v. City of Vancouver*, 136 Wn. App. 104, 147 P.3d 641 (2006) (plaintiff filed a LUPA Petition seeking reversal of a hearing examiner decision, but his failure to ever again argue LUPA at either the trial or appellate level meant the appeals court had no jurisdiction over his appeal). There this Division of the Court of Appeals held as follows:

“¶ 8 LUPA is the *exclusive* means of judicial review of land use decisions. RCW 36.70C.030(1) (emphasis added). Thus, by abandoning the exclusive means for judicial review, Holder *108 forfeited his appeal of right and, consequently, we do not have jurisdiction over his appeal of the hearing examiner's (footnote omitted) land use decisions. If Holder were to appeal any non-LUPA decisions of the hearing examiner or superior court, he must comply with RAP 2.3(b), which establishes the circumstances under which discretionary review may be accepted. (footnote omitted) But all his arguments arise directly from the hearing examiner's land use decision. Holder did not file a petition for discretionary review and the issues raised do not satisfy RAP 2.3(b) standards, thus, we decline further review.” *Id.*, at 107-108.

Unlike Mr. Holder, the Brothertons never took the initial step of using LUPA to gain the appellate jurisdiction of the Superior Court over what aggrieved them, the denial of the waiver that would allow them to use the Park Model RV with a holding tank for any sewage that human occupation of the RV might create.² Thus, the logic of the *Holder* case appears more applicable to the Appellants than it was to Mr. Holder and this Court can conclude that it lacks any jurisdiction to hear the appeal of these Appellants. While it is true both parties did not analyze LUPA, since the

² Neither party argued LUPA below as it was first brought to the parties' attention by Judge Spearman, who suggested it as a possible cause of action/affirmative defense during oral arguments on the cross-motions for Summary Judgment. VRP 9:10 to 10:14.

failure to invoke LUPA was and is a jurisdictional defect, the Respondent has authority to raise this issue for the first time on appeal. RAP 2.5(a)(1).

The County will not delve into whether the Appellants would have had success under LUPA. Such an exercise would be purely an academic one in any regard since it is far too late to bring a LUPA Petition now. The County requests that this Court find it lacks subject-matter jurisdiction and therefore should affirm the trial court decision.

II-APPELLANTS SEEK ONLY TO HAVE THE LOCAL CODE VOIDED, AND BY DOING SO HAVE ABANDONED AT LEAST TWO ALLEGATIONS FOUND IN THEIR COMPLAINT

Appellants have strayed far from the contours of their August 2009 Complaint. They narrow their appeal to a single issue, i.e., that the local OSS code, codified at Ch. 8.15 JCC, was and is unlawful and unenforceable. For example, at page 9 of the Opening Brief Appellants write:

“The Respondent continued to confuse the issue by arguing the validity of Appellant’s (sic) waiver request. This is not the issue at bar. The only issue is whether JCC 8.15.165 contradicts WAC 246-272-0420.”

At page 11 the Appellants write: “The issue at bar, then, is whether JCC §8.15.165 conflicts with the State statute granting the [LHO]’s specifically

delegated discretionary authority by also requiring a special hardship exist.”

Appellants’ Opening Brief to this Court has strayed quite far from the allegations set forth in the Complaint and therefore arguments found in Counts I and III of the Complaint have been abandoned by the Appellants. This panel need not consider them. See *Seattle-First Nat. Bank v. Shoreline Concrete Co.* 91 Wn. 2d 230, 588 P.2d 1308 (1978) (subcontractor’s solitary reference to a possible defense [an alleged duty owed by a co-tortfeasor employer] amounts to an abandonment of that defense by employer). Justice Stafford wrote: “[w]e will not consider issues apparently abandoned at trial and clearly abandoned in this court.” *Id.*, at 243. “[P]ro se litigants are bound by the same rules of procedure and substantive law as attorneys.” *Westberg v. All-Purpose Structures*, 86 Wn. App. 405, 936 P.2d 1175 (1997).

Count I of the Complaint (CP 3, 4) alleges that Ch. 8.15 JCC, the County’s OSS code, was invalidly enacted because the County did not comply with the Administrative Procedures Act (or “APA”) while enacting the OSS code. Yet that is not argued in the Opening Brief. Instead, with no basis in the Complaint, the Appellants now ask this Court to void JCC §8.15.165 not because of APA violations but instead for other reasons. Appellants make two arguments for the first time to this panel:

alleging that 1) the notice of public hearing provided prior to the adoption of the local code in July 2007 was deceptive in that it did not inform the world that the local code would be more stringent than the state WAC (Opening Brief p. 2, 3) AND 2) the County legislature in enacting a more stringent code failed to make the findings that would support a more stringent local code (Opening Brief, p. 13, 14). The Honorable Theodore Spearman heard the oral argument on the parties' cross CR 56 motions. Judge Spearman, upon learning that both of these new arguments were NOT contained anywhere in the three submissions Appellants made in the context of the cross CR 56 motions, correctly refused to consider those arguments. VRP 18:14 to 20:16.

Similarly, the Complaint (CP 1-7, inclusive, particularly Count III of the Complaint) and the pleadings submitted by the Brothertons below (CP 19-21, 250-252 for example) all focus on an alleged violation of Art. I, §12 of the State Constitution, known as the "privileges and immunity" clause. In support of this claim the Appellants provided an "equal protection" analysis to the trial court starting at CP 19 and CP 250. Yet, with no basis in the Complaint or their trial court pleadings, the Appellants have switched to a "due process" ("void for vagueness") argument at

pages 14 to 16 of the Opening Brief.³ All of these arguments (deceptive public notice, no findings to support a more stringent code and void for vagueness) are not only NOT found in the record below but they are OUTSIDE the proverbial “four corners” of the Complaint filed by Appellants. None of these arguments, even if present in the Complaint, would have changed the outcome below and thus cannot be argued for the first time here. All should be ignored by this Court and should lead this Court to affirm the trial court Judge’s decision.

III-THE LHO DID NOT ABUSE HIS DISCRETION BY DENYING THE WAIVER APPLICATION MADE BY THE BROTHERTONS

The LHO acted well within his discretionary authority to grant or not grant the waiver requested by the Appellants because his decision to not grant the waiver was not an arbitrary and capricious one. Although this matter comes to the Court as the appeal of a Summary Judgment granted to the County, the crux of this matter is whether the LHO acted within his lawful discretion when he repeatedly informed the Appellants

³ The only logical inference that can be obtained from these statements is the conclusion by the Appellants that if they can convince this Court to discard the local OSS code, then they will be entitled to their waiver pursuant to state regulation. Or, in the alternative, perhaps the Appellants simply want to win the academic exercise of seeing the local OSS code invalidated. They are entitled to neither form of relief they apparently seek.

they were not entitled to the waiver they were seeking. The appropriate standard of review for this case is “abuse of discretion.”

Courts do not find an abuse of discretion unless the challenger can show the disputed action was “arbitrary or capricious.” An act is arbitrary or capricious only if it is a “willful and unreasonable action, without consideration and regard for facts or circumstances.” *Landmark Dev., Inc. v. City of Roy*, 138 Wash.2d 561, 573, 980 P.2d 1234 (1999) (city can charge increased water system hook-up fees to Landmark fees greater than it did to a different developer because other developer asked for hookups before City lawfully increased the fee from \$350 to \$920.)

The discretion to grant or not grant the requested waiver always rested entirely with the LHO pursuant to WAC 246-272A-0420. The waiver request may be denied although Appellants may satisfy the technical requirements of WAC 246-272A-0240(3) when the Appellants CANNOT ALSO satisfy, in the mind of the LHO, the public policy codified at WAC 246-272A-0420(1)(b), specifically that granting the waiver would be “consistent with the standards in, and the intent of, the public health protection purpose and objectives of these rules.” The relevant portion of the WAC states “consistent with the standards in and objectives of these rules,” undoubtedly a reference to all of Ch. 246-272A WAC rather than a reference to the contents of the two advisory

(and non-regulatory) guidance documents from State DOH that Appellants rely upon so heavily because their application may satisfy the technical requirements found therein.

Regarding the standards and objectives of the rules, LHO Locke wrote to the Appellants on December 31, 2008 “[w]hat is lacking in your application is a compelling rationale for granting a waiver of this type when available evidence suggests your property will support an [OSS] that is fully-compliant with state and local [OSS] regulations.” CP 207 “Reducing the cost of an [OSS] is an insufficient reason to grant a waiver.” CP 207-08 and CP 205 to 219, generally.

The LHO did not abuse his discretion and the decision of the trial court finding that the Jefferson County Board of Health lawfully affirmed the LHO’s denial of the waiver request should be affirmed.

IV-THE STATE OSS CODE DOES NOT PRE-EMPT THE COUNTY’S OSS CODE, THUS COUNT TWO OF THE APPELLANTS’ COMPLAINT WAS PROPERLY DISMISSED BY JUDGE SPEARMAN BELOW

While not conceding for the reasons above that this Court has any jurisdiction over any of the allegations found in Appellants’ Complaint, the County notes that Appellants have argued their pre-emption issue as originally found in Count II of the Complaint. Opening Brief, at pages 5

and 6. Therefore, the County is obligated to respond to this argument in case it remains a viable allegation.

Such an argument is on its face absurd and even if true does not help the Appellants obtain their waiver.⁴ The LHO has been granted by the Legislature broad powers to protect the health and welfare of the citizens in his or her jurisdiction (RCW 70.05.070) and may grant waivers in the OSS context pursuant to RCW 70.05.072. Similarly, the various county or regional Boards of Health “shall [e]nact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;” RCW 70.05.060(3). Finally, the local government is authorized to adopt a more stringent OSS code if it memorializes its reasons for doing so. RCW 70.118.050 and WAC 246-272A-0015(15).

While Appellants should have invoked LUPA years ago, they did not and thus Count II was and is most akin to a request for Declaratory Relief, specifically a judicial Declaration that the local OSS code is

⁴ The LHO held full discretion to grant or not grant the waiver pursuant to WAC 246-272A-0420. The waiver request was denied because the LHO concluded the Appellants COULD NOT ALSO satisfy the public policy codified at WAC 246-272A-0420(1)(b), specifically that granting the waiver would be “consistent with the standards in, and the intent of, the public health protection purpose and objectives of these rules.” Compliance with any state-issued technical (and advisory) documents was never enough to guarantee granting of the waiver Appellants requested. See Legal Argument III above.

unlawful because it intrudes on a regulatory area that is the sole province of the state.

Appellants asked a trial court for Declaratory Relief against an allegedly unconstitutional Ordinance much too late. Because Ch. 7.24 RCW does not contain a specific timeliness provision that would govern when such a Complaint for Declaratory Relief must be filed, courts of this state have required the injured party to file a Complaint based on Ch. 7.24 RCW within a “reasonable time.” One appellate panel has written that “[w]hat constitutes a reasonable time is determined by analogy to the time allowed for appeal of a similar decision as prescribed by statute, rule of court or other provision. (citation omitted.)” See *City of Federal Way v. King Cty.*, 62 Wn. App. 530, at 536-37, 815 P. 2d 790 (1991.) There Federal Way challenged an emergency county ordinance and Division One, looking for an analogous limitation period, found that the County Code only allowed 20 days for an appeal of any decision by the County legislature. As a result, Federal Way’s appeal based on Ch. 7.24 RCW and filed on the 38th day was untimely. In a similar vein see *Bellewood I & Sammamish Woods v. LOMA and City of Issaquah*, 124 Wn. App. 45 (2004), where an eight month delay in challenging an Ordinance was deemed to be unreasonable and was thus grounds for dismissing a Complaint for Declaratory Relief.

The cases described above are analogous to what this Appellants are seeking to do since like the Plaintiffs in *City of Federal Way* and *Bellwood I* the Brothertons are asking the Superior Court to undo legislative decisions made nearly three years ago by the Jefferson County Board of Health.

Appellants' pre-emption argument similarly proves to be untimely under numerous other analogous statutes. If the now-challenged local OSS were a development regulation adopted pursuant to Ch. 36.70A RCW, the Growth Management Act or "GMA," then Appellants would have had 60 days to challenge the ordinance. RCW 36.70A.290(2). The same 60 days Statute of Limitations would apply to any person aggrieved by adoption of a new or amended Shoreline Master Program ("SMP") in this County since this County plans under GMA. RCW 90.58.190(2). Outside of a GMA-planning County any appeal of a new or revised SMP must be initiated within 30 days in accordance with RCW 90.58.190(1) and RCW 34.05.542(2). These rules further an important public policy: policy decisions by legislative bodies should be subject to short appeal periods so that governments can get on with the business of governing rather than using scarce resources to defend policy decisions made earlier and relied upon in the interim. Both the regulators and the regulated are entitled to certainty with respect to local ordinances.

If adoption of Ch. 8.15 JCC amounted to rule-making such that Ch. 34.05 RCW (the Administrative Procedures Act) regulated the County's rule-making, then RCW 34.05.375 (the APA Statute of Limitations is two years) also bars the request for relief found in the Complaint at Count II. *RCW 34.05.375 also bars the cause of action found in Count I of the Complaint.*⁵

If none of these Statute of Limitations applied to adoption of the local OSS, then the more general rule of RCW 36.32.330 would apply. That statute allows the aggrieved person only 20 days to file an appeal of a decision by a County Commission.

Appellants may argue that "equitable tolling" makes this facial challenge to the local OSS Code (found in Count II of their Complaint) viable despite the two years plus that have lapsed since Ch. 8.15 JCC was enacted. Not only is equitable tolling a form of relief only sparingly granted, but Appellants have not shown the necessary predicate for "equitable tolling," i.e., deception or false assurances since it has been quite clear since July 2007 that JCC §8.15.165 contained the allegedly unlawful phrases "special circumstances" and "unnecessary hardship." It is the Appellants and not the County that contends that these are extra

⁵ The County explained in briefing below why Count I is time-barred. See CP 263, 264, 265.

requirements that were hidden from the public. The County strongly disputes that interpretation and any assertion that the plain meaning of those words was interpreted by the County as additional or extra requirements.⁶ The same logic should prevent this Court from applying the discovery rule to Count II's untimely claim.

Two years and one month later and in the context of a permitting decision (waiver denial) is not a lawful time to assert a facial challenge to a local Ordinance, which carries with it the presumption of validity. *Louthan v. King County*, 94 Wn. 2d 422, 628 P. 2d 171 (1980) (“The ordinance is entitled to a presumption of validity and the burden of showing otherwise rests heavily on the challenger.”)

On the slim chance that Count II survives the County's assertion that it is time-barred the County and if the Court chooses to assume that because of JCC §8.15.165(2)(a)(i) and (ii) the local OSS code is more stringent than the parallel state OSS code, then there was a finding made by the County Board of Health now codified at JCC §8.15.020. That finding satisfies the requirement found in RCW 70.118.050:

“If the legislative authority of a county or city finds that more restrictive standards than those

⁶ The only evidence in the administrative record states those two phrases are “additional considerations,” not “requirements,” confirming that those two phrases serve to explain WAC 246-272A-0420(1) rather than pile on more criteria for the waiver applicant to satisfy. CP 207.

contained in *section 2 of this act or those adopted by the state board of health for systems allowed under *section 2 of this act or limitations on expansion of a residence are necessary to ensure protection of the public health, attainment of state water quality standards, and the protection of shellfish and other public resources, the legislative authority may adopt ordinances or resolutions setting standards as they may find necessary for implementing their findings.”

No case law explains the quantity or quality of a finding the local government must make to in order to comply with this RCW, thus this finding is adequate for that purpose.

The Appellants are arguing that the local OSS code forbids what state law permits. Such a conflict if it exists would make the local OSS code unlawful.

However, as is true in this case, if the local code and the state code can be harmonized, then there is no conflict and the local code will be deemed lawful. *Lawson v. City of Pasco*, 2010 WL 1492807, ___ P. 3d ___ (WA Supreme Ct., #81636-1, 4/15/2010). In *Lawson* the State Supreme Court found no conflict existed between the Manufactured/Mobile Home Landlord-Tenant Act (“MHLTA”) which regulates rights and duties arising from mobile/manufactured home tenancies, which may include residential RVs and the Pasco ordinance which prohibits placing RV’s within any mobile home park within Pasco.

The Court did not read the MHLTA to affirmatively make the placement of RV's within any and all mobile home parks a right accruing to all citizens including Mr. Lawson. The *Lawson* majority wrote:

“Mobile home lot” describes “a portion of a mobile home park ... designated as the location of one mobile home, manufactured home, or park model ... and intended for the exclusive use as a primary residence....” RCW 59.20.030(9). And a “park model” is a “recreational vehicle intended for permanent or semi-permanent installation and ... used as a primary residence.” RCW 59.20.030(14), This acknowledgement that park models could be present on mobile home lots is not equivalent to an affirmative authorization of their presence. The statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement.

¶ 16 We faced a similar issue in *Weden v. San Juan County*, 135 Wash.2d 678, 958 P.2d 273 (1998). In that case, a state law required boats to be registered before they could operate in state waters. We rejected Weden's argument that the law implied a right to operate vessels in all waters in the state. We reasoned that the law created no right; it merely imposed a condition on operation. In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wash.2d 106, 108, 594 P.2d 448 (1979), which addressed a conflict with another motor boat statute, we stated, “There being no express statement nor words from which it could be fairly inferred that motor boats are permitted on all waters of the state, no conflict exists....” Similarly, the MHLTA contains no language creating a right to place RVs in mobile home parks anywhere in the state. The statute imposes no restrictions on local government's regulation of landlord-tenant relationships involving mobile/manufactured

homes; it merely regulates such tenancies once they exist.” 2010 WL 1492807, p. 4 (Emphasis supplied.)

Appellants are situated just as Mr. Lawson was. Lawson wrongly relied on a false understanding of what the state regulation affirmatively authorizes, i.e., the presence of an RV at any mobile home park inside Washington regardless of any contradictory text in a local code. Similarly, the Brothertons are mistaken when they assert their indisputable right to a waiver simply because they have satisfied the state’s technical requirements for holding tanks. The state OSS code does not include text granting such an automatic permission. Nor would Ch. 8.15 JCC prevent an applicant in technical compliance from obtaining a waiver if the waiver would be, in the opinion of the LHO, also consistent with the public policy memorialized in Ch. 246-272A WAC. Appellants’ position ignores the parallel and harmonious texts found in WAC 246-272A-0420(1)(b) and JCC §8.15.165(2)(a)(iii), both of which require the waiver applicant to convince the LHO that issuance of the waiver would be consistent with the standards and purposes of the state’s OSS code IN ADDITION to meeting any and all technical requirements.

There is no disharmony between the state and local OSS codes and thus the Appellants’ pre-emption argument is meritless.

V-THE EQUAL PROTECTION CLAIM OF APPELLANTS, IF EXTANT, IS MERITLESS AND THE TRIAL COURT SHOULD BE AFFIRMED

If this Court possesses jurisdiction to hear the equal protection claim of the Appellants made in Count III of the Complaint, then this Court should, upon further examination of this allegation find it to be without merit.

The Third Cause of Action alleged by Plaintiffs should be dismissed with prejudice because it fails to reflect the process regarding waivers AND it does not accurately represent the state and local codes with respect to waivers and residences. As such the allegation found in the Third Cause of Action has no basis in fact or in law and should be immediately rejected.

A careful reading of the Complaint is necessary. CP 5. The Brothertons allege that the discrimination against them occurred because their proposal for using a holding tank in conjunction with an operation and management plan while sufficient for a commercial enterprise was deemed by the LHO Locke to be not worthy of a waiver for residential use. CP 5, Complaint, ¶3.3.1. The LHO's reasoning for the distinction between commercial and residential systems was that WAC 246-272A-240(2)(a) allowed holding tanks "(f)or permanent uses limited to

controlled, part-time, commercial usage situations, such as recreational vehicle parks and trailer dump stations” but specifically banned their use for residential settings unless conditions specified in WAC 246-272A-240(2)(b) or 246-272A-240(2)(c) are present (i.e. interim use for emergencies or for certain types of repairs). Appellants then assert, entirely incorrectly and contrary to the express text of WAC 246-272A-0240(2), that the State Department of Health would have granted a waiver for this residential use. See CP 5, the Complaint, at ¶3.3.2. Of course, the State Department of Health neither grants waivers nor even takes the initial step of deciding whether a waiver should be granted. Instead that task falls upon the LHO pursuant to RCW 70.05.072, which states:

70.05.072. Local health officer--Authority to grant waiver from on-site sewage system requirements

The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if

- (1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;
- (2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;
- (3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and
- (4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected.

While the issuance of waivers is up to the sole discretion of the LHO, there is a state-controlled “brake” on the LHO. An LHO who abuses the process by granting too many waivers may have his authority to issue waivers revoked by the State DOH.⁷

If the State DOH did have authority to issue a waiver to the Brothertons, presumably it would not have done so because, in part, the Brothertons have plenty of room on their parcel to install an OSS of sufficient size for their residence and the Park model RV. In other words, the Brothertons cannot satisfy any portion of WAC 246-272A-0420(1), regardless of which entity or person is charged with implementing that

⁷ Note also that the text of RCW 70.05.072(3) is precisely duplicated in JCC §8.15.165(2)(a)(iii).

WAC. There is no “real world” difference in the application of the state code to the Brothertons’ waiver request as compared to application of the local code to that same waiver request. That alone should be enough reason to find the equal protection claim meritless.

However, pursuant to longstanding case law only a single rational basis is required to support the constitutionality of an economic regulation such as Ch. 8.15 JCC. See *Sonitrol Northwest, Inc. v. City of Seattle*, 84 Wash.2d 588, 590 (1975), where the State Supreme Court, in upholding a different municipal tax rate for centrally monitored alarm firms as opposed to firms that merely install stand-alone home alarms not connected to an outside monitoring location, concluded “[t]he test for purposes of classification is merely whether ‘any state of facts reasonably can be conceived that would sustain (the classification). Citation omitted.’” Here the County has listed five rational bases for the decision not to grant this waiver, among them, for example, the fear that if this particular waiver was granted it would soon make the holding tank waiver the exception that “ate” the general rule because anyone who could meet the technical requirements for a holding tank would go that route instead of installing the more expensive, more protective and more typical OSS. CP 189, ¶33 to ¶35, inclusive. CP 208-217 generally.

VI-JEFFERSON COUNTY IS ENTITLED TO ITS REASONABLE ATTORNEY'S FEES AND COSTS SHOULD THE TRIAL COURT DECISION ON THE MERITS BE UPHeld BY THIS COURT

Should this appellate panel affirm the decision below by Judge Spearman on the merits, which, in essence, affirmed the LHO's denial of the Appellants' waiver request, then the County is entitled to recover from the Appellants its reasonable attorney's fees and costs.

The text of RCW 4.84.370 expressly allows for this recovery of costs when a party (including a local government such as the county) is successful in both the trial and appellate courts. RCW 4.84.370 states, in relevant portion:

“(1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a)

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a

prevailing party if its decision is upheld at superior court and on appeal.”

On point for the litigation now before this Court is *Pavlina v. City of Vancouver*, 122 Wn. App. 520, 94 P.3d 366 (2004) (city entitled to its fees and costs under RCW 4.84.370 because it prevailed before the Hearing Examiner, the trial court and the Court of Appeals).

There can be no doubt that a waiver from an OSS regulation is a decision by a County that would be governed by RCW 4.84.370 because in the absence of an available sanitary sewer system, no structure can be used or inhabited by humans without an approved OSS. See *Harrington v. Spokane County*, 128 Wn. App. 202, 114 P.3d 1233 (2005) and JCC §8.15.060(1). The Appellants’ Park Model RV is not connected to an approved OSS and thus it is not lawfully habitable by humans.

Through entry of an Order granting the County’s CR 56 Motion the trial court decided this matter on the merits favorably for the County. Should this court affirm that trial court decision, the County would be entitled to recover its attorney’s fees and costs pursuant to RCW 4.84.370. This request is made pursuant to RAP 18.1

CONCLUSION

For all of the reasons and analysis provided above this Court should affirm the decision of the Hon. Theodore Spearman below, a decision that dismissed the Complaint of the Appellants with prejudice.

DATED this 25th day of May 2010



DAVID ALVAREZ, WSBA #29194
Chief Civil Deputy Prosecuting Attorney
On behalf of Respondent, Jefferson County

Brothertons (Appellants) vs. Jefferson County
(Respondents)

Case #40108-8-II

ATTACHMENT #1

Jefferson County On-Site Septic Code
Ch. 8.15 Jefferson County Code

Chapter 8.15

ON-SITE SEWAGE DISPOSAL SYSTEMS¹

Sections:

- 8.15.010 Authority – Scope.
- 8.15.020 Purpose.
- 8.15.030 Adoption by reference.
- 8.15.040 Administration.
- 8.15.050 Definitions.
- 8.15.060 Adequate sewage disposal required.
- 8.15.070 No discharge to water or ground surface.
- 8.15.080 On-site sewage system permit.
- 8.15.090 Design.
- 8.15.095 Commercial on-site sewage systems.
- 8.15.100 Community on-site sewage disposal systems.
- 8.15.105 Subdivision requirements.
- 8.15.110 Inspection.
- 8.15.120 Sewage system installer.
- 8.15.130 Septic tank pumps.
- 8.15.140 Operation and monitoring specialist.
- 8.15.150 Operation, maintenance and monitoring.
- 8.15.165 Waiver of state or local regulations.
- 8.15.170 Appeal – Hearing.
- 8.15.180 Enforcement – Penalty.
- 8.15.190 Severability.
- 8.15.200 Fees.
- 8.15.210 Effective date.
- 8.15.220 Conflict.
- Table 1 Third party operations/monitoring inspection schedule for on-site sewage systems.

8.15.010 Authority – Scope.

Pursuant to Chapters 43.20 and 70.05 RCW, the Jefferson County board of health is charged with the duty of protecting the public health and safety of all inhabitants of Jefferson County, and enacting such rules and regulations as are necessary in order to carry out these responsibilities and provide for the enforcement thereof. The provisions of this regulation shall apply to all territory within the boundaries of Jefferson County. [Ord. 6-07]

8.15.020 Purpose.

The purpose of these regulations is to assure protection of public health by:

(1) Minimizing the public health effects of on-site sewage systems on surface water and ground water;

(2) Minimizing the potential for public exposure to sewage;

(3) Establishing design, installation and management requirements for on-site sewage systems to accommodate long-term treatment and disposal of sewage;

(4) Enhancing protection of environmentally sensitive areas within Jefferson County; and

(5) Complying with the intent of Chapter 246-272A WAC. [Ord. 6-07]

8.15.030 Adoption by reference.

Chapter 246-272A WAC, On-Site Sewage Systems Rules and Regulations of the State Board of Health, as now or hereafter amended, is hereby adopted by reference as rules and regulations of the Jefferson County board of health. [Ord. 6-07]

8.15.040 Administration.

The Jefferson County environmental health director, through authority delegated by the Jefferson County board of health and the Jefferson County health officer, shall administer these regulations. Fees may be charged for this administration. [Ord. 6-07]

8.15.050 Definitions.

In addition to those definitions set forth in Chapter 246-272A WAC, the following definitions shall also apply in this regulation:

“Accessory dwelling unit” means an additional dwelling unit either in or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the main structure, for use as a complete, independent living facility with provisions within the accessory dwelling unit for cooking, eating, sanitation, and sleeping. Such a dwelling shall be considered an accessory use of the main dwelling and be clearly subordinate to the main dwelling.

“Certification” means a certificate granted by the health officer permitting a person to practice in the field of sewage disposal as an operation and monitoring specialist, installer, or pumper of on-site sewage systems.

“Chain of custody” means a procedure to ensure that samples have been in the possession of, or secured by, an authorized person at all times from sample collection to receipt by the laboratory. The procedure includes:

1. Prior legislation: Ords. 1-69, 2-77, 1-80, 1-83, 1-87 and 4-90.

(a) Obtaining the sample by health officer or designee with owner or owner representative present.

(b) Assignment of sample ID number.

(c) Labeling/tagging the sample container with assigned number and location taken.

(d) Documentation by authorized sampler of date and location of samples taken.

(e) Delivery by secured means to the certified laboratory.

“Commercial on-site sewage system” means any nonresidential or combined residential/nonresidential on-site sewage system with a design flow of up to 3,500 gallons per day.

“Community on-site sewage system” means any on-site sewage system designed to serve two or more independent stand-alone dwelling units with design flows of up to 3,500 gallons per day. An OSS serving only one single-family residence plus one accessory dwelling unit is not considered a community on-site sewage system.

“Department” means the Washington State Department of Health.

Design. An on-site sewage disposal system design shall consist of a complete scale drawing of the site plan showing the proposed sewage disposal system, including all relevant details as specified herein and in Chapter 246-272A WAC and Jefferson County policies. The design shall use the format and forms provided or approved by JCPH. Proper identification and location of soil logs and drainfield components at the site are considered to be part of the design.

“Designer” means an individual authorized by the Washington State Department of Licensing to perform design services for on-site wastewater treatment system pursuant to Chapter 18.210 RCW. Throughout this chapter this term applies to both on-site sewage treatment system designers licensed under Chapter 18.210 RCW and professional engineers licensed under Chapter 18.43 RCW.

“Dwelling unit” means a unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Education contact hours” means contact participation in an organized educational experience led or facilitated by qualified sponsorship, capable of direction and qualified instruction. Courses must be approved by the health officer or designee and be sources of expanded knowledge pertaining to on-site sewage treatment and disposal. A copy of the agenda or syllabus showing date, time, subject matter, presenter, sponsor and evidence of actual

participation must be presented at the time of certification renewal. This evidence could be in the form of a certificate of completion, a receipt or a copy of the attendance roster of the training event.

“Environmentally sensitive areas” means geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife habitat areas, all as defined through Chapter 356-190 WAC as “critical areas” and regulated in Chapter 18.15 JCC as adopted or hereinafter amended.

“Evaluation of existing system” means a monitoring inspection of an OSS containing the information specified on forms approved by JCPH.

“Expansion” means a change in a residence, facility, site or use that:

(a) Causes an on-site sewage system to exceed its existing treatment or disposal capability; for example, when a residence is increased from two to three bedrooms or there is a change in use of the residence, or a change in use from an office to a restaurant; or

(b) Reduces the treatment or disposal capability of the existing on-site sewage system or the reserve area; for example, when a building is placed over a reserve area.

“Failure” means a condition of an on-site sewage system that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include, but are not limited to:

(a) Sewage on the surface of the ground;

(b) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;

(c) Sewage leaking from a septic tank, pump chamber, holding tank, septic system component other than the drainfield, or collection system;

(d) Cesspools or seepage pits where evidence of ground water or surface water quality degradation exists;

(e) Inadequately treated effluent contaminating ground water or surface water, as demonstrated through: (i) a positive tracing dye result; and (ii) a coliform count of at least 500 organisms per 100 mL of water; or (iii) the presence of the disposal component of the on-site sewage system located in ground water; or

(f) Noncompliance with conditions stipulated on the OSS permit.

“Fees” means charges as hereinafter authorized by the Jefferson County board of commissioners or the Jefferson County board of health for issuing

permits, processing records, making inspections as found necessary, administrative processes, and certifying individuals in the practice of installing, pumping or maintaining/monitoring on-site sewage systems.

“Gray water” means sewage from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks. It includes sewage from any source in a residence or structure that has not come into contact with toilet wastes.

“Health officer” means the local health officer of Jefferson County public health, or a representative authorized by and under the direct supervision of the local health officer, as defined in Chapter 70.05 RCW.

“Installer” means an individual who has passed the Jefferson County installer’s exam, holds a current bond and insurance as specified in JCC 8.15.120, personally holds an installer’s certificate and directly supervises the installation and/or repair of an on-site sewage disposal system in Jefferson County.

“JCPH” means Jefferson County public health.

“Modification” means alteration of an existing on-site sewage component that does not result in an increase of the capacity of the system.

“Notice of violation” means written determination that an element or section of these rules and regulations has not been complied with.

“On-site sewage system (OSS)” means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and/or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, a soil dispersal component, and a reserve area. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. This includes systems previously defined as:

(a) Conventional. Systems consisting solely of a septic tank and a gravity SSAS, or those including a pump to a gravity SSAS.

(b) Alternative. All systems not defined as conventional, such as pressurized public domain treatment devices and proprietary products.

“Operation and monitoring specialist” means an individual with training, skill, and experience in the maintenance, monitoring, and operation of an OSS and who is certified by JCPH to inspect and monitor the performance of an OSS.

“Pre-occupancy inspection” means any inspection(s) of the OSS that are required before a certificate of occupancy can be issued.

“Probation” means a penalty period where the individual committing the violation shall be subject to additional review, reporting and/or inspection.

“Proprietary product” means a sewage treatment or distribution technology, method, or material subject to a patent or a trademark.

“Pumper” means an individual approved and granted a certificate to operate by the health officer to remove and transport wastewater or septage from septic tanks, pump chambers and portable toilets. Said individuals may repair baffles within the septic tank, install or repair risers on septic tanks or pump chambers, vacuum and hydro-jet systems, and install outlet baffle filters in a septic tank.

“Record drawing” means an accurate graphic and written record of the location and features of the OSS that are needed to properly monitor, operate, and maintain that system.

“Repair” means the reconstruction, relocation, or replacement of any portion of a failed or substandard on-site sewage system. This includes actions proposed to impact the soils surrounding the disposal component to increase the dispersal of effluent or remediate clogged soil surfaces.

“Resident owner” means a person who owns and occupies, or intends to occupy, a property.

“Residential sewage” means sewage having the constituency and strength typical of wastewater from domestic households not containing chemicals or other waste components atypical of a residential source.

“Revocation” means the termination of all the rights and privileges associated with a certification.

“Scale bar” means the graphic representation by which distances can be measured.

“Scum” means lighter solids, such as fats and grease, that rise to the top of a septic tank, holding tank or pump chamber.

“Septage” means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, holding tanks, pump chambers, and other OSS components or removed from grease traps.

“Septic tank” means a watertight treatment receptacle receiving the discharge of sewage from a building sewer or sewers, designed and constructed to permit separation of settleable and floating solids from the liquid, detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

“Sewage disposal permit” means a written permit, including conditions of approval, issued by the health officer or designee granting permission for the installation, modification, expansion, or repair of an on-site sewage system.

“Site installer” means an individual that has passed the installer’s exam and maintains an annual certificate, but is working under the direction, insurance and bond of a certified installer.

“Sludge” means heavy solids that settle to the bottom of a septic tank, holding tank or pump chamber.

“Soil log” means a detailed description of soil characteristics providing information on the soil’s capacity to act as an acceptable treatment and disposal medium for sewage. It includes the excavation as described in WAC 246-272A-0220(3).

“SSAS” means subsurface soil absorption system, as defined in WAC 246-272A-0010(2).

“Suspension” means the temporary termination of all rights and privileges associated with a certification.

“Violation” means a failure to comply with the provisions of applicable laws, rules or regulations including, but not limited to, instances or cases when:

(a) A designer submits a permit application or a record drawing of an on-site sewage disposal system which contains any significant deviation below the minimum requirements for siting or sizing of on-site wastewater treatment.

(b) An individual designs or installs an on-site sewage system that is not in accordance with the applicable regulations, or is not fitting the size, shape or topography of the site, within setbacks, as specified in Chapter 246-272A WAC, specification or approval of inadequate construction material, devices or methods.

(c) A system is not installed in accordance with the approved permit.

(d) An installer fails to notify the designer and/or JCPH when site conditions have changed making installation of the approved permitted system impossible or impractical.

(e) A pumper disposes of wastewater or septage at an unapproved disposal site.

(f) A designer fails to submit record drawing plans as specified in JCC 8.15.110(10).

(g) An authorized person fails to submit required reports to JCPH as specified in the conditions of the on-site sewage disposal permit or in this chapter.

(h) A certificate holder fails to pay fees as specified by Jefferson County ordinance.

(i) A person holding a certificate or license to install, pump or monitor an OSS fails to report to JCPH within 24 hours any nonfunctioning on-site components that could result in human contact with sewage effluent.

(j) An owner fails to complete required O&M inspections, comply with the O&M schedule in Table 1 following this chapter and/or submit the reports to JCPH or the approved entity.

(k) An owner fails to comply with conditions of the on-site sewage permit.

“WAC” means Washington Administrative Code. [Ord. 6-07]

8.15.060 Adequate sewage disposal required.

(1) Every residence, place of business, or other building or place where people congregate, reside or are employed shall be connected to an approved public sewer. If no public sewer is available, the building sewer shall be connected to an on-site sewage system approved by the health officer. Said sewage disposal system shall be built or rebuilt, constructed and maintained in such manner as to meet the requirements as prescribed by the health officer in accordance with minimum requirements and standards of Chapter 246-272A WAC and this code. Such system may include the use of waterless toilet devices in conjunction with an approved gray water system or other proprietary products approved by Washington State Department of Health.

(2) Any unit/facility with the potential to generate wastewater by virtue of being equipped with a toilet, sink, shower or other plumbing fixture shall be connected to an approved public sewer or shall be connected to an on-site sewage system approved by the health officer.

(3) Any new or replacement residence or commercial structure, or any expansion, as that term is defined in JCC 8.15.050, may be connected to a pre-existing on-site sewage system only when the pre-existing system has hydraulic capacity, sufficient vertical and horizontal separation, an adequate reserve area and satisfies all other requirements to be in compliance with current code. [Ord. 6-07]

8.15.070 No discharge to water or ground surface.

Effluent from any on-site sewage disposal system shall not be discharged directly or indirectly to surface water or upon the surface of the ground, except where expressly permitted by JCPH or by the Washington State Department of Ecology. [Ord. 6-07]

8.15.080 On-site sewage system permit.

(1) No person shall install or cause to be installed a new on-site sewage system, nor perform any modification, extension, repair, relocation or connection to an existing on-site sewage system without a valid permit issued by the health officer.

(2) When applying for a permit to install an on-site sewage system, a detailed to-scale construction plan of the proposed system and site is required and shall include all items identified herein. Each application shall contain the information required herein, and those items identified on the septic permit application form as a minimum.

(3) The minimum land area required for approval of an OSS permit shall be determined by either Method 1 or Method 2 analysis as established in Chapter 246-272A WAC. Applications shall be reviewed in accordance with Jefferson County Policy 97-2 adopted by the board of health as amended or replaced.

(4) Where more than one lot is required to meet minimum land area requirements for issuance of a permit, a declaration of restrictive covenant shall be recorded binding together, at a minimum, the lots required to meet the minimum land area requirements. Any remaining lots not included in the declaration of restrictive covenant must either meet minimum land area requirements or have a notice recorded to the title stating that the lots do not meet minimum land area requirements for a septic system and that the lots are not eligible for a waiver under Jefferson County Policy 97-2 or as amended or replaced.

(5) Permits are transferable with property ownership.

(6) Any sewage disposal permit issued under this section shall be valid for a period of three years from the date of issuance.

(a) The permit may remain valid if the property for which the permit has been issued also has an active building permit for a structure that will be connected to the on-site sewage system.

(b) If the system is not installed before the permit expires, a new permit may be applied for based on standards in effect at the date of the new application. Information as specified in JCC 8.15.090 shall be submitted with any new application.

(7) Repair Permit. Repair permits shall expire 90 days from the date of issue. Repair permits may be renewed for an additional 90 days if the health officer determines it is warranted.

(8) The health officer may revoke or deny a permit for due cause. Examples include, but are not limited to:

(a) Development or continued use of an OSS that threatens the public health;

(b) Misrepresentation or inaccuracy in the construction plan or the permit application, whether intended or accidental, shall be considered as grounds for invalidating and voiding any application or permit issued under this section. The applicant or their authorized agent is responsible for the accurate representation of all information presented to the health officer;

(c) Failure to meet conditions of the permit or the regulations; or

(d) Changes or alterations to the site such as grading, filling, clearing, or burning operations.

(9) Jefferson County public health shall have neither an obligation nor the power to reduce the requirements to accommodate a designer or installer's error.

(10) For any on-site sewage system proposed to serve a structure requiring a flood control zone permit under the provisions of Chapter 86.16 RCW and Chapter 508-60 WAC, or requiring a flood plain certification by Jefferson County under the provision of the flood damage prevention ordinance, the OSS installation permit shall not be issued until a flood control zone permit or flood plain certification has been issued in accordance with Jefferson County Ordinance 18-1120-95 or subsequent amendments. An OSS installation permit shall comply with the standards in said ordinance.

(11) On-site sewage disposal permits shall comply with regulations and policies established in the Jefferson County comprehensive plan, Jefferson County zoning code, critical areas ordinance, the Jefferson County shoreline master plan and any other duly adopted land use regulations of Jefferson County, the city of Port Townsend in the case of lands within the city, or the state of Washington.

(12) Any pending and all future permits and approvals by the JCPH for the subject property shall be withheld when written notice of noncompliance with Jefferson County and other applicable codes has been provided to the property owner. Permits and applications shall be released only upon satisfactory remedy of the noncomplying action or activity.

(13) No on-site sewage system permit shall be issued for industrial, chemical or hazardous waste disposal.

(14) A soil log report shall be provided on a health department-approved form by the individual who performed the soil evaluation. The report shall identify the date the soil observations were made and the name of the individual who logged the soils

for the report. Soils evaluation shall be completed by a designer or professional engineer licensed in the state of Washington, soil scientist licensed in the state of Washington, or the local health officer or designee.

(15) Uniform soil testing procedures shall be as described under WAC 246-272A-0220 and be used in addition to the following procedures:

(a) A minimum of two soil logs shall be dug in each the proposed primary area and the proposed reserve area of sufficient size and depth to accurately determine site suitability for on-site sewage disposal;

(b) The health officer or designee may require additional soil logs or such further testing as is necessary to determine the adequacy of a site for on-site sewage disposal;

(c) Where sieve analysis tests are required, they shall be completed by a certified lab and chain of custody requirements shall be followed.

(16) It shall be the responsibility of the owner or owner's authorized representative to fill/cover the holes provided for evaluation of the soils for an installation permit or subdivision review within 10 days following notification that the inspection by the health officer is complete. The property owner shall be notified in writing when the inspection has been completed.

(17) Any OSS not located entirely on the property originating the sewage must be secured by appropriate easements and/or a covenant recorded with the Jefferson County auditor's office prior to issuance of the permit unless specifically waived by the health officer. In all cases, the easement or covenant shall be secured and recorded prior to final approval of the system installation.

(18) Pending on-site sewage disposal permit applications.

(a) Applications for which no decision has been issued within 12 months following the date of application, due to a lack of action by the applicant, and after receipt of written notice of pending expiration, shall expire by limitation.

(b) The health officer may extend the time for action by the applicant for a period not to exceed 180 days upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once.

(c) In order to renew action on an application after expiration, the applicant shall resubmit the application and plans, pay current application fees and meet current rules and regulations.

(d) The applicant shall be provided a 60-day notice by certified mail of the pending expiration of a permit application.

(e) The statement "Voided - Lack of Action" shall be entered on the record for an expired pending permit application.

(f) Plans and other data submitted for review shall thereafter be retained as per the Jefferson County records retention schedule. [Ord. 6-07]

8.15.090 Design.

(1) All on-site sewage disposal systems shall be designed in accordance with these rules, and the criteria in Chapter 246-272A WAC, by the local health officer, by an on-site sewage system designer licensed by the Washington State Department of Licensing to perform design work pursuant to Chapter 18.120 RCW or by a licensed engineer pursuant to Chapter 18.43 RCW.

(2) Permits shall be issued for wastewater meeting domestic waste strength criteria as defined in the "Design Manual: On-Site Wastewater Treatment and Disposal Systems," United States Environmental Protection Agency, EPA-625/1-80-012 and EPA-625/R-00/008 except where modified by, or in conflict with, Chapter 246-272A WAC or this code. Pretreatment shall be required for nonresidential/high-strength waste streams.

(3) Sewage system sizing criteria shall comply with the standards in Chapter 246-272A WAC.

(a) The number of bedrooms shall include all rooms labeled as bedrooms and any additional heated rooms not labeled as bathrooms, kitchen, living room and dining room, utility room and one bonus room except that the sewage system design may be for fewer than determined above if a covenant provided by the health officer and signed by the property owner is filed and recorded with the Jefferson County auditor, so as to be discovered during a title search, which declares the maximum capacity in bedrooms of the sewage system.

(b) In no case shall the septic system be sized for fewer bedrooms than the number of rooms labeled as bedrooms or sleeping rooms such as guest rooms or bunk rooms.

(c) The minimum design flow for any dwelling unit is 240 gallons per day.

(4) Reserve Area. As a minimum, an area equal to that required for a 100 percent replacement or repair, completely separate from the primary area, and shown dimensioned on the site plan.

(5) Permit application submittal shall include the following items. Each page shall contain a header with the name and address of the property owner, and the address or parcel number of the property.

(a) One copy of the JCPH "Septic Permit Application Form" providing all identified information. This form shall have the signature of the property owner or authorized representative as provided in writing.

(b) Three copies of the design and construction specifications. One copy shall have an original stamp and designer signature with date prepared.

(c) One copy of the soil log report submitted on a separate eight-and-one-half-inch by 11-inch sheet(s). The evaluation shall include the date of evaluation and identify the soil evaluator.

(d) One copy of the calculations and assumptions supporting the proposed design including all items outlined in subsection (7) of this section.

(e) One copy of the following information:

(i) Directions to the site.

(ii) Identification if the parcel is within the boundaries of a sewer utility.

(iii) If connecting to a community OSS provide:

(A) The name, location and permit number of said system.

(B) The name, address and point of contact with the system's management entity.

(C) A customer agreement with the management entity that provides a commitment to serve the parcel.

(iv) All easements impacting the OSS or access to the OSS, whether public or private, and whether or not recorded.

(v) All covenants impacting the OSS or access to the OSS, whether public or private, and whether or not recorded.

(vi) One copy of any special reports applicable to the project, such as geotechnical report or wetland delineation.

(6) Design and construction specifications shall include the following items and those required by Chapter 246-272A WAC. This portion of the application shall be no more than 10 pages, 11 inches by 17 inches, unless specifically authorized by the health officer. All sheets must be at least eight and one-half inches by 11 inches but not more than 11 inches by 17 inches.

(a) A complete, detailed, and dimensional site plan including:

(i) The date of the design, the designer's seal and the designer's signature.

(ii) An overall plan that represents the entire parcel to scale and identifies the location of the system components. A scale bar is required.

(iii) A scaled drawing of the area within 100 feet of the system that is at an engineering scale not to exceed one inch equals 50 feet. A scale bar is required.

(iv) Designated and dimensioned areas for the proposed primary system and the reserve area.

(v) The location of all soil logs and other soil tests for the OSS.

(vi) Location of utilities.

(vii) General topography and the percent slope of the site within 100 feet of the system and reserve areas.

(viii) Drainage characteristics.

(ix) The location of existing and proposed encumbrances including legal access documents if any component of the OSS is not on the lot where the sewage is generated.

(x) An arrow indicating north on all site plans.

(xi) Location of the essential tightline components of the sewage disposal system, including all plumbing stub outlets between the building(s) and septic tank(s), pump chamber(s), siphon chamber(s), tightline between septic tank or pump chamber and distribution network and all drain-field lines.

(xii) Identify cuts, banks, terraces, foundations, waters of the state, wells, driveways, waterlines, and surface or subsurface drains within 100 feet of the system and reserve.

(xiii) Identify the access route or driveway to the site.

(xiv) Clearly indicate scale on each site plan, including a scale bar.

(b) Construction specifications.

(c) Vertical cross-section drawings showing:

(i) The depth of the disposal component from native grade, the vertical separation, and depth of soil cover;

(ii) Septic tank;

(iii) Pump tank and its components;

(iv) Monitoring and access ports.

(7) Calculations and assumptions supporting the proposed design, including:

(a) Soil type;

(b) Hydraulic loading rate in the disposal component;

(c) Systems maximum and average daily flow capacity and how determined;

(d) Source of the sewage including waste strength characteristics;

(e) Where pumps are included, provide friction loss and dynamic head calculations.

(8) Nothing herein shall preclude the designer from providing supplemental information regarding the design directly to the client under separate cover.

(9) The proposed drainfield lateral/bed shall be staked in the field for inspection and review unless specifically waived by the health officer or designee.

(10) Septic tanks shall:

(a) Have watertight pumping access ports to ground surface over both compartments and at the outlet and inlet to facilitate inspection and maintenance. A homeowner may provide access ports to within six inches of the surface of the ground; provided, that a written agreement to uncover them for required O&M inspections has been recorded with the title to the property.

(b) Be set on a self-leveling, stable base.

(11) Distribution boxes shall be fitted with risers to grade. Distribution box risers shall be sized adequately to allow visible inspection of liquid level in the box, shall be constructed of durable materials and shall be equipped with secure, tightly fitted lids. [Ord. 6-07]

8.15.095 Commercial on-site sewage systems.

(1) Commercial on-site sewage systems as defined in this chapter shall be designed according to the standards contained in Chapter 246-272A WAC and this code.

(2) If the ownership is by more than one individual, a management and operations agreement shall be prepared by the applicant, approved by JCPH and recorded to the property as a covenant.

(3) All individual connections or separate uses within a commercial development shall be equipped with a water meter or other approved method for monitoring flows to the on-site sewage system.

(4) All commercial on-site sewage systems shall provide an annual report to JCPH including the following at a minimum:

(a) Number of connections to the system and each connection's design flow.

(b) Copies of inspection reports consisting of the items detailed in JCC 8.15.150(7) completed per Table 1 following this chapter.

(c) Records identifying any maintenance completed on the system components. [Ord. 6-07]

8.15.100 Community on-site sewage disposal systems.

(1) Community on-site sewage systems as defined in this chapter shall be designed in accordance with Chapter 246-272A WAC, this code and the maintenance criteria as set forth in the current Washington State Department of Health "Design Standards for Large On-Site Sewage Systems," 1996, and Chapter 246-272B WAC or as they may be hereafter amended.

(2) Management of community on-site sewage systems shall be by an entity approved by JCPH. If the lots are individually owned, the management shall in all cases be provided by a public entity. A homeowners' association is not considered an approved entity for the management of a community on-site sewage system.

(3) A covenant shall be recorded to the property and shall remain in place for the life of the on-site sewage system or until the on-site sewage system is no longer needed. It shall provide the management entity the following items including but not limited to:

(a) A legal easement allowing access for construction, operation and maintenance, and repair of the OSS; and

(b) Identification of an adequate financing mechanism to assure the funding of operation, maintenance, and repair of the OSS.

(4) All lots, parcels, or individual connections to a community system shall be equipped with a water meter or other approved method for monitoring flows into the system.

(5) Sites proposing community systems shall conform to the minimum land area requirements of Chapter 246-272A WAC.

(6) All community on-site sewage systems shall provide an annual report to JCPH including the following at a minimum:

(a) Number of connections to the system and each connection's design flow.

(b) Copies of inspection reports consisting of the items identified on forms provided or approved by JCPH per JCC 8.15.150(8) and completed per Table 1 following this chapter.

(c) Records identifying all maintenance completed on the system components. [Ord. 6-07]

8.15.105 Subdivision requirements.

(1) A person proposing the development of subdivisions, planned unit developments, binding site plans and other land division shall obtain approval from the health officer, where the use of an OSS is proposed, prior to any development.

(2) The proposal shall comply with the standards of WAC 246-272A-0320 and the Jefferson County unified development code as amended.

(3) Where preliminary approval is requested, the following shall be submitted at the time of application:

(a) Applicable fees.

(b) Preliminary plan of the proposal showing the layout of the lots.

(c) A soils report and preliminary plan submitted by a licensed designer or licensed professional engineer that:

(i) Shows an area for each proposed lot/segregation that is suitable for on-site sewage disposal; and

(ii) Provides a minimum of four test pits, two feet by four feet by six feet deep, two in the area of the primary drainfield and two in the area of the reserve. Test pits shall be flagged with the lot number; and

(iii) Identifies the locations of the test pits on the preliminary plan.

(d) Soil test pits shall be made available for observation by health department staff and must be filled in upon completion of review and notification of such by the health department.

(e) Statements as to the type of potable water supply.

(4) To Obtain Preliminary Approval.

(a) The health department staff shall review the application and perform field visits.

(b) The highest anticipated ground water table elevation shall be determined. The health officer or designee may require an evaluation during the months of suspected high water table conditions where less than 18 inches of usable soil is observed.

(c) Lot sizes shall meet minimum area requirements.

(d) Soils suitable for the installation of the OSS must be identified for each lot.

(e) Conceptual or detailed designs may be required by the health officer or designee.

(f) An evaluation of all existing on-site sewage systems within the bounds of the project shall be completed by an entity authorized by the health officer or designee.

(g) Where a community system or large on-site sewage system is proposed as the method of sewage disposal, a preliminary layout design of the system must be submitted to the health department as well as a letter from an approved management entity indicating that they will meet the standards of JCC 8.15.100.

(h) For the water supply, a utility service review shall be completed.

(i) Public water supplies shall be developed consistent with provisions of the Jefferson County coordinated water system plan, Washington State Department of Health Drinking Water regulations, Chapter 246-290 WAC as amended, and Washington State Department of Ecology water rights provisions, Chapter 90.03 and/or 90.44 RCW.

(ii) Wells, whether individual or public, shall not encumber adjacent property owner(s) and shall be protected by a sanitary control area of a 100-foot radius. If a sanitary control area of a 100-foot radius cannot be met, evidence of adjacent property owners' written consent shall be submitted to the health department. For existing wells, the sanitary control area shall be established by covenant and portrayed graphically on the face of the plat.

(5) To Obtain Final Approval.

(a) All conditions of the preliminary approval shall be met.

(b) The locations of test pits used for the preparation of the soils report shall be portrayed on the final plat. [Ord. 6-07]

8.15.110 Inspection.

(1) An initial inspection by the health officer or designee shall be conducted to verify soil and site conditions for the proposed design unless expressly waived by the health officer.

(2) The health officer or designee may make inspections during construction to determine compliance with these regulations.

(3) It shall be the responsibility of the installer of the system to notify the designer for inspections as specified in the design or in permit conditions.

(4) It shall be the responsibility of the installer of the system to notify the health department within one working day prior to commencement of system construction of the intent to install the system. This shall be done by means of a start card to be submitted by fax or emailed to a designated address.

(5) Final Inspection.

(a) A precover inspection shall be conducted on all systems by the designer of record or other licensed designer or engineer where that person is taking responsibility to certify the system installation.

(b) For pressurized or proprietary systems:

(i) The designer shall be responsible for all inspections during the construction of the OSS.

(ii) After completion of the system, when the system is fully functional the designer shall contact the health officer or designee to schedule a joint inspection of the OSS.

(c) The designer of record or other licensed designer or engineer where that person is taking responsibility to certify the system installation shall submit a record drawing of the system installation including the items specified in this section.

(d) No part of any on-site sewage system installation shall be put into use until final approval has been obtained from the health officer or designee.

(6) Partial installation may be allowed and shall be subject to all of the following requirements and limitations:

(a) Installation shall take place prior to the expiration date of the permit; and

(b) The health officer or designee shall be notified of the intent to install the system as described in this section; and

(c) At a minimum the treatment and disposal components shall be installed; and

(d) The system shall be vested only for the portions that are installed; and

(e) The system shall be subject to review at the time of building permit for a structure to use the system under JCC 8.15.060(3); and

(f) A report shall be submitted by the designer of record or other licensed designer or engineer where that person is taking responsibility to certify the system installation. The report shall provide details on what was installed and shall be accompanied by a drawing locating the components that were installed prior to the expiration of the permit; and

(g) An additional inspection and/or permit, with appropriate fees, may be required to complete the installation and finalize the system.

(7) Final approval of on-site systems by the health officer can be made only after:

(a) Satisfactory inspection of the installed system;

(b) Receipt by JCPH of record drawings of the final construction with the operational settings and installation data report;

(c) Receipt of the homeowner operations and monitoring manual; and

(d) Compliance with installation conditions of the permit.

(8) If installation or workmanship of the on-site sewage system does not meet the requirements of this code or conditions of the permit, the health

officer or designee shall order corrections and cause a subsequent inspection to be made. Fees may be charged for subsequent inspections.

(9) Designer Inspections. Nothing contained herein shall prohibit the designer of record from requiring additional designer-performed inspections to ensure compliance with the design and regulations.

(10) Record Drawings.

(a) After installation of the sewage disposal system has been completed, a scaled and dimensional record drawing of the sewage disposal system shall be prepared by the designer of the system as specified in subsection (5) of this section on forms provided or approved by JCPH.

(b) The record drawing shall include:

(i) Information identified on the JCPH "final inspection report" form as applicable to the system installed;

(ii) Measurements to existing site features enabling the first tank manhole to be easily located;

(iii) A dimensioned reserve area;

(iv) For a repaired or altered OSS, the new, repaired or altered components with their relationship to the existing system;

(v) North direction indicated;

(vi) Location of all sewage system components;

(vii) Stub outs;

(viii) Tightlines;

(ix) Pump and/or siphon chamber(s);

(x) D-box(es);

(xi) Drainfield lines or bed and fill area(s) when applicable;

(xii) Other treatment components – sand filter, proprietary device, disinfection unit;

(xiii) Driveway – existing and/or proposed;

(xiv) Building(s) size, shape and placement;

(xv) Water line(s);

(xvi) Location of utility and/or other easements;

(xvii) Slope(s) – direction and percent;

(xviii) Cuts, banks, terraces;

(xix) Foundations;

(xx) Property lines;

(xxi) Surface waters, springs, wells;

(xxii) Additional information as required for systems that are covered by Washington State guidelines;

(xxiii) Designer's stamp and signature, and date of installation;

(xxiv) Other pertinent information.

(11) The designer shall provide to the property owner:

(a) One copy of the homeowners operations and monitoring manual; and

(b) The record drawing of the completed system with the operational settings and installation data.

(12) A pre-occupancy inspection prior to occupancy of a residence shall be required if there were no permanent structures connected to the OSS and the system requires a pump or siphon or there was not permanent power wired to a permanent structure connected to the OSS at the time of finalization of the OSS permit. This inspection may be performed by the health department, designer, or a certified operations and maintenance specialist. This inspection shall verify that conditions are consistent with the final inspection and system settings are the same. The inspection report shall be submitted on forms provided or approved by JCPH. Fees shall be charged for inspection. [Ord. 6-07]

8.15.120 Sewage system installer.

(1) Certificate Required. It shall be unlawful for any person, firm or corporation to engage in construction, alteration, repair or modification of on-site sewage systems without first having been issued a septic system installer's certificate by the health officer.

(2) Requirements for a sewage system installer shall include the following:

(a) Application shall be made on forms provided by the health officer.

(b) Certificate and/or application fees as set forth in the fee schedule shall be payable to JCPH.

(c) Written proof showing a minimum of one-year experience under the direct supervision of a certified installer, designer or operation and monitoring specialist. Completion of classroom training specific to on-site sewage system installation as approved by JCPH may be substituted for up to six months of work experience.

(d) Such certificate shall be issued only after the applicant has indicated a basic knowledge of the proper installation and function of a sewage system and knowledge of the provisions of this chapter and Chapter 246-272A WAC by successful completion of a JCPH examination. If the applicant scores below 70 percent, a license shall not be granted and the applicant may request to take the next available examination. Fees for reexamination shall be required.

(3) Renewal of Certificate. Application is required annually for certificate renewal. All certificate renewal applications along with the required

bond, renewal fee, and verification of continuing education shall be submitted to the health officer no later than March 1st. The certificate shall not be issued or renewed if the applicant is found by the health officer to be out of compliance or in violation of the provisions of this chapter.

(4) Lapse of certification for lack of bond, payment of fees or verification of continuing education shall require completion and passage of the JCPH examination and provision of items identified.

(5) An installer's certificate is not transferable.

(6) An installer's certificate grants authority to install any on-site sewage system approved for use in the state of Washington, except in the case of a proprietary product where a special authorization, in writing, is required by the manufacturer or patent holder.

(7) A Jefferson County certified installer or site installer as defined in JCC 8.15.050 shall be present on the site during all phases of system installation.

(8) Exception. A bona fide resident owner may construct, alter, repair, or modify a permitted on-site sewage system on his/her own property for his/her own use without obtaining an installer's certificate; provided:

(a) That he/she complies with other terms of this chapter and WAC 246-272A-0250; and

(b) That he/she installs no more than one system in any one calendar year; and

(c) The on-site sewage system is intended to serve the primary residence of the owner; and

(d) The resident owner does not arrange for, nor contract, nor hire, with or without reimbursement, any person or concern to perform that work, unless that person is a Jefferson County-certified sewage system installer as set forth in this section; and

(e) The sewage system is located on the same lot as the residence or situated on adjoining property controlled by the owner and legally listed as an encumbrance; and

(f) Prior to beginning installation, the health officer or designee and the designer are contacted to schedule required inspections.

(9) A property owner may not install the OSS and its components, unless specifically allowed by the health officer or designee, if the site meets any of the following criteria:

(a) Has horizontal or vertical separations less than required in Chapter 246-272A WAC;

(b) Receives commercial or industrial wastewater as defined in Chapter 246-272A WAC;

(c) Is permitted as a nonconforming repair;

(d) Has a reduced drainfield size of 50 percent or less;

(e) Is within 200 feet of surface water, as measured from the ordinary high water mark;

(f) Is within 200 feet of a Category I or II wetland;

(g) Is in a 100-year floodplain, as defined by the Federal Emergency Management Agency;

(h) Is in a special aquifer recharge protection area as defined in JCC 18.15.240 or as amended;

(i) Is in a marine recovery area;

(j) Is adjacent to a marine shoreline.

(10) Site Installer. A certified sewage system installer may sponsor a site installer to be responsible for compliance with Chapter 246-272A WAC. The certified installer shall inform the health officer of the site installer's name(s) and of any changes in employment status of sponsored site installers. Site installers must pass the installer's exam and maintain their annual certificate.

(11) Bond and Insurance Required. Prior to the issuance of a sewage system installer's certificate, the applicant must be in possession of a bond obtained in accordance with the Special or General Contractors Laws of the state of Washington running to Jefferson County public health on a form approved by JCPH in the sum of \$20,000 and executed by a surety company duly authorized to do business in the state of Washington. The bond shall be conditioned that the holder of the certificate and his/her agents, in performing work governed by these rules and regulations, shall exercise all reasonable care and skill and shall comply with all the terms and conditions of these rules and regulations. The bond must be kept in effect during the period of time for which the certificate is issued, and cancellation of the bond shall automatically suspend the certificate. The bond shall run for a period of 36 months following termination of the certificate. Applicant shall provide proof of business liability insurance in the minimum amount of \$500,000 in accordance with the Special or General Contractors Laws of the state of Washington. Except, site installers working for or under the direction of a general contractor who is also a certified installer may have this requirement waived if the general contractor provides a written statement indicating their assumption of responsibility for the individual's work, and agreement to coverage of the individual by the general contractor's bond and liability insurance.

(12) Continuing Education. Each installer shall obtain a minimum of eight hours of approved classroom training every two years. Subject matter

must be directly related to on-site sewage disposal and be acceptable to the health officer. Proof of training shall be submitted annually with application for certificate renewal.

(13) Suspension/Revocation. A sewage system installer's certificate may be revoked or suspended as set forth in JCC 8.15.180 if he/she has been found to be in noncompliance with provisions of this chapter or has performed with negligence, incompetence or misrepresentation. [Ord. 6-07]

8.15.130 Septic tank pumpers.

(1) Certificate Required. It shall be unlawful for any person, firm, or corporation to engage in the activity of cleaning any septic tank, pump chamber, or chemical toilet, or removing other accumulations of sewage without first having obtained a septic tank pumper's certificate from the health officer.

(2) Renewal of Certificate. Application is required annually for certificate renewal. All certificate renewal applications, along with the required bond, renewal fee, and verification of continuing education shall be submitted to the health officer no later than March 1st. The certificate shall not be issued or renewed if the applicant is found by the health officer to be out of compliance or in violation of the provisions of this chapter.

(3) A septic tank pumper's certificate is not transferable.

(4) Septage Disposal Site Approval. It shall be unlawful to dispose of septic tank pumpings or other accumulated sewage at any location other than disposal sites designated and approved by the Washington State Department of Ecology.

(5) No material/substance shall be discharged into any component of the OSS during pumping or maintenance except that tank(s) may be filled with water to prevent flotation.

(6) Reporting Requirements.

(a) Each pumper shall submit to the health officer not later than the tenth day of each month a report on a form provided by JCPH. Said report shall contain:

(i) The dates, sources, disposal site, disposal receipts, and volume of each load of wastes handled from the preceding calendar month.

(ii) The vacuuming system on each occurrence with the date and physical address and property owner name.

(iii) The hydro-jetting system on each occurrence with the date and physical address and property owner name.

(b) Each pumper shall complete an inspection report at each site where a holding tank, septic

tank or pump chamber is serviced. Inspection reports shall be submitted to JCPH. Said report shall include at a minimum the following information:

- (i) Measured depth of scum and sludge in the septic tank and pump chamber if present.
- (ii) Condition of tank(s), baffles, risers, and screens.
- (iii) Record signs of backflow from drainfield.
- (iv) Record signs of ground water infiltration into tank(s).
- (v) Each pumper shall list portable toilet locations, the frequency of service and the disposal location on the monthly report.

(7) Pump Tank Requirements. Pumping equipment must be presented to JCPH for inspection at the time of certificate application and renewal or upon request of the health officer.

(a) The pump tank must be of at least 1,000 gallons in capacity and must be in good repair and of cleanable construction.

(b) All hoses and pumping equipment shall be kept in a clean and sanitary condition while stored or in transit.

(c) All discharge valves shall be in good repair, free from leaks and be fitted with watertight caps.

(d) The name of the operating firm shall be prominently displayed on the sides of the vehicle.

(8) Bond Required. Prior to the issuance of a septic tank pumper's certificate, the applicant must post a bond with JCPH in a form approved by the prosecuting attorney of Jefferson County, and executed by a surety company authorized to do business in the state of Washington, in the sum of \$2,000.

(9) Continuing Education. Each pumper shall obtain a minimum of six hours of approved classroom training every two years. Subject matter must be directly related to on-site sewage disposal and be acceptable to the health officer. Proof of training shall be submitted annually with application for renewal.

(10) Suspension – Revocation. A septic tank pumper's certificate may be revoked or suspended as set forth in JCC 8.15.180 if he/she has been found to be in noncompliance with the terms of this chapter or has performed with negligence, incompetence or misrepresentation. [Ord. 6-07]

8.15.140 Operation and monitoring specialist.

(1) Certificate Required. It shall be unlawful for any person, firm or corporation to engage in any operation and maintenance/monitoring inspection

required by JCPH without first having been issued an operation and monitoring specialist certificate by the health officer.

(2) A sewage system operation and monitoring specialist certificate shall not be transferable.

(3) Requirements for monitoring specialist certificate shall include all of the following:

(a) Application shall be made on forms provided by the health officer.

(b) Certificate and/or application fees as set forth in the fee schedule shall be payable to JCPH.

(c) Written proof showing a minimum of one-year experience under the direct supervision of a certified installer, designer or operation and monitoring specialist or other experience as approved by the health officer. Completion of classroom training specific to on-site sewage system operation and maintenance as approved by JCPH may be substituted for up to six months' work experience.

(d) Written proof of completion of a minimum of 16 hours of training in on-site wastewater treatment, operation and maintenance at the Northwest On-Site Wastewater Training Center or equivalent.

(e) Take and pass a written examination to determine the applicant's knowledge of the operation and monitoring requirements, both herein and in Chapter 246-272A WAC or as amended, for the on-site sewage systems approved by the Washington State Department of Health, except those proprietary devices requiring a special authorization from the system proprietor.

(4) Scope of Practice.

(a) The operation and monitoring specialist may complete regular maintenance of an on-site sewage system including:

(i) Measuring levels of sludge, scum and liquid in the system components;

(ii) Visual evaluation of the condition of all system components;

(iii) Inspecting and reporting the condition of system components; monitoring ports and the surface above the drainfield/disposal area; or

(iv) Recording information from devices such as cycle counter or operating hour meters and water meters.

(b) The operations and monitoring specialist may complete the following if authorized by the homeowner:

(i) Clean pump screen or outlet baffle screen;

(ii) Install and repair septic tank lids, risers and baffles;

(iii) Replace pumps, float switches, and check valves intended to prevent the backflow of

effluent into the pump chamber, within Washington State Labor and Industry requirements; or

(iv) Make repairs to a septic tank or pump chamber to correct a condition of ground water intrusion or leakage; or

(v) Excavate for purposes of affixing sweeping 45 degree angle lateral ends and removable end caps on manifolds and lateral lines, for purposes of maintenance, such as flushing, jetting and brushing.

(c) The operation and monitoring specialist shall not:

(i) Pump the septic tank and/or pump chamber, except in the case where he/she also holds a valid septic tank pumper's certificate;

(ii) Excavate an OSS's drainfield or any drainfield component, except as stated in subsection (4)(b) of this section, or in the case where he/she also holds a valid installer's certificate;

(iii) Alter devices such as cycle counters or operating hour meters without the prior written approval of JCPH;

(iv) Alter or replace any portion of the subsurface disposal component or pretreatment components, except as stated in subsection (4)(b)(v) and except in the case where he/she also holds a valid installer's certificate and a permit has been obtained for such work; or

(v) Replace or alter devices that monitor or regulate the distribution of the effluent.

(5) The operation and monitoring specialist shall report failure of an on-site sewage system to JCPH within 24 hours of first identifying the failure.

(6) Inspection reports shall be submitted by the operation and monitoring specialist to JCPH or another authorized agency within 30 days following the inspection.

(7) Only certified operation and monitoring specialists that have also obtained written approval from either the manufacturer or patent holder may operate and maintain proprietary devices governed by this chapter.

(8) Continuing Education. Each operations and monitoring specialist shall obtain a minimum of eight hours of approved classroom training pertaining to on-site sewage treatment and disposal every two years. Proof of training shall be submitted annually with application for renewal.

(9) Bond Required. Prior to the issuance of an operation and monitoring specialist certificate, the applicant must be in possession of a bond obtained in accordance with the Special or General Contrac-

tors Laws of the state of Washington and provide proof of business liability insurance in the minimum amount of \$500,000.

(10) Renewal of Certificate. Application is required annually for certificate renewal. All certificate renewal applications, along with the required bond, renewal fee, and verification of continuing education shall be submitted to the health officer by March 1st. The certificate shall not be issued or renewed if the applicant is found by the health officer to be out of compliance or in violation of the provisions of this chapter.

(11) Suspension – Revocation. An operation and monitoring specialist certificate may be revoked or suspended as set forth in JCC 8.15.180 if he/she has been found to be in noncompliance with the terms of this chapter or has performed with negligence, incompetence or misrepresentation. [Ord. 6-07]

8.15.150 Operation, maintenance and monitoring.

(1) Responsibility of Owner(s). The owner of every residence, business, or other place where persons congregate, reside or are employed that is served by an OSS, and each person with access to deposit materials in the OSS, shall use, operate, and maintain the system to eliminate the risk to the public associated with improperly treated sewage. Owners' duties are included, without limitation, in the following list:

(a) They shall comply with the conditions stated on the on-site sewage permit.

(b) They shall employ an approved pumper to remove the septage from the tank(s) when the level of solids and scum indicates that removal is necessary. The septic tank shall be pumped when the total amount of solids equals or exceeds one-third the volume of the tank. The pump and/or siphon chamber(s) shall be pumped when solids are observed.

(c) They shall not use water in quantities that exceed the OSS's designed capacity for treatment and disposal.

(d) They shall not deposit solid, hazardous waste, or chemicals other than household cleaners in the OSS.

(e) They shall not deposit waste or other material that causes the effluent entering the drainfield to exceed the parameters of residential/household waste strength.

(f) They shall not build any structure in the OSS area or reserve area without express, prior consent of the health officer.

(g) They shall neither place nor remove fill over the OSS or reserve area without express, prior consent of the health officer.

(h) They shall not pave or place other impervious cover over the OSS or reserve area.

(i) They shall divert drains, such as footing or roof drains, away from the area of the OSS.

(j) They shall comply with inspection requirements in this section and Chapter 246-272A WAC.

(k) They shall complete maintenance and repair of the OSS as recommended by the monitoring entity.

(l) They should not dispose of excess food waste via a garbage disposal.

(m) They should not drive, park or store vehicles or equipment over the drainfield or reserve area.

(n) They should not allow livestock access to the OSS area or reserve area.

(o) They shall comply with WAC 246-272A-0270.

(2) Breach of Owner's Responsibilities. An owner's or occupier's failure to fulfill any of the responsibilities in subsection (1) of this section shall be a basis for a notice of violation and for the health officer to decline to issue approval for further development on the parcel.

(3) Where a proprietary product is included as a part of the on-site sewage system, a notice shall be placed on the title of the property providing notice that the site is served by an alternative method of sewage disposal and requires regular maintenance that must be performed by a person authorized by the device manufacturer and certified by JCPH. This notice shall be recorded prior to final approval of the system on forms approved by JCPH.

(4) The health officer shall be responsible to make available written guidance on the proper maintenance and operation of the OSS to the owner. Information shall be made available at JCPH and the Jefferson County department of community development locations and shall be mailed on a periodic basis to owners of an OSS by the health officer or his/her designated representative.

(5) Inspection Requirements.

(a) The owner shall ensure that the OSS receives an inspection by an approved monitoring entity at the frequency identified in Table 1 following this chapter as adopted or hereinafter amended.

(b) Treatment Devices and Proprietary Products. Existing and proposed systems that include a treatment device or proprietary product in order to meet a treatment standard (or in which

Chapter 246-272A WAC or a Washington State Department of Health guideline requires ongoing operation and maintenance as a condition of approval) shall be inspected at the frequency established in Chapter 246-272A WAC. Said inspections shall be completed by personnel authorized by the manufacturer and certified by JCPH.

(c) Owners of existing and new OSSs generating wastewater of greater than residential strength, including food service establishments, shall be inspected annually by an approved monitoring entity.

(d) The health officer may require more frequent inspections for systems where a problem has been identified.

(e) Multiple Requirements. If the manufacturer, patent holder, state, JCPH, and any other relevant body have differing recommendations or requirements for inspection and maintenance intervals for an OSS or any component of the OSS, then the owner shall follow the most frequent service interval.

(6) Operations and Monitoring Agreement.

(a) The owner of any site where a permit is issued for an on-site sewage component shall complete and record to the property title an operations and monitoring agreement prior to finalization of the permit. The agreement shall be on a form approved by the public health department.

(b) The owner of a conventional OSS shall be subject to a permit condition requiring compliance with the inspection schedule specified in Table 1 following this chapter beginning with the earliest of the following events:

(i) The installation of an OSS.

(ii) The repair of an OSS.

(iii) The modification of an OSS.

(c) Owners of existing conventional systems shall obtain an initial inspection by JCPH, a licensed designer or a licensed professional engineer and comply with the inspection schedule specified in Table 1 following this chapter beginning with the earliest of the following events:

(i) The sale of the property.

(ii) The application for a building permit on the site.

(iii) The use of an OSS as a community OSS.

(iv) Identification that an OSS is in a marine recovery area or a shellfish protection district as designated by the Jefferson County board of health.

(v) Identification that a system has received a waiver/variance from state or local code.

(d) Owners of all on-site sewage systems (conventional, alternative and proprietary systems after meeting manufacturers' training requirements) may obtain operations and monitoring inspections from a certified monitoring specialist in lieu of JCPH, a licensed designer or a licensed professional engineer for the following inspections:

- (i) Routine O&M.
- (ii) The sale or transfer of a property.
- (iii) The application for a building permit that is not classified as an expansion.

(e) Owners of existing and new OSSs generating wastewater of greater than residential strength, including food service establishments, shall be inspected annually by an approved monitoring entity.

(7) Operation and Monitoring Requirements.

(a) On-site sewage systems in Jefferson County shall be inspected and maintained as set forth in Table 1 following this chapter by an approved monitoring entity that meets the standards set forth in JCC 8.15.140.

(b) Access Required. The owner of the system shall provide access to the system for inspection and maintenance/monitoring as follows:

(i) Septic Tank. Septic tanks shall be fitted with watertight pumping access risers to the ground surface over both compartments and over the outlet baffle, except as set forth in JCC 8.15.090(10). The risers shall have a means to lock or secure the lid against tampering and accidental access.

(ii) Pump Chamber. Pump chambers shall have a watertight riser to ground surface over the pump. The riser shall have a means to lock or secure the lid against tampering and accidental access.

(iii) Proprietary Devices and Disinfection Equipment. Access shall be provided as determined by the manufacturer or patent holder and shall include access to ground surface for effluent sample collection, observation and inspection of the unit.

(c) Fees for inspections and contracts shall be set by the service provider.

(8) Inspection Report. The inspection report shall be submitted to JCPH on JCPH forms. The inspection report form shall be completed in full for an inspection to be considered valid. [Ord. 6-07]

8.15.165 Waiver of state or local regulations.

(1) Applicability. Any person who owns or operates an OSS may apply to the health officer for a waiver from any paragraph of these regulations.

(2) Granting Requirements.

(a) The health officer may grant such a waiver if it finds that:

(i) Special circumstances exist that are not of the applicant's making;

(ii) An unnecessary hardship will occur without the waiver;

(iii) The health officer has determined that the waiver is consistent with the standards in, and the intent of, the public health protection purpose and objectives of these rules;

(iv) Corresponding mitigation measure(s) to assure that public health and water quality protection, at least equal to that established by these rules, is provided.

(b) The health officer may grant a waiver conditioned by a timetable if:

(i) Compliance with this regulation will require spreading of costs over a considerable time period; and

(ii) The timetable is for a period that is needed to comply with this regulation.

(c) The health officer may grant waivers from these regulations for standards that are more stringent than the standards of Chapter 246-272A WAC, or from provisions in these regulations that are not contained in Chapter 246-272A WAC without department of health approval.

(3) Application.

(a) The application shall be made on forms provided by JCPH and accompanied by all information required by the health officer or designee.

(b) The health officer may request additional information if required to make a decision.

(c) An application for a waiver, or for the renewal thereof, submitted to the health officer shall be approved or disapproved by the health officer within 90 calendar days of receipt unless the applicant and the health officer agree to a continuance.

(4) Renewal. The health officer may renew any waiver granted pursuant to this paragraph on terms and conditions and for periods that would be appropriate on initial granting of a waiver. No renewal shall be granted except on written application. Any such application shall be made at least 60 calendar days prior to the expiration of the variance. [Ord. 6-07]

8.15.170 Appeal – Hearing.

(1) Appeal of Public Health Action – Health Officer Administrative Hearing. Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation, or by any inspection, permit issuance or enforcement action conducted by public health under this regulation, may request, in writing, a hearing before the health officer or his or her designee. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of public health. Such request shall be presented to the health officer within 10 business days of the action appealed; except in the case of a suspension, the request for a hearing must be made within five business days. Upon receipt of such request together with hearing fees, the health officer shall notify the person of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than five business days nor more than 30 business days from the date the request was received. The health officer will issue a decision upholding or reversing public health's action. The health officer may require additional actions as part of the decision.

(2) Appeal of Administrative Hearing.

(a) Any person aggrieved by the findings or required actions of an administrative hearing shall have the right to appeal the matter by requesting a hearing before the board of health. Such notice of appeal shall be in writing and presented to the health officer within five business days of the findings and actions from the administrative hearing and shall be accompanied by a fee as established in the current public health fee schedule. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the health officer. The appellant and the health officer may submit additional information to the board of health for review.

(b) The notice and order to correct violation shall remain in effect during the appeal. Any person affected by the notice and order to correct violation may make a written request for a stay of the decision to the health officer within five business days of the health officer's decision. The health officer will grant or deny the request within five business days.

(c) Upon receipt of a timely written notice of appeal together with the hearing fee, the health officer shall set a time, date, and place for the requested hearing before the board of health and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than five business days or more than 30

business days from the date the appeal was received by the health officer.

(d) Any decision of the board of health shall be final and may be reviewed by an action filed in superior court. Any action to review the board's decision must be filed within 30 business days of the date of the decision.

(3) All revocation hearings shall be conducted by the board of health.

(4) The following guidelines apply to all hearings and appeals conducted by the board of health pursuant to this section:

(a) Appeals shall be made in writing and shall be signed and dated by the petitioning party.

(b) Appeals shall include a brief and concise statement of the law and facts, which affirmatively establish that the health officer has committed an error.

(c) Appeals shall be transmitted to the board of health by JCPH following receipt from the petitioning party together with all relevant material associated with the health officer's action, including, but not limited to, applications, reports, soil logs, photographs, staff analysis and recommendations.

(d) Upon receipt of the appeal materials transmitted by JCPH, the board of health shall conduct a hearing to determine the correctness of the decision by the health officer within 35 days. The petitioner shall be given five days' notice by certified mail of the purpose, time, date and place of said hearing. Further, if the petitioning party is a person other than the permit applicant or a permit holder, then notice of the purpose, time, date, and place of said hearing shall likewise be mailed by certified mail to the permit applicant or permit holder.

(e) Any hearing conducted pursuant to this section shall be a public hearing and the chairperson of the board of health shall open the hearing and take testimony from any interested persons; provided, that testimony in suspension or revocation hearings shall be limited to that presented by the health officer, the certificate holder and any witness called by them; provided further, that the chairperson may limit the length of the testimony to a specific amount of time to be applied equally to those interested persons wishing to speak except in suspension or revocation hearings where the board of health is authorized to use its discretion.

(f) The procedure to be utilized during any hearing conducted pursuant to this section shall be as follows:

(i) The petitioning party, permit applicant, or permit holder and the health officer, if not

the petitioning party, shall be given an opportunity to present evidence, analysis and recommendations.

(ii) Members of the board of health may direct questions to the petitioning party, permit applicant or permit holder and health officer.

(iii) The chairperson of the board of health shall permit the presentation of testimony by any interested person as set forth in this chapter.

(iv) Following presentation of evidence and testimony, the chairperson of the board of health shall close the hearing and initiate discussion with other board members on the matters presented.

(v) Following discussion, the board of health shall make ruling on the appeal.

(vi) Under no circumstances shall cross-examination of persons making presentations at the hearing be permitted, notwithstanding that the board of health may ask questions as set forth above.

(g) Should the board of health require additional testimony, it may continue the public hearing to a date and time not to exceed 35 days following the date of the initial public hearing; provided, that at the close of the second public hearing the board of health may continue its deliberations on the appeal to another time and date not to exceed 35 days following the close of the second public hearing conducted to receive additional testimony. In all other cases, the board of health may continue its deliberations on the appeal to another date and time not to exceed 35 days following the close of the public hearing.

(h) Relevant evidence is admissible, if in the opinion of the board of health it is the best evidence reasonably obtainable having due regard for its necessity, availability and trustworthiness; provided, that in passing upon the admissibility of evidence the Jefferson County board of health may give consideration to, but shall not be bound to follow the rules of evidence governing civil proceedings in matters not involving trial by jury in the Superior Court of the state of Washington.

(i) A full and complete record shall be kept of all proceedings, and all testimony shall be recorded. The record of testimony and exhibits together with all papers and requests filed in the proceedings shall constitute the exclusive record for the decision in accordance with the law.

(j) All decisions shall become a part of the record and shall include a statement of findings and conclusions.

(k) Notice of the decision of the board of health shall be provided not later than 10 days following the date of its decision.

(l) The petitioning party, permit applicant, permit holder, or designated agent, and JCPH shall be notified of the decision of the board of health, together with the findings and conclusions. [Ord. 6-07]

8.15.180 Enforcement – Penalty.

(1) Other Laws, Regulations and Agency Requirements.

(a) All OSS management shall be subject to the authority of other laws, regulations or other agency requirements in addition to these rules and regulations. Nothing in these rules and regulations is intended to abridge or alter the rights of action by the state or by persons, which exist in equity, common law or other statutes to abate pollution or to abate a nuisance.

(b) If a conflict exists between the interpretation of Chapter 246-272A WAC and these regulations, the more stringent regulation shall apply to better protect public health and the environment.

(2) Enforcement Authority. The health officer, his or her designee, or any person appointed as an "enforcement officer" by the Jefferson County board of health shall have the authority to enforce the provisions of these regulations equally on all persons. The health officer is also authorized to adopt rules consistent with the provisions of these rules and regulations for the purpose of enforcing and carrying out its provisions.

(3) Right of Entry.

(a) Whenever necessary to make an inspection to enforce or determine compliance with the provisions of these regulations, and other relevant laws and regulations, or whenever the health officer has cause to believe that a violation of these regulations has or is being committed, the health officer or his/her duly authorized inspector may, in accordance with federal and state law, seek entry of any building, structure, property or portion thereof at reasonable times to inspect the same.

(b) Prior to entering any building, structure, property or portion thereof, the health officer or his/her duly authorized inspector shall attempt to secure the consent of the owner, occupant or other person having apparent charge or control of said building, structure, property or portion thereof.

(i) If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

(ii) In attempting to contact the owner, occupier or other persons having apparent control of said building, structure, property or portion thereof, the inspector may approach said building or structure by a recognizable access route, e.g., a street or driveway, leading to said building or structure.

(c) If permission to enter said building, structure, property or portion thereof is not obtained from the owner, occupier or other persons having apparent control of said building, structure, property or portion thereof, the inspector may enter said building, structure, property or portion thereof only if the entry into the building, structure, or property is consistent with applicable state and federal law.

(d) If permission to enter said building, structure, property or portion thereof is not obtained from the owner, occupier or other persons having apparent control of said building, structure, property or portion thereof, the health officer or his/her duly authorized inspector shall also have recourse to any other remedies provided by law to secure entry, including but not limited to search warrants based on probable cause or statutory authority.

(4) Notice and Order to Correct Violation.

(a) Issuance. Whenever the health officer determines that a violation of these regulations has occurred or is occurring, he/she may issue a written notice and order to correct violation to the property owner or to any person causing, allowing or participating in the violation.

(b) Content. The notice and order to correct violation shall contain:

(i) The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;

(ii) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

(iii) A description of the violation and a reference to that provision of the regulation, which has been violated;

(iv) A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;

(v) A statement that each violation of this regulation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation;

(vi) A statement that the person, to whom the notice and order is directed, can appeal

the order to the health officer, in accordance with the terms of this chapter, and that any such appeal must be presented to the health officer with 10 days;

(vii) A statement that the failure to obey this notice may result in the issuance of a notice of civil infraction, and/or the assessment of an administrative remedy, and/or, if applicable, the imposition of criminal penalties.

(c) Receipts. The notice and order to correct violation may also include a statement requiring the person to whom the notice and order to correct violation is directed to produce receipts from a certified professional to demonstrate compliance with an order issued by the health officer.

(d) Service of Order. The notice and order to correct violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violations by first class and/or certified mail postage prepaid, return receipt requested, to such person at his/her last known address. The notice and order to correct violation shall also be served via certified mail, return receipt requested, to the owner of the parcel or parcels where the alleged violations are occurring, to the owner's last known address.

(e) Extension. Upon written request received prior to the correction date or time, the health officer may extend the date set for corrections for good cause. The health officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.

(f) Supplemental Order to Correct Violation. The health officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations.

(g) Enforcement of Order. If, after any order is duly issued by the health officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the health officer may:

(i) Utilize any remedy or penalty under subsection (5) of this section; and/or

(ii) Abate the health violation using the procedures of these regulations; and/or

(iii) Pursue any other appropriate remedy at law or equity.

(h) Written Assurance of Discontinuance. The health officer may accept a written assurance of discontinuance of any act in violation of this regulation from any person who has engaged in such

act. Failure to comply with the assurance of discontinuance shall be a further violation of this regulation.

(5) Violations, Remedies and Penalties.

(a) Violations.

(i) Violations of these regulations may be addressed through the remedies and penalties provided in this section.

(ii) Each violation of these regulations shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be considered a separate and distinct violation.

(iii) The health officer may investigate alleged or apparent violations of these regulations. Upon request of the health officer or designee, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves.

(iv) Violations, apparent or alleged, that occurred or are occurring in environmentally sensitive areas, as that term is defined in this chapter, of Jefferson County will have the highest priority for investigation by those persons charged in this chapter with investigating such violations and enforcing this chapter, and such violations will be subject to a "zero tolerance" policy.

(b) Civil Remedies.

(i) Except as provided in this section, the violation of any provision of these regulations is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW, Civil Infractions.

(ii) In addition to or as an alternative to any other judicial or administrative remedy provided herein, or by law, any person or establishment who violates this regulation may be assessed a civil penalty up to \$513.00 per day of continuous violation to be directly assessed by the health officer until such violation is corrected.

(iii) The health officer may issue a notice of civil infraction pursuant to Chapter 7.80 RCW if the health officer has reasonable cause to believe that the person has violated any provision of these regulations or has not corrected the violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard and determined as described in Chapter 7.80 RCW, and any applicable court rules.

(iv) All other legal and equitable remedies are also deemed available to public health or its health officer and may be invoked, utilized or sought at any time regardless of whether other remedies have or have not been undertaken or sought.

(c) Criminal Penalties.

(i) Any person who fails, neglects, or refuses to obey an order of the health officer to correct a violation as set forth in this section shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000, or imprisonment in the county jail not to exceed 90 days, or both. The court may also impose restitution.

(ii) Any person who fails, neglects, or refuses to comply with a written assurance of discontinuance pursuant to this section shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000, or imprisonment in the county jail not to exceed 90 days, or both. The court may also impose restitution.

(d) Stop-Work Orders. The health officer may cause a stop-work order to be issued whenever the health officer has reason to believe that a violation of this regulation is occurring. The effect of the stop-work order shall be to require the immediate cessation of such work or activity that has contributed to the violation until authorized by the health officer to proceed.

(i) Content. A stop-work order shall include the following:

(A) The name and address for the person responsible for the alleged violation;

(B) The street address or description sufficient for identification of the building, structure or premises, or land upon or within which the alleged violation has occurred or is occurring;

(C) A description of the violation and reference to the provision of the Jefferson County board of health ordinance, which has been allegedly violated;

(D) The required corrective action;

(E) A statement that a failure to comply with the order may lead to issuance of a civil infraction to the person named in the order;

(F) A statement that the person to whom the stop-work order is directed can appeal the order to the health officer in accordance with JCC 8.15.170 and that any such appeal must be presented to the health officer within 10 days.

(ii) Service of Notice. The health officer shall serve the stop-work order upon the owner of the property where the alleged violation occurred or is occurring and the person, firm or business entity that has allegedly violated this chapter, either personally or by mailing a copy of the notice by regular and certified or registered mail, within a five-day return receipt requested, to the owner at his or her last known address. A copy of the order shall also be posted on the property where the alleged violation occurred or is occurring.

(iii) Posting of Notice. In addition to service of the notice listed above, an additional notice shall be posted on the property in substantially the following form:

Under the authority of Jefferson
County Public Health Code 8.15
Onsite Sewage Regulations you are
hereby required to immediately
STOP WORK.

This order is in effect at this property
for all work and activities that relate to
violations of Jefferson County Public
Health Code 8.15 Onsite Sewage
Regulations, and remains in effect until
removed by Public Health. It is a
violation of these regulations to
remove, deface, destroy, or conceal a
posted Stop Work Order. **FAILURE TO
COMPLY WITH THIS ORDER MAY
RESULT IN THE ISSUANCE OF A
CIVIL INFRACTION.**

(e) Voluntary Correction. When the health officer determines that a violation has occurred or is occurring, he or she shall attempt to secure voluntary correction by contacting the person responsible for the alleged violation and, where possible, explaining the violation and requesting correction.

(i) Voluntary Correction Agreement. The person responsible for the alleged violation may enter into a voluntary correction agreement with public health. The voluntary correction agreement is a contract between public health and the person responsible for the violation in which such person agrees to abate the alleged violation within a specified time and according to specified conditions. The voluntary correction agreement will be in lieu of the issuance of further citations or the abatement of the property pursuant to Chapter 7.48 RCW or this chapter. The voluntary correction agreement shall include the following:

(A) The name and address of the person responsible for the alleged violation;

(B) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the alleged violation has occurred or is occurring;

(C) A description of the alleged violation and a reference to the regulation, which has been violated;

(D) The necessary corrective action to be taken, and a date or time by which correction must be completed;

(E) An agreement by the person responsible for the alleged violation that public health may enter the property and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;

(F) An agreement by the person responsible for the alleged violation that public health may enter the property to abate the violation and recover its costs and expenses (including administrative, hearing and removal costs) from the person responsible for the alleged violation if the terms of the voluntary correction agreement are not satisfied; and

(G) An agreement that by entering into the voluntary correction agreement the person responsible for the alleged violation waives the right to a hearing before the health officer under these regulations or otherwise, regarding the matter of the alleged violation and/or the required corrective action.

(ii) Right to a Hearing Waived. By entering into a voluntary correction agreement, the person responsible for the alleged violation waives the right to a hearing before the health officer under these regulations or otherwise, regarding the matter of the violation and/or the required corrective action. The person responsible for the alleged violation may, through written documentation provided to the health officer, state his or her decision to reject and nullify the voluntary correction agreement, at which time that person is entitled to an appeal to the health officer pursuant to JCC 8.15.170.

(iii) Extension and Modification. The health officer may, at his or her discretion, grant an extension of the time limit for correction or a modification of the required corrective action if the person responsible for the alleged violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances have delayed correction under the original conditions.

(iv) Abatement by Public Health. The county may abate the alleged violation in accordance with subsection (5)(f) of this section if all terms of the voluntary correction agreement are not met.

(v) Collection of Costs. If all terms of the voluntary correction agreement are not met, the person responsible for the alleged violation shall be assessed all costs and expenses of abatement, as set forth in this chapter.

(f) **Abatement Orders.** Where the health officer has determined that a violation of these regulations has occurred or is occurring, he or she may issue an abatement order to the person responsible for the alleged violation requiring that the unlawful condition be abated within a reasonable time period as determined by the health officer.

(i) **Prerequisite to Abatement Order.** Absent conditions which pose an immediate threat to the public health, safety or welfare of the environment, the procedures for abatement of conditions constituting a violation of these regulations should be utilized by public health only after corrections of such conditions have been attempted through the use of the civil infractions process. Once it has been determined by public health that there is an immediate threat to the public health, safety or welfare and that correction of such conditions has not been adequately achieved through use of the civil infraction process, then public health is authorized to proceed with abatement of such conditions pursuant to these regulations. Public health shall also attempt to enter into a voluntary corrections agreement prior to issuing an abatement order.

(ii) **Content.** An abatement order shall include the following:

(A) The name and address for the person responsible for the alleged violation;

(B) The street address or description sufficient for identification of the building, structure or premises, or land upon or within which the alleged violation has occurred or is occurring;

(C) A description of the violation and reference to the provision of the Jefferson County board of health ordinance which has been allegedly violated;

(D) The required corrective action and a date and time by which the correction must be completed and after which the health officer may abate the unlawful condition in accordance with this chapter;

(E) A statement that the costs and expenses incurred by public health pursuant to this chapter, including any amount expended on staff time to oversee the abatement, may be assessed against a person to whom the abatement order is directed in a manner consistent with this chapter; and

(F) A statement that the person to whom the abatement order is directed can appeal the order to the health officer in accordance with this chapter.

(iii) **Service of Notice.** The health officer shall serve the abatement order upon the owner of

the property where the alleged violation occurred or is occurring, either personally or by mailing a copy of the notice by regular and certified or registered mail, a five-day return receipt requested, to the owner at his or her last known address. The order shall also be served on each of the following if known to the health officer or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record and the holder of any other estate or legal interest of record in or to the property or any structures on the property. The failure of the health officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such served person from any duty or obligation imposed by the provisions of this section. A copy of the order shall also be posted on the property where the alleged violation occurred or is occurring.

(iv) **Authorized Action by Public Health.** Using any lawful means, public health may enter the subject property and may remove or correct the condition that is subject to abatement.

(v) **Recovery of Costs and Expense.** The costs of correcting a condition which constitutes a violation of these regulations, including all incidental expenses, shall be billed to the owner of the property upon which the alleged violation occurred or is occurring, and shall become due within fifteen calendar days of the date of mailing the billing for abatement. The term "incidental expenses" includes, but is not limited to, personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; towing/hauling, storage and removal/disposal expenses; and actual expenses and costs to public health in preparing notices, specifications and contracts associated with the abatement, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.

(vi) **Collection of Costs and Expenses.** The costs and expenses of correcting a condition, which constitutes a violation of these regulations, shall constitute a personal obligation of the person to whom the abatement order is directed. Within 15 days of abating any violation, the health officer shall send the person named in the abatement order a bill that details the work performed, materials removed, labor used and the costs and expenses related to those tasks as well as any other costs and expenses incurred in abating the violation.

(g) **Notice to Vacate.** When a condition constitutes a violation of these regulations and poses

an immediate threat to life, limb, property, or safety of the public or persons residing on the property, the health officer may issue a notice to vacate.

(i) Content. A notice to vacate shall include the following:

(A) The name and address for the person responsible for the alleged violation;

(B) The street address or description sufficient for identification of the building, structure or premises, or land upon or within which the alleged violation has occurred or is occurring;

(C) A description of the violation constituting an emergency and reference to the provisions of the Jefferson County board of health regulations which have been allegedly violated;

(D) A date, as determined by the severity of the emergency, by which any persons must vacate the premises. In case of extreme danger to persons or property, immediate compliance shall be required;

(E) The required corrective action;

(F) A statement that the person to whom the notice to vacate is directed can appeal the order to the health officer in accordance with JCC 8.15.170 and that any such appeal must be presented to the health officer within 10 days.

(ii) Service of Notice. The health officer shall serve the abatement order upon the owner of the property where the alleged violation occurred or is occurring, either personally or by mailing a copy of the notice by regular and certified or registered mail, with a five-day return receipt requested, to the owner at his or her last known address. A copy of the order shall also be posted on the property where the alleged violation occurred or is occurring.

(iii) Posting the Notice. In addition to providing service as stated above, an additional notice shall be posted on the property in substantially the following form:

**DO NOT ENTER
UNSAFE TO OCCUPY**

It is a violation of the Jefferson County Board of Health Code 8.15 to occupy this building, or to remove or deface this notice.

_____, Health Officer
Jefferson County Public Health

(iv) Compliance. No person shall remain in or enter any building, structure, or property which has been so posted, except that entry may be made to repair or correct any conditions causing or

contributing to the threat to life, limb, property, or safety of the public or persons residing on the property. No person shall remove or deface any such notice after it is posted until the required corrective action has been completed and approved.

(6) Appeals. See JCC 8.15.170.

(7) Administrative – Certificate Holders.

(a) Suspension of Certificate.

(i) The health officer may suspend any certificate upon making the determination, after a hearing between the health officer and the certificate holder, that the holder has performed with negligence, incompetence, misrepresentation or failure to comply with the applicable rules, regulations, guidelines, policies or practices which pertain to water supply and wastewater disposal, to have made fraudulent misrepresentation in making application for a certificate or to have made fraudulent misrepresentation in making application for a permit to install an on-site sewage system, either existing at the time of certification or as thereafter enacted.

(ii) The health officer shall give written notice of the hearing to any person aggrieved who has filed a written complaint with the health officer and the affected certificate holder(s).

(iii) For the first confirmed violation under this subsection, the suspension period shall not exceed 30 days; and the second violation in any three-year period shall result in a suspension of the certificate for a period not less than 15 days and not to exceed 180 days.

(iv) If the health officer suspends a certificate, the certificate holder shall not proceed with any further work in connection with the activity covered by the certificate.

(v) The certificate holder shall be notified by certified mail of suspension of the certificate upon determination of a finding that a violation has occurred requiring suspension.

(b) Revocation of Certificate.

(i) A certificate may be revoked for repeated violation of any of the requirements of these regulations or any other applicable regulation or if, after a hearing with the board of health, the holder of such certificate shall be found grossly incompetent or negligent, or to have made fraudulent misrepresentations in making application for a certificate or for a permit to install an on-site sewage system, or should the bond or insurance required herein be cancelled.

(ii) The health officer shall give written notice of the hearing to any person aggrieved who has filed a written complaint with the health officer and the affected certificate holder(s).

(iii) The third notice of violation issued by JCPH staff within any 12-month period shall be considered as a repeated violation and result in certificate revocation.

(iv) If the board of health revokes a certificate, the certificate holder shall not proceed with any further work in connection with the activity covered by the certificate.

(v) The certificate holder shall be notified by certified mail of revocation of the certificate, upon determination of a finding that a violation has occurred requiring revocation.

(vi) If, after revocation of a certificate, the applicant desires to reapply for a certificate, the applicant must wait six months prior to reapplication. Any person whose certificate has been revoked will be required to pay all applicable fees and take and pass the written examination again before issuance of a new certificate.

(c) Reinstatement of Suspended or Revoked Certificate.

(i) The certificate holder shall make written application for reinstatement to the environmental health director specifying what practices, performance, and conditions that were named as grounds for suspension or revocation have been remedied; and the certificate holder will provide a description of the changes in performance that will occur which will directly avoid the repetition of past violations.

(ii) The environmental health director, upon determining that noted deficiencies have been satisfactorily addressed, shall schedule the individual for participation in the next available examination where applicable. Reissuance of the certificate is subject to the individual's successful completion of the application and testing procedure and payment of testing and certification fees as per the fee ordinance.

(d) Probation. A period of probation consisting of additional reporting or inspection requirements may be imposed on a certificate holder as a result of violations of these rules or as a condition of operation following suspension/revocation of a certificate. Said period and requirements shall be the decision of the health officer and shall be determined after an administrative hearing with the certificate holder.

(e) Appeal. Any person feeling aggrieved because of the suspension or denial of a certificate by the health officer may, within 15 days of the suspension or denial, appeal to the board of health as set forth in JCC 8.15.170.

(8) Administrative – Property Owners.

(a) Notice to Title. If the health officer finds that an owner has failed to comply with the requirements of this regulation, and all administrative remedies have been exhausted, and the case has been forwarded to the Jefferson County prosecuting attorney for further action, the health officer may record a notice of potential uncorrected violation finding on the title of the property with the Jefferson County auditor.

(b) Removal of Notice. The owner shall make written request to the health officer for rescission of the notice to title. The request shall specify corrective actions that have been completed.

(c) The health officer, upon determining that noticed violation has been corrected, shall record a rescission of notice with the Jefferson County auditor.

(d) The owner shall pay fees as required to complete inspection(s) to verify correction and to record the rescission prepared by JCPH. [Ord. 6-07]

8.15.190 Severability.

Provisions of these rules and regulations are hereby declared to be separable, and if any section, subsection, sentence, clause, phrase, or portion of these rules and regulations is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of these rules and regulations. [Ord. 6-07]

8.15.200 Fees.

(1) Fees shall be as per the Jefferson County public health fee schedule.

(2) Refunds shall not be granted if field investigation, plan review, site visit or design review has been completed by JCPH.

(3) A refund of the application fee minus an administrative fee of \$45.00 shall be granted upon written request of the applicant/owner, except as noted in subsection (2) of this section.

(4) All sewage system installers, septic tank pumpers, and operation and monitoring specialist certificates are renewable annually on March 1st. Should any renewal fee remain unpaid by March 31st, a penalty fee according to the fee schedule shall be charged. Previously issued certificates shall become void if not renewed prior to April 1st.

(5) Fees generated under this authority cannot be used to support nonpublic health activities. [Ord. 6-07]

8.15.210 Effective date.

This chapter shall be effective 10 days after approval is obtained from the department of health as per WAC 246-272A-0015(10). [Ord. 6-07]

8.15.220 Conflict.

Where other county regulations are in conflict with this chapter, the more restrictive regulation shall apply and such application shall extend only to those specific provisions that are more restrictive. [Ord. 6-07]

Table 1 Third party operations/monitoring inspection schedule for on-site sewage systems.

Type of System	Site Size Equal to or Less Than One Acre	Site Size Greater Than One Acre	Waiver Required and/or Approved	Site on Shoreline and System Less Than 200 Feet to Shoreline	Commercial with High Strength Waste
Conventional*	Every three years and at time of sale ¹	Every six years and at time of sale ¹	Every three years and at time of sale ¹	Every three years and at time of sale ¹	Annually or as specified in sewage disposal permit
Alternative systems**	At six months, at one year and annually thereafter and at time of sale ¹	At six months, at one year and then every three years and at time of sale ¹	At six months, at one year and annually thereafter and at time of sale ¹	At six months, at one year and annually thereafter and at time of sale ¹	Annually or as specified in sewage disposal permit
Proprietary devices	At the schedule required by the treatment standard to be met and manufacturer's guidelines	At the schedule required by the treatment standard to be met and manufacturer's guidelines	At the schedule required by the treatment standard to be met and manufacturer's guidelines	At the schedule required by the treatment standard to be met and manufacturer's guidelines	At the schedule required by the treatment standard to be met and manufacturer's guidelines. Annually at a minimum.

The third party inspection does not alleviate the responsibility of the homeowner to complete inspections as required in the O&M manual provided by the system designer and maintain the system when problems are observed.

¹Time of sale inspection is required only if inspections have not been kept current per this schedule or if the site has not been inspected and is not yet enrolled in the inspection schedule.

REPORTS OF ALL INSPECTIONS SHALL BE SUBMITTED ON FORMS SUPPLIED BY THE HEALTH DEPARTMENT

Any system where a system operation problem is identified at the time of inspection shall be reinspected within six months.

All maintenance of proprietary devices shall be completed by factory-authorized personnel.

*"Conventional" includes gravity and pump-to-gravity only.

**The inspection schedule for alternative systems is specified in the state guidelines for pressure distribution.

[Ord. 6-07]

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2. On May 25, 2010 I mailed, with prepaid sufficient postage through the United States Postal System a copy of the following:

- BRIEF OF RESPONDENT JEFFERSON COUNTY;

To the following persons:

David C. Ponzoha (original and 1 copy)
Court Clerk, Ct. of Appeals, Div. II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Thomas and Cassandra Brotherton (1 copy)
255 Cascara Drive
Quilcene, WA 98376-8592

I sign this Declaration under penalty of perjury pursuant to the laws of the State of Washington.

Signed in Port Townsend, WA on May 25, 2010


DAVID W. ALVAREZ