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Division II
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No. 51500-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JEFFERSON COUNTY

Respondent

v.

MICHAEL ANDERSON

Appellant

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Jefferson County raises a variety of issues in its response brief.

The relevant ones are addressed herein. Anderson expands and clarifies his original statement and argument in his brief.

A. ISSUE OF MOOTNESS

County argues Anderson negated the need for execution of the warrant of abatement, thus rendering the case moot.

B. ISSUE REGARDING NON-CONFORMING USE

County states that Anderson failed to include the decision regarding nonconforming use in the notice of appeal.

C. IS ANDERSON AN ILLEGAL VEHICLE WRECKER?

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G. CONCLUSION: SQUEAKY WHEEL/AIN’T IT AWFUL

Anderson challenges some of County’s “facts.”

A. ISSUE OF MOOTNESS

Jefferson County contends that because,

After the warrant to abate the nuisance was issued, Anderson “removed all the offending vehicles” from the property.... Thus, there no longer any need for the order directing issuance of a nuisance warrant. An issue is moot if an appellant court cannot provide effective relief. [cites omitted]. Accordingly, the appeal of the order requiring issuance of a warrant for a nuisance abatement should be dismissed as moot. p. 37, Respondent’s Reply Brief.

As recently stated in *Global Neighborhood v. Respect Washington*, App. Ct.III 35528-4 [2019] a case is moot when it involves only abstract propositions or questions, when substantial questions in the trial court no longer exist, or when a court can no longer provide effective relief. *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005). Anderson points out that the “substantial question” continues to exist as to the whole issue of whether or not the series of County ordinances that modifies the state definition of “solid waste” in 2006, to include “junk vehicle” instead of “abandoned vehicle,” and in 2014, to change the definition of “junk vehicle” so almost any defect or visually unappealing vehicle more than three years old is subject to removal and disposal by the County. These modifications trigger the whole section of state law regarding removal and processing of solid

waste, Chapter 70.95 RCW. By placing “junk vehicles” within the category “solid waste” the County avoids RCW 70.95.240(3)(c)(v)(4):

If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

Under state law, junk vehicles are not subject to the regulations regarding the removal of solid waste unless they are abandoned.

County argues that the removal moots this case. However, Anderson points out that, since he could not afford the bond required for an injunction staying proceedings CP 337 [Anderson income tax exhibit], the only way he had to preserve his property [the 98 junk vehicles] was to remove them from his property at 890 Old Hadlock Road, before the County removed them pursuant to the warrant CP 342, 345.

Anderson further contends that this Court’s action is needed to provide effective relief given the very real possibility of future similar actions by the County because the underlying case is still an open case. There is a permanent injunction regarding which vehicles he can keep on his property. Should one of Anderson’s vehicles that remains on his property have a problem, like a flat tire or weeds growing up around it, the County could declare it a junk vehicle and could file another motion of contempt. Note that it only takes one and only one of the problems listed in the 2014 ordinance for the

County to find a vehicle a “junk vehicle.” under its current code,

Ordinance 09-1016-14:

A junk vehicle includes campers, boats, boat trailers or any other type of vehicle used for human transportation which **may exhibit any of the** following: (1) Build-up of debris, moss or weeds on, in, under, or around the vehicle that obstructs use; (2) Damage to the frame; (3) More than one missing or shattered window or windshield; (4) More than one inoperable or missing headlight or taillight; (5) More than one flat tire; (6) A missing or inoperable engine or transmission. (7) A missing wheel, license plate, driver-side mirror, tire, body panel, door, hood or other obvious body part, not including a bumper (8) A license plate that has been invalid for more than 60 days. (9) Evidence that the vehicle has not been moved in at least 60 days. [*Emphasis added*]

The issues in the case under appeal here are not abstract propositions or questions, they directly impact Anderson’s ability to continue his business of repairing and rebuilding used vehicles.

This definition also applies to many older vehicles owned by many middle to low-income Jefferson County citizens, which are fixable, in the process of being fixed or intended to be fixed when the citizen has the money. This issue does not just affect Anderson, it effects many Jefferson County citizens with older vehicles.

B. DOCUMENTATION OF NON-CONFORMING USE ISSUE

County, in its discussion of Assignment of Error 1, states:

Anderson failed to include or attach the decisions designated in the Notice of Appeal.

Anderson stated in his opening brief, page 2, last paragraph:

Judge Brian P. Coughenour ruled on December 15, 2017, RP 3-45, CP 194, reconsideration denied on January 26, 2018, RP 48-50, that he was precluded from acknowledging the subject property [SP]'s long time use as a vehicle storage yard because of the previous ruling in this case

To clarify, Anderson filed a *Motion to Declare Legal Non-Conforming Use of Property at 890 Old Hadlock Road, Port Hadlock, Washington*, on September 14, 2017, CP 158. The motion was heard on December 15, 2017 RP 5-21 and denied, CP 194. A *Motion for Reconsideration*, was heard on January 26, 2018. Judge Coughenour denied reconsideration orally, RP 48-50, CP 343, but the written order signed that day failed to include the denial of reconsideration on the issue of non-conforming use.

Anderson submits the following list to clarify the sequence of documents submitted by the parties regarding a legal non-conforming use of his property as a vehicle storage yard between motion and judgment:

CP 159, CP 162, CP 168, CP 177, CP 194, CP 196, CP 197, CP 200, CP 202, CP 203, CP 205, CP 206, CP 207, CP 324, CP 326, CP 327, CP 328, CP 330, CP 336.

C. ISSUE: IS ANDERSON AN ILLEGAL VEHICLE WRECKER?

Does the occasional selling of parts from vehicles that he owns make Anderson an illegal vehicle wrecker as County claims?

The County insists that Anderson is a vehicle wrecker because he occasionally sells vehicle parts. Anderson freely acknowledges that he occasionally sold parts from vehicles he owns. Is this de minimis selling

of parts legal? Anderson points out that he does not advertise parts for sale or otherwise solicits buyers, but sells to people in the community who inquire, knowing that he is in the repair and rebuild business. CP 162. The parts come from vehicles he owns. [Most of the vehicles on the Anderson property are in his name. CP 63]. Anderson explains his situation in his

Declaration of Michael Anderson Re: Business Activity of Michael's

Custom Rebuild & Towing CP 162:

6. Second I repair engines and motors of all kind, primarily vehicle and boat engines and other minor repairs. This part of my business is regulated by RCW Chapter 46.71.

7. *The county repeatedly refers to what I do as auto wrecking and questions why I do not have an auto wrecker's license. I have looked into expanding my business by doing auto wrecking but choose not to do it because it also requires a great deal of paperwork and uncompensated time. Just a partial list of requirements is found in RCW 46.80.080:*

Records—Penalty.

(1) Every vehicle wrecker shall maintain books or files in which the wrecker shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by the wrecker; and

(b) Every major component part acquired by the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom the wrecker purchased the vehicle or part. Major component parts other than cores shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle that is the source of a major component part other than a core:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased; (g) Disposition of the motor and chassis; (h) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) The records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the licensee, identifying the seller by name, address, and date of sale.

(4) The records shall be maintained by the licensee at his or her established place of business for a period of three years from the date of acquisition.

(5) The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the vehicle wrecker's place of business or to other places designated by the owner of the vehicle or his or her representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

(7) Failure to comply with this section is a gross misdemeanor.

8. The Washington State Department of Licensing gives the following description of who must get a motor vehicle wrecker's license:

Who needs a license?

Any business that buys or sells: Wrecked titled or registered motor vehicles for the purpose of dismantling them; Second-hand motor vehicle parts.

I trade or buy older vehicles that I believe I can repair at a profit. I do not obtain vehicles for the purpose of dismantling them. **I put most of the vehicles I trade or buy in my name. Sometimes I keep the title provided by the seller and act as an interim owner until I dispose of the vehicle.** On rare occasions someone will come by needing a part I have, and if I don't need it, I will sell it to him. Some of the vehicles I obtain are parts vehicles used in rebuilding collector vehicles for old car hobbyists.

9. I also haul or tow the remains of vehicles that I own or have the title to, that have no further value, to a metal recycler in either Port Orchard or Tacoma.

Anderson has been told by authorities in the past that an occasional private selling of a part from a vehicle that he owned was legal, CP 63 p 5.

[The County's reference to this document in his reply brief is second-hand, as an attachment to Declaration of Philip C. Hunsucker, CP 165. The source document, CP 63, Declaration of Michael Anderson in Opposition to Plaintiff's Second Motion For Partial Summary Judgment is an excellent, detailed 15 page description of Anderson's business activities.]

Anderson would appreciate the Court addressing the issue of the legality of occasional selling of parts from vehicles he owns to persons who seek him out hoping to find a part they need and taking parts from vehicles he owns and attaching them to other vehicles he owns or to vehicles that customers ask him to repair, charging the customer for the part. These kinds of trades and buy/sell situations are often found between vehicle restorers and collectors.

D. THE "DRIVE AND RUN" TEST ISSUE

County implies that Anderson deliberately mislead the Court by omitting, in Anderson's Brief, mention of the Order of Continuance, CP 155, and in particular the agreed "drive and run" test in which vehicles that did not run and drive when tested by a Department of Health representative would be considered "junk vehicles" for purposes of deciding which vehicles would be considered solid waste by the County.

Anderson's view, at the time, was that many of the vehicles stored on his Old Hadlock Road property would fit the description of "junk vehicle" since County's definition of "junk vehicle" had become far more inclusive with the adoption in 2014 of Ordinance 09-1016-14:

A junk vehicle includes campers, boats, boat trailers or any other type of vehicle used for human transportation which may exhibit **ANY** of the following: (1) Build-up of debris, moss or weeds on, in, under, or around the vehicle that obstructs use; (2) Damage to the frame; (3) More than one missing or shattered window or windshield; (4) More than one inoperable or missing headlight or taillight; (5) More than one flat tire; (6) A missing or inoperable engine or transmission. (7) A missing wheel, license plate, driver-side mirror, tire, body panel, door, hood or other obvious body part, not including a bumper (8) A license plate that has been invalid for more than 60 days. (9) Evidence that the vehicle has not been moved in at least 60 days.

Anderson's contention then, and now, is when Jefferson County, in 2005, Ordinance 09-1020-05, changed the definition of solid waste, to include "junk vehicle" and deleted the term "abandoned vehicle" which is the term in the state definition since 1969 and previously in the County's definition, County interfered with the State's enforcement scheme for handling abandoned vehicles and, instead, granted control over junk vehicles, wherever found, to the Jefferson County Health Department to dispose of as solid waste. They did this by a few simple changes, adding a word, dropping a word. They dropped the phrase "abandoned vehicle" and put in its place, the phrase "junk vehicle."

The County already had limited jurisdiction over "abandoned junk vehicles" under the following statute:

RCW 46.55.230(1)(a) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or **officer of a jurisdictional health department** acting pursuant to RCW **70.95.240**, or any person authorized by the director shall inspect and **may authorize the disposal of an abandoned junk vehicle**. The

person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the parts.

which had been amended in 2000 [Chapter 154, Laws of 2000, 56th Legislature 2000 Regular Session, RURAL GARBAGE DISPOSAL, Effective Date: 6/8/00.]

to include health department personnel in a state law that allows law enforcement officers to call a licensed tow-truck driver to remove an abandoned vehicle, notify the owner, and sell it at auction if unclaimed. RCW Chapter 46.55. Health Departments were added primarily because vehicles abandoned on private property needed to be addressed.

Anderson contends that none of the vehicles on his property were abandoned as required under the state law that permits local health departments to impound abandoned junk vehicles. CP 188. County got around that by granting itself the power to dispose of “junk vehicles,” wherever found, on public or private property, including the property of the individual who owns the junk vehicle or has permitted the owner of the vehicle to park it on his land, **by including junk vehicles in the definition of solid waste.** Forget about the “abandoned” requirement. Here is how they did it:

Washington passed a law in 1969 [Engrossed House Bill No. 596 titled SOLID WASTE MANAGEMENT.] It included the following definition of solid waste:

(9) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including garbage, rubbish, ashes, industrial wastes, demolition and construction wastes, **abandoned vehicles or parts thereof**, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded materials.

This is the definition in 2004 and currently:

(22) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, **abandoned vehicles or parts thereof**, and recyclable materials.

On July 15, 2004 *Jefferson County Ordinance Number 09-0715-04, Solid Waste Regulations*, was passed, defining “solid waste:”

Solid Waste: All putrescible and non-putrescible solid and semi-solid wastes including but not limited to garbage, rubbish, ashes, industrial wastes, swill, construction and demolition wastes, land clearing wastes, **abandoned vehicles or parts thereof** (including waste tires), and **discarded commodities**. This includes solid and semi-solid materials that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, (*Criteria for Municipal Solid Waste Landfills*), Chapter 173-308 WAC (*Biosolids Management*), and a solid waste handling permit issued by the Health Officer.

“Discarded commodities” is not listed in the state definition and Jefferson County did not define it. In October 2005 Jefferson County passed Ordinance Number 09-1020-05, effective October 20, 2005. The relevant changes from the 2004 to the 2005 version definitions are as follows:

Modified : **Solid Waste:** All putrescible and non-putrescible solid and semi-solid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, animal wastes, construction and demolition wastes, land clearing wastes, contaminated soils, contaminated dredged spoils, **junk vehicles or parts thereof** (including waste tires), and **discarded commodities**. This includes all liquid, solid and semi-solid, materials

that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste also includes, but is not limited to, woodwaste, dangerous waste, yard waste, bulky waste, biomedical waste, animal waste, waste tires, recyclable materials, and problem wastes. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, *Criteria for Municipal Solid Waste Landfills*, Chapter 173-308 WAC, *Biosolids Management*, and a solid waste handling permit issued by the Health Officer.

Added: **Discarded Commodity:** Products or items that because of damage, misuse, wear, or neglect, are no longer being utilized for its intended purpose.

Added: **Junk Vehicle:** A vehicle certified under RCW 46.55.230 as meeting at Least three of following requirements:

1. Three (3) years old or older;
2. Extensively damaged, such damage including but not limited to the following: a broken window or windshield, or missing wheels, tires, motor, or transmission.
3. Apparently inoperable, and/or
4. Has approximate fair market value equal only to the approximate value of the scrap in it.

For enforcement purposes, possessing three (3) junk cars on a single property of any size is not allowed under this regulation.

There were also changes in enforcement allowing a civil infraction citation and/or criminal charges that impacted the legal process in this case, creating due process concerns.

Apparently questions had been raised about the rights of citizens and the responsibilities of staff during the four months since this new ordinance was passed because on February 14, 2006 David Alvarez, Jefferson County Chief Civil Deputy Prosecuting Attorney, issued a six page memorandum to the County Board of Health, topic: “*What are the definitions for Junk and Abandoned vehicles?*” CP 340. It starts out by

saying “State law provides precise definitions for junk vehicles and abandoned vehicles,” but does not include the definitions as found in state law. He answers the question, # 3. *Who can dispose of a junk vehicle?* as follows:

Several categories of persons can dispose of a junk vehicle, specifically 1) law enforcement officer having jurisdiction, 2) a representative of a County Board of Health who is enforcing rules against illegal dumping of solid waste or 3) any representative of the State DMV. See RCW 46.55.230(1).

But Alvarez has given the Board of Health the wrong information. RCW 46.55.230(1)(a) actually says:

Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or **officer of a jurisdictional health department acting pursuant to RCW 70.95.240**, or any person authorized by the director shall inspect and **may authorize the disposal of an abandoned junk vehicle.**

There is a big difference between “dispose of a junk vehicle” and “authorize the disposal of an abandoned junk vehicle.” “Abandoned junk vehicle” is a term of art in this context. It is not the sum of its parts.

This is the point Anderson argued before Judge Coughenour. RP January 26, 2018, pages 61-73. During that exchange there is referenced to this February 14, 2006 Memorandum which was entered into evidence, CP 340, and Anderson attempts to point out the error made in 2006 by the County’s attorney interpenetrating the law that allows county health officers to handle “abandoned junk vehicles.”

County responds on p.70, RP January 26, 2018, “First of all, in the Jefferson County Code, junk vehicles are in the solid waste part of the Code.” Judge Coughenour, acknowledges this argument and rules in favor of the County immediately after this discussion.

The phrase ABANDONED JUNK VEHICLE is a term of art that has a legal meaning as a phrase that is not the same as the meaning of the parts separately. Junk generally means something dilapidated, broken or not working, but it also holds out the hope of being fixed. People make a living running junk yards and junk shops.

To put the issue succinctly, Michael Anderson has a collection of older vehicles in need of repair. They are his business inventory. He is in the business of repairing and rebuilding vehicles. He has been since the late 1970s. Unfortunately, most of his business inventory fits the description of “junk vehicle” as found in RCW 46.55.230 and referenced elsewhere in Chapters RCW.46.55, RCW 70.93, and RCW 70.95. The **actionable** references to “junk vehicle” in these statutes is always proceeded by the word “abandoned,” specifically what to do with abandoned junk vehicles and who is authorized to do something about it.

Abandoned is an important word here. Vehicles are a major purchase for most people and they generally do not abandon them unless they are so far gone they are worthless. On the other hand the vehicles in

Anderson's inventory are there at their owner's request that Anderson fix them or they are owned by Anderson with the intent to fix them and sell or barter them for a profit, CP 63. They are fixable junk vehicles. The state's definition of "junk vehicle" was only intended to be used to define the kind of abandoned vehicle found on the side of the road or on private property, unauthorized, that needs to be gone. What happens when this definition is used to define Anderson's inventory can be seen in a declaration of Walter Chatrand CP 93.

[Chatrand examined Anderson's property a number of times to determine which vehicles were "junk vehicles" in CP 56, CP 68, and CP 82, but CP 93 is the only one where he explains his method. He is employed as a Tow, Wrecking Yard Inspector with the Washington State Patrol.]

p. 3 Michael Anderson filed an affidavit which disputed his conclusion regarding most of the 39 vehicle (or vehicle hulks) that I determined were junk vehicles.

Chatrand then details how specific vehicles that were in dispute were determined to be junk vehicles:

25/26. The first criterion they agreed on: all of the vehicles were more than three years old.

27. The second criterion is that the vehicle be "extensively damaged."

28. Some 26 times Mr. Anderson asserts that one of his junk vehicles has "no significant damage."

29. For 20 of the 31 junk vehicles remaining on the SP I have marked them as "INOP" or "inoperable." This means the damage or missing parts observed at that vehicle is sufficient to make it

NOT safely operable on the roads of this state and therefore “extensively damaged.”

30. Safety concerns making a vehicle “extensively damaged” for the purposes of the junk vehicle law arise with #19, where a muffler is dragging on the ground, #22 where the hood is misaligned, #32 where the hood is misaligned, #35 which is missing its right front headlight and #45 which has missing or damaged rear light fixtures.

31. #49 is missing its entire engine block. These are only examples.

32. A vehicle that is “apparently inoperable” meets the third of the four criteria.

33. Mr. Anderson frequently disputes any conclusion I reached that the junk vehicles at the SP are “apparently inoperable.”

34. He disputes the “apparently inoperable” standard to his junk vehicles by stating with respect to 16 separate vehicles, in essence, “this vehicle runs and drives,”

35. That is not the criteria laid out in state law.

36. Instead, the third criterion is “apparently inoperable.”

37. The apparent inoperability of a vehicle is not determined by whether the engine starts and whether the vehicle is capable of progressing down the highway.

38. Instead, I determine what quantity of repairs it would take to resuscitate the vehicle from its long inactivity and if it appears that the vehicle cannot be revived unless a person does more than simply add gasoline and turn the key, then the vehicle satisfies the junk vehicle criterion of “apparently inoperable.”

39. The older a vehicle is the more likely it is that the rubber tubes within it have cracked or deteriorated and the more likely the vehicle would need extensive work to revive it, making the vehicle “apparently inoperable” despite the fact that the vehicle can emit exhaust.

40. See for example within my matrix any comments which I have inserted the phrase “INOP” (for inoperable) in my “notes” column,

reflecting on each occasion missing body or engine parts which make said vehicle unable or unsafe to operate on streets or highways.

45. The fourth criterion found in RCW 46.55.010(5) requires me to determine whether the vehicle hulk “[h]as an approximate fair market value equal only to the approximate value of the scrap in it.”

46. My training has always been to read the fourth criterion as meaning what is the fair market value or “FMV” of the car in its current condition, as if it were put at the curb today (without any repairs or improvements) with a “for Sale” sign placed upon it.

47. If that FMV is not greater than what the scrap in the vehicle hulk would bring if sold for scrap, then the fourth criterion if the applicable state law has been satisfied.

As you can see, Chatrand’s statement concerning when a vehicle is “extensively damaged” was based on whether it would be legal to drive it on a public road as is. A missing headlight or rear light were considered “extensively damaged,” not the ordinary understanding of a layman looking at a vehicle on its owner’s property, but reasonable in the context of determining whether or not a vehicle has been abandoned. Chatrand further states the apparent inoperability of a vehicle is not determined by whether the engine starts and whether the vehicle is capable of progressing down the highway. Instead, he determines what quantity of repairs it would take to resuscitate the vehicle from its long inactivity and if it appears that the vehicle cannot be revived unless a person does more than simply add gasoline and turn the key, then the vehicle satisfies the junk

vehicle criterion of “apparently inoperable.” Pretty harsh if one was considering a vehicle on its owner’s property, but reasonable in determining whether a vehicle has probably been abandoned.

On the other hand, Anderson evaluated each vehicle as a fixable junk vehicle: what was needed to fix it in terms of parts and labor to make it worthwhile. Each time the County came after more vehicles Anderson submitted his analysis of the vehicles chosen by the County as junk vehicles that must be disposed of. The evaluations are found in CP 63, CP 89, CP 90, CP 210 through CP 323. This was not just a field of old cars. Anderson knew each vehicle and what was needed to repair it.

This is a vivid demonstration that the evaluation of a “junk vehicle” that is abandoned and needing to be disposed of by the WSP uses criteria very different from an evaluation of a “junk vehicle” by a car repair person with more than 40 years’ experience as to whether or not he can fix it for financial gain. State law limits the use of its definition of “junk vehicle” to those that have been abandoned for good reason.

The government, any government, is not in the business of seizing personal property except under specific exceptions not found here, *Article XI, section 11 Washington Constitution*. Certainly not Jefferson County when it decided, without hearings or explanation to change the definition

of “solid waste” by substituting “junk vehicle” for “abandoned vehicle” so they could go after Anderson’s stockpile of fixable junk vehicles.

When the Judge allowed Anderson to keep some of his “junk” vehicles in 2012, County passed Ordinance 09-1016-14 on October 16, 2014 and, in an *ex post facto* proceeding in 2016, charged Anderson with having breached the 2012 Injunction by having junk vehicles on his properties, using the expanded definition of junk vehicle. The 2014 ordinance redefined the definition of “junk vehicle” [quoted above], which widened the net so that almost any older vehicle parked out in the weather for any amount of time, could fit the new definition as well as boats, trailers, and other unspecified forms of transportation. One wonders if the county employee who designed this ordinance walked among the vehicles stored at 890 Old Hadlock Road to determine the criteria for their new definition of “junk vehicle.”

Anderson decided to test these new ordinances in court. It made sense for Anderson to agree to using County’s proposed shortcut test of “drive and run” to simplify determining which vehicles would be labeled “junk vehicles” by the County for the purposes of the court test.

Anderson did not agree that “drive and run” was a proper determinative of the definition of “junk vehicle” nor did he concede that Jefferson County Department of Health had the legal right to issue a notice of infraction or

to impound junk vehicles that were not abandoned and that were on his property with his permission. County has taken the position that, when dealing with a vehicle that it believes is a junk vehicle under its extended definition AND it is on the property of the vehicle's owner or by permission of the property owner, thus not an abandoned vehicle, the County can still proceed because all such junk vehicles are solid waste subject to abatement and disposal at the County's direction.

In Anderson's case, the County apparently, *sua sponte*, decided on a drive and run test as described in the County's documents. The particular means of documenting which of his vehicles were "junk vehicles" was not a battle that Anderson had any chance of winning so he acquiesced to the drive and run. He then put the argument presented here in his response to the Motion for Contempt of Court, CP188, CP190, and in the discussion with the Court on January 26, 2018. RP p. 60-72, CP 157, CP167, CP 179 explain issues mentioned in the court transcript for January 26, 2018 referencing the December 15, 2017 hearing found at RP p. 21-29].

F. LAW OF THE CASE: *Weden v. San Juan County*

Appellant agrees with the Respondent:

1. Questions of law are reviewed de novo.
2. Whether collateral estoppel applies to bar re-litigation of an issue is reviewed de novo.

3. Interpretation of constitutional provisions, statutes, and court rules are questions of law and are reviewed de novo.
4. Whether or not an ordinance is constitutional is a question of law and requires de novo review.

Weden v. San Juan County, 135 Wash.2d 678, 958 P. 2d 273, 279

(1998) is the seminal case regarding the circumstances in which local governments can legally creation an ordinance that varies from Washington state law.

First, San Juan County did not change the meaning of “personal watercraft” or other terms when it created its ordinance. No matter where you go in Washington, “personal watercraft” means the same. That is not true in this case. Jefferson County changed the meaning of solid waste so that it included junk vehicles in 2005, which the state does not. The state’s definition has included the term “abandoned vehicles and part thereof” from 1969 to the present. Jefferson County, in its pleadings, has referenced state law regarding solid waste back to the mid-twentieth century as if references to state law or cases concerning “solid waste” apply to Jefferson County which uses a different meaning of that term. Apples and oranges. The same is true of the passage in 2014 of an ordinance in which the definition of junk vehicle allows a car with weeds growing around it, **or** an outdated license plate **or** a broken headlight to be considered solid waste, destined for a trip to a vehicle crusher. Legal

terms should mean the same throughout the state so that citizens of this state can rely on the meaning of terms defined in state law by looking in the RCWs and not be expected to search out local ordinances for modifications of definitions county by county. There is nothing special about Jefferson County that would dictate a different definition.

Second, San Juan County was able to successfully argue that it was unique among Washington's counties because it is a group of islands surrounded by water with specific environmental concerns and therefore the need to regulate transportation and noise on its waterways is an essential element of its governmental responsibilities. Jefferson County has no such claim of uniqueness. Solid waste, abandoned vehicle, junk vehicles and "abandoned junk vehicles" are found in every county. The state, in its statutory formulation made a reasonable division between an **"abandoned junk vehicle"** which is probably too far gone to be fixed, but still requires the enforcement official, including the health officer, to determine the owner and give them notice regarding where it was towed to; and **"junk vehicle"** found on private property with the permission of the owner, with the presumption that it is fixable. There is no state law that permits such a vehicle to be impounded. **Except in Jefferson County.**

Third, when San Juan County proposed its ordinance it held public hearings, resulting in “an extensive list of 21 legislative findings” which is described in detail in *Weden*, p. 685-687. A search in Jefferson County records does not reveal any public hearings regarding its 2005 modification of the definition of solid waste and its 2014 redefinition of junk vehicle. Jefferson County has not, in its reply brief, pointed out any public notice or hearings that Jefferson County undertook regarding the ordinances in question here.

Weden, p.700 further points out that the ordinance must be a “reasonable” exercise of the County’s police power in order to pass muster under Article XI, Section 11 of the State Constitution. A law is a reasonable regulation if it promotes public safety, health or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. Anderson argues that the power to confiscate and destroy a vehicle found on the owner’s property because it has weeds growing around it or has not been moved recently or did not have a current license plate or some of the other elements listed in the ordinance, goes too far. Allowing the County to take person’s vehicle by simply issuing an infraction, followed by a warrant of abatement, taken and destroyed by a county contractor it is an unconstitutional taking. A vehicle is often the most valuable personal property many people own. These ordinances

grant too much power to the County Health Department and provide insufficient due process. Confiscation of their vehicle can be the last straw for the down and out in the name of neatness.

G. CONCLUSION: SQUEAKY WHEEL/AIN'T IT AWFUL

Despite arguing that this case is about interpreting the law, most of County's Respondent Brief discusses "facts" regarding the awful experience it's had with Anderson and its inability to get him to conform to their desired outcome. Anderson replies to three of those

1. The same party has complained to the County about the Anderson property over time. There are no other documented complaints. Because the Anderson property slopes west down toward Chimacum Creek it is not visible from the north/south road between the Port Hadlock four-way stop and the Chimacum four-way stop, now called Chimacum Road. Old Hadlock Road was the road between these two locations, but many years ago the road was straightened, leaving a loop of the old road about 500 yards long and about 100 feet from the new road. That loop is called "Old Hadlock Road." In that space between the old and new roads is a veterinarian clinic. The complaints all were made by people associated with this clinic, CP 28, attachment 1, CP 42, CP 43, attachment 8 CP 108.

2. The County and the state Department of Ecology were rightly concerned about environmental hazards at the Anderson site. Messy

people are often believed to be careless people. Ecology and the County requested the federal EPA investigate the SP as a possible superfund site. In 2019 a major integrated investigation was undertaken, combining EPA and Ecology's criteria. The September 2009 eleven page report [well worth reading] was attached to County's M. Boyd Declaration, CP 55.

“[T]he Anderson property does not appear to be a source of contamination warranting further action from the EPA.”

In spite of this report, which Ecology has posted on its Anderson Wrecking Yard site, Ecology has not taken it off its list of hazardous sites. Anderson has communicated with Ecology and requested its removal, to no avail. CP 337.

3. County frequently makes reference to tons of solid waste being removed from the Anderson property and other, similar claims. All of County's references are to statements by various County employees with no documentation. Anderson claims that he removed all the offending material except for one instance in the 2011-2012 period, just as he did in 2018, [Email to county commissioners attached to Anderson's brief]. Anderson challenges County's claim in this matter.

DATED: April 8, 2019

/s/ Joan Best

Joan Best, WSBA #7247
Attorney for Appellant

April 08, 2019 - 3:33 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51500-8
Appellate Court Case Title: Jefferson County, Respondent v. Michael Anderson, Appellant
Superior Court Case Number: 06-2-00348-8

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Court of Appeals
JEFFERSON COUNTY Division II OF HEALTH

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Ordinance No. 09-1016-14

**AN ORDINANCE TO AMEND
SOLID WASTE REGULATIONS
JEFFERSON COUNTY PUBLIC HEALTH**

Section 1 – Purpose

Section 2 – Effective Date

Section 3 – Severability

WHEREAS, the purpose of this ordinance is to amend the Solid Waste Regulations for Jefferson County Public Health,

WHEREAS, adoption of this ordinance will further the public policy memorialized in Chapter 173-350, *Solid Waste Handling Standards*, and Chapter 173-304, *Minimum Functional Standards for Solid Waste Handling*, pursuant to and by the authority of RCW 70.95,

WHEREAS, this ordinance promotes the health, safety and welfare of the citizens of Jefferson County, and

WHEREAS, this ordinance is proposed and may be enacted pursuant to the general police power granted to Jefferson County and its Board of Health by the State Constitution,

NOW, THEREFORE, BE IT ORDAINED by the Jefferson County Board of Health as follows:

Section 1 – Purpose

That the Solid Waste Regulations Jefferson County Board of Health Ordinance 8.10 shall repeal and replace Ordinance number 09 1020 05. The ordinance has been revised for clarity of terms, procedures, consistencies, and remedies by refining definitions, editing redundancies, and adding sections to alleviate confusions.

Section 2 – Effective Date

That this revision to the Solid Waste Regulations Jefferson County Board of Health Ordinance 8.10 shall be effective November 1, 2014.

Section 3 – Severability

A determination that any text adopted as part of this Ordinance is unlawful or illegal shall not cause any other text adopted as part of this Ordinance not affected by that determination to be repealed, revised, or reduced.

**AN ORDINANCE REVISING THE SOLID WASTE ORDINANCE FOR
JEFFERSON COUNTY PUBLIC HEALTH**

ADOPTED the sixteenth day of October 2014.

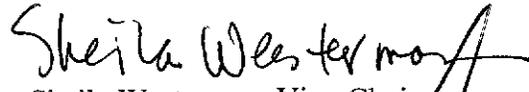
PERSON COUNTY BOARD OF HEALTH


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John Austin, Member

excused absence
Sally Aerts, Member

excused absence
Jill Buhler, Member


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Kris Nelson, Member

Excused absence
Phil Johnson, Member

**JEFFERSON COUNTY BOARD OF HEALTH
ORDINANCE 8.10**

SOLID WASTE REGULATIONS

JEFFERSON COUNTY BOARD OF HEALTH
SOLID WASTE REGULATIONS

8.10.010 – AUTHORITY AND PURPOSE

These solid waste rules and regulations are promulgated under the authority of Chapters 43.20.050, *Powers and Duties of State Board of Health* 70.05, *Local Health Departments, Boards, Officers-Regulations*, and 70.95, *Solid Waste Management-Reduction and Recycling*, in the Revised Code of Washington (RCW), and Chapters 246-203, *General Sanitation*, 173-304, *Minimum Functional Standards for Solid Waste Handling*, 173-350, *Solid Waste Handling Standards*, and 173-351, *Criteria for Municipal Solid Waste Landfills*, in the Washington Administrative Code (WAC), to protect the public health and the environment, and promote the safety and welfare of the citizens of Jefferson County. All references to these RCWs and WACs, and all other RCWs, WACs, and other federal, state, and local regulations, refer to the cited chapters and paragraphs, as amended. The rules and regulations herein govern the handling, storage, collection, transportation, treatment, utilization, processing and final disposal of all solid waste within Jefferson County, including the issuance of permits and enforcement. These regulations shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the Federal Government or recognized Native American Nations and Tribes.

It is expressly the purpose of these rules and regulations to provide for and promote the health of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of these rules and regulations.

It is the specific intent of these rules and regulations to place the obligation of complying with its requirements upon waste generators, haulers, and/or operators of solid waste handling sites, and no provision of, nor term used in these rules and regulations is intended to impose any duty whatsoever upon Public Health nor any of its officers or employees, for whom the implementation or enforcement of these rules and regulations shall be discretionary and not mandatory.

Nothing contained in these rules and regulations is intended to be, nor shall be construed to create or form the basis for any liability on the part of Public Health or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of Public Health.

8.10.015 – ADOPTION BY REFERENCE

Pursuant to and by the authority of RCW 70.95, Jefferson County Public Health hereby adopts Chapter 173-350, *Solid Waste Handling Standards*, and Chapter 173-304, *Minimum Functional Standards for Solid Waste Handling*. As provided for by RCW 70.95.160 Public Health makes the following amendments to Chapter 173-350. To the extent that any state statute or regulation listed in this section is amended or revised subsequent to the adoption of this chapter that amendment or revision is deemed incorporated into this Chapter upon its effective date and is applicable to any activity regulated by this Chapter.

8.10.020 - APPLICABILITY

WAC 173-350-020 "*Applicability*", is adopted by reference except that subparagraph (6) is hereby repealed. Single-family residences and single-family farms disposing of their own solid wastes on their own property shall be subject to these regulations.

8.10.025 - OWNER RESPONSIBILITY FOR SOLID WASTES

WAC 173-350-025 is revised to read as follows:

1. General.

The owner, operator, or occupant of any premise, business, establishment, or industry shall be responsible for the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated by them on the property. An owner is not relieved of the duties and obligations imposed by this Chapter because the owner has leased the property or premises to another or permitted others to occupy the premises or operate there.

2. Removal.

It shall be the responsibility of the owner, operator or occupant of any premise, business, establishment or industry to remove solid waste from the premises where it was generated to a permitted solid waste handling facility at a frequency that does not create a nuisance or litter problem, or at a frequency otherwise approved by the Health Officer. The Health Officer may require any person who does not store, remove, transport, or dispose of solid waste consistent with these regulations, or who stores solid waste so as to create a nuisance or litter problem, to remove solid waste from the premises where it was generated, or collected, by that person to a permitted solid waste handling facility no less frequently than once per week.

3. Disposal.

- (a) Generally. It shall be the responsibility of the owner, operator or occupant of any premise, business, establishment or industry to dispose of all solid wastes at an appropriate solid waste handling facility permitted to receive such waste, or in a manner consistent with these regulations as approved by the Health Officer. Should a situation arise where disposal of solid waste is not covered under these regulations, the Health Officer shall determine acceptability of a method of disposal for the solid waste on a case-by-case basis
- (b) Unlawful Dumping. It shall be unlawful for any person to dump, deposit, bury, or allow the dumping, depositing or burying of any solid waste onto or under the surface of the ground or into the waters of this state, except at a solid waste disposal site for which there is a valid permit. Unlawful dumping shall include unauthorized deposition of solid waste into a container that is owned or leased by another person.
- (c) Name Appearing on Waste Material and Presumption. Whenever solid waste dumped in violation of this regulation contains three (3) or more items bearing the name of one individual, there shall be a presumption that the individual whose name appears on such items committed the unlawful act of dumping.

- (d) Identification Presumed. When the Health Officer investigates a case of unlawful dumping and finds identification in the solid waste as described in Section 025(3)(c), or other evidence, he/she may then order the person who committed the unlawful dumping to remove and dispose of said solid waste according to these regulations. Following the disposal of said solid waste, the Health Officer may order this person to present to the Health Officer a receipt from the permitted disposal facility as proof of appropriate disposal.
- (e) Lack of Identification. When the Health Officer investigates a case of unlawful dumping and finds no identification in the solid waste, nor evidence, he/she may then order the property owner to remove said solid waste from his/her land, and have the solid waste disposed of according to these regulations. Where this occurs on private land, the property owner or occupant shall be responsible for removal and disposal. Where this occurs on public land, the appropriate governmental agency shall be responsible for removal and disposal.
- (f) Burning Prohibited. It shall be unlawful for any person to burn solid waste including garbage or rubbish unless these materials are burned in an appropriate permitted energy recovery or incinerator facility. The burning of land clearing debris and the residential burning of natural vegetative matter is regulated under Chapter 173-425 WAC, Outdoor Burning.
- (g) Disposal Service Required. When a person does not dispose of solid wastes in a manner consistent with these regulations, the Health Officer may order said person to obtain ongoing and regularly scheduled solid waste collection service if said person does not already have this service and if a solid waste collection service exists or is offered in the geographic area where the person resides. Said service shall be from a solid waste collection service holding a Solid Waste Handling Permit issued by Jefferson County Public Health and necessary certificates issued by the Washington Utilities and Transportation Commission. If said person does not have this service and resides in a geographic area where a single solid waste collection service operates exclusively under covenant or ordinance as required by local government, and said service is mandatory for persons residing within the jurisdiction of the local government, the Health Officer may schedule ongoing regularly scheduled service for said person with this solid waste collection service. If service is cancelled through nonpayment, it will be deemed a violation of this paragraph.
- (h) Disposal Receipts Required. Any person in violation of this paragraph to whom a notice and order to correct violation has been issued is required to produce receipts from a permitted solid waste disposal, recycling and/or reclamation facility or solid waste transporter to demonstrate compliance with the notice and order to correct violation issued by Jefferson County Public Health.

8.10.030 – EFFECTIVE DATES.

WAC 173-350-030, *Effective Dates* are hereby adopted by reference. The effective date of these regulations is November 1st, 2014.

8.10.040 – PERFORMANCE STANDARDS.

WAC 173-350-040, *Performance Standards*, is hereby adopted by reference.

8.10.100 - DEFINITIONS.

Terms used in this regulation shall have the meaning provided in WAC 173-350-100, WAC 173-351-100 WAC and WAC 173-304-100 are hereby adopted in its entirety by reference herein except as revised or altered by the definitions provided below.

Abandoned Landfills: Those sites not closed in accordance with all applicable regulatory requirements in place at the time that waste handling/disposal activities ceased.

Abate: Repair, replace, remove, destroy, or otherwise remedy a condition(s) which constitutes a nuisance or a violation of these regulations by such means, in a manner, and to such an extent as the Health Officer determines is necessary in the interests of the general health, safety and welfare of the community.

Abrasive Blasting: A method of surface preparation in which an abrasive aggregate is sprayed under pressure on to exterior surfaces which include, but are not limited to, boats, ships or other watercraft.

Agricultural Wastes: Non-dangerous wastes on farms resulting from the production of agricultural products including, but not limited to, crop residues, manures, animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds.

Animal Wastes: Wastes generated on a farm, including manure, pet feces, and dead animals.

Asbestos-Containing Material: Any material containing more than one percent (1%) asbestos as determined using the method specified in EPA regulations Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy.

Asbestos-Containing Waste Material: Any waste that contains or is contaminated with friable asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

Ashes: The residue from combustion or incineration of material including solid wastes and any air pollution flue dust.

Biomedical Waste: Biomedical waste means, and is limited to, the following types of waste:

1. "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.
2. "Biosafety level 4 disease waste" is the waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the Centers for Disease Control, National Institute of Health, and Biosafety in Microbiological and Biomedical Laboratories, current edition.
3. "Cultures and stocks" are wastes infectious to humans including specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of

etiologic agents or blood specimens. Such waste includes but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

4. "Human blood and blood products" are waste human blood and blood components, and materials containing free-flowing blood and blood products.
5. "Pathological waste" is human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for interment or cremation.
6. "Sharps waste" is all hypodermic needles, syringes with needles attached, intravenous tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

Biomedical Waste Collection Service: Any agency, business, or service operated by a person for the purpose of biomedical waste collection and transportation.

Biomedical Waste Generator: Any producer of biomedical waste to include without limitation the following categories: General acute care hospitals, skilled nursing facilities or convalescent hospitals, intermediate care facilities, in-patient care facilities for the developmentally disabled, chronic dialysis clinics, community clinics, health maintenance organizations, surgical clinics, urgent care clinics, acute psychiatric hospitals, laboratories, medical buildings, physicians offices and clinics, veterinary offices and clinics, dental offices and clinics, funeral homes or other similar facilities.

Biomedical Waste Treatment: Means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting infectious disease.

Board of Health: The Jefferson County Board of Health.

Buffer Zone: That part of a facility that lies between the active area and the property boundary. Junk cars are not allowed in a Buffer Zone as defined in Title 18 of Jefferson County Code.

Bulky Waste: Large items of refuse, such as appliances (white goods), furniture, junk vehicles, and other oversize wastes which would typically not fit into reusable or disposable containers.

Construction Waste: Non-dangerous solid waste, largely inert waste, generated as the result of construction of buildings, roads, and other man-made structures. Construction waste consists of, but is not limited to: concrete, asphalt, brick, rock, wood and masonry, composition roofing and roofing paper, shakes, shingles, plastic and paper wrappings, plastic pipe, fiberglass insulation, carpeting, floor tile, glass, steel, and minor amounts of other metals like copper.

Decision: Any writing authored by Jefferson County Public Health (JCPH), the Local Health Officer or any employee or representative of JCPH or the Local Health Officer that serves to represent the official position of the JCPH or the LHO including, but not limited to, a decision to deny a permit application, a decision to allege permit violation(s), issuance of an Abatement Order, transmittal to a person or entity of a Notice and Order to Correct Violation, or a decision to suspend or revoke an existing or issued permit.

Demolition Waste: Non-dangerous solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition waste consists of, but is not limited to: concrete, asphalt, brick, rock, wood and masonry, composition roofing and roofing paper, shakes, shingles, plastic pipe, fiberglass insulation, carpeting, floor tile, glass, steel, minor amounts of

other metals like copper, and incidental amounts of soil associated with these wastes. Plaster (i.e., sheet rock or plaster board), yard wastes, stumps, or any other materials that are likely to produce gases or leachate during the decomposition process are not considered to be demolition waste for the purposes of this definition. Bulky wastes, white goods, and asbestos-containing materials are not considered to be demolition waste for the purpose of this regulation.

Discarded Commodity: Products or items that because of damage, misuse, wear, or neglect and because of such neglect are no longer being utilized for their intended purpose. Neglect, for the purpose of this definition is deemed to include, but not limited to, circumstances where a product or item is left exposed to the weather to rot, rust or deteriorate or is so severely damaged such that it can no longer be used for its intended purpose.

Disposal Site: The location where any final treatment, utilization, processing or deposition of solid waste occurs. See also the definition of interim solid waste handling site.

Drop Box Facility: A facility used for the placement of a detachable container, including the area adjacent for necessary entrance and exit roads, unloading and turnaround areas. Drop box facilities normally serve the general public with loose loads and receive waste from off-site

Ecology: The Washington State Department of Ecology.

Emission: The release of air contaminants from solid waste into the outdoor atmosphere.

Environmentally Sensitive Areas or "ESA": shall be as defined at RCW 36.70A.030(5) (or as hereafter amended) to include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas (and buffers for all such areas) as those terms are defined and described in Title 18 of the Jefferson County Code in its current form or as it may be in the future, amended, supplemented or replaced. Junk cars are not allowed in an ESA as defined in Title 18 of Jefferson County Code.

EPA: The United States Environmental Protection Agency.

Hazardous Substance: Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or WAC 173-303-100.

Health Officer: The Health Officer or the Health Officer's representative, of the Jefferson County Public Health.

Junk Vehicle: A junk vehicle includes campers, boats, boat trailers or any other type of vehicle used for human transportation which may exhibit any of the following:

- Build-up of debris, moss or weeds on, in, under, or around the vehicle that obstructs use;
- Damage to the frame;
- More than one missing or shattered window or windshield;
- More than one inoperable or missing headlight or taillight;
- More than one flat tire;
- A missing or inoperable engine or transmission.
- A missing wheel, license plate, driver-side mirror, tire, body panel, door, hood or other obvious body part, not including a bumper.
- A license plate that has been invalid for more than 60 days.
- Evidence that the vehicle has not been moved in at least 60 days.

A vehicle certified under RCW 46.55.230 as meeting at least three of following requirements shall be considered a junk vehicle:

1. Three (3) years old or older;
2. Extensively damaged, such damage including but not limited to the following: a broken window or windshield, or missing wheels, tires, motor, or transmission;
3. Apparently inoperable; and/or
4. Has approximate fair market value equal only to the approximate value of the scrap in it.

For enforcement purposes, possessing three (3) or more junk vehicles on a single property of any size is not allowed under this regulation.

Minimum Functional Standards (MFS): Chapter 173-304 WAC, *Minimum Functional Standards for Solid Waste Handling*.

Moderate Risk Waste (MRW): means solid waste that is limited to conditionally exempt small quantity generator (CESQG) waste and household hazardous waste (HHW) as defined in this chapter.

Nuisance: Consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the, repose, health or safety of others; or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. To the extent applicable, the County adopts the definitions of nuisance found in Ch. 7.48 RCW.

Owner: The person, business entity or partnership that is the title owner of record with the Jefferson County Auditor for the parcel or parcels where the violation is allegedly occurring.

Person responsible: The owner, lessee, occupant or operator of the premises, business, activity or action that is allegedly a violation of this Chapter.

Problem Wastes:

1. Any solid material removed during a remedial action, a dangerous waste site closure, other cleanup efforts, or other actions, which contain hazardous substances, but are not designated dangerous wastes;
2. Dredge spoils resulting from the dredging of surface waters of the state where contaminants are present in the dredge spoils at concentrations not suitable for open water disposal and the dredge spoils are not dangerous wastes and are not regulated by Section 404 of the Federal Clean Water Act (PL 95-217); or
3. Waste abrasive blasting grit or other material used in abrasive blasting. Common aggregates include, but are not limited to silica sand, utility slag or copper slag. Waste abrasive blasting grit does not include blasting grit that will be reused for its intended purpose.

Public Health: Jefferson County Public Health or any person acting on behalf of or employed by Jefferson County Public Health.

Remedial Action: Any action to identify, eliminate or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessment or health effects studies conducted to determine the risk or potential risk to human health.

Rubbish: All non-putrescible wastes from all public and private establishments and from all residences.

Solid Waste: All putrescible and non-putrescible solid and semi-solid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, animal wastes, construction and demolition wastes, land clearing wastes, contaminated soils, contaminated dredged spoils, junk vehicles or parts thereof (including waste tires), and discarded commodities. This includes all liquid, solid and semi-solid, materials that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste also includes, but is not limited to, woodwaste, dangerous waste, yard waste, bulky waste, biomedical waste, animal waste, waste tires, recyclable materials, and problem wastes. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, *Criteria for Municipal Solid Waste Landfills*, Chapter 173-308 WAC, *Biosolids Management*, and a solid waste handling permit issued by the Health Officer.

Used Oil:

1. Lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, truck, bus, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; or
2. Any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; or
3. Any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser; and
4. Used oil does not include oil to which dangerous wastes have been added, or oil that would otherwise be considered used oil except that it is used as a fuel in an industrial furnace, which meets the emission standards of the Puget Sound Clean Air Agency.

8.10.200 – Beneficial Use Permit Exemptions

WAC 173-350-100 *Beneficial Use Permit Exemptions* is hereby adopted by reference.

8.10.210 – Recycling

WAC 173-350-210, *Recycling* is hereby adopted by reference.

8.10.220 – Composting Facilities

WAC 173-350-220, *Compost Facilities* is hereby adopted by reference. Paragraph 220(7) has been revised as follows:

220(7) *Compost Facilities – Financial Assurance requirements.*

- (a) Financial Assurance may be required for certain compost facilities as determined by Public Health.

- (b) If required by Public Health, the owner or operator shall establish a financial assurance mechanism in accordance with 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum amount of wastes that could be present at any time during the operation of the facility and to accomplish closure in accordance with the facility closure plan.
- (c) If required, no owner or operator shall commence or continue to operate any part of the facility until a suitable financial assurance mechanism has been provided to the JHD in accordance with WAC 173-350-600.

8.10.230 - Land Application

WAC 173-350-240, *Land Application* is hereby adopted by reference.

8.10.240 - Energy Recovery and Incineration

WAC 173-350-240, *Energy Recovery and Incineration* is hereby adopted by reference.

8.10.300 - On-site Storage, Collection, and Transportation Standards

WAC 173-350-300, *On-Site Storage, Collection, and Transportation Standard* is hereby adopted by reference and revised with the addition of the following paragraphs.

300(2)(b)(iv) Containers of mixed municipal solid waste, putrescible waste, and rubbish shall be closed at all times except when waste is being added or removed. Commercial containers located at public or private collection facilities may be kept open during routine hours of operation, as long as the container drain plugs remain in place.

300(2)(b)(v) The owner, operator or occupant of any premises, business establishment or industry shall store all recyclable materials so as not to produce unsafe or unsanitary conditions.

8.10.305 - Solid Waste Handling Standards for Specific Waste Stream

8.10.305 (1) Animal Waste

- (a) Animal waste, as defined in Section 100, shall be disposed of in a manner consistent with these regulations, or other method approved by the Health Officer.
- (b) Any animal waste that is deemed biomedical waste as defined in Section 100, shall be handled, treated, and disposed of as required in Section 305(b).
- (c) **Animal Manure.** Animal manure shall not be deposited, or allowed to accumulate, in any ditch, gulch, ravine, river, stream, lake, pond, marine water, or upon the surface of the ground, or on any highway or road right of way, where it may become a nuisance or menace to health, as determined by the Health

Officer, through the breeding of flies, harboring of rodents, or pollution of water. Manure shall not be allowed to accumulate in any place where it can pollute any source of drinking water.

- (d) **Dead Animals.** Except as otherwise provided in Section 305(3), dead animals shall be disposed of in a manner to protect the public health and the environment. Their disposal shall be consistent with local codes. Dead animals may be taken to a rendering plant, a veterinary clinic, an animal shelter, pet cemetery, or can be disposed of directly at permitted operating landfills or transfer stations so as not to create a nuisance. Property owners may bury dead animals on their property, so long as no nuisance is created. If the dead animal is buried, it shall be placed so that every part shall be covered by at least two (2) feet of earth and at a location not less than one-hundred (100) feet from any well, spring, stream, or other surface waters, and in a place not subject to overflow. In all cases of death from communicable disease, the dead animal, if disposed of by burial, shall first be thoroughly enveloped in unslaked lime.
- (e) **Pet Feces.** Pet feces, especially dog droppings, shall be disposed of in a manner, such as burial, or bagging and placement into containers described in Section 300(2), which does not create a nuisance or pollute surface waters of the state. Pet feces shall not be disposed of into the sanitary sewer unless approved by the sewer purveyor. This waste shall not be put into a storm sewer or on-site sewage system.

8.10.305 (2) Asbestos-Containing Waste

- (a) **General.** Asbestos-containing waste material (ACWM), as defined in Section 100, shall be handled and disposed of pursuant to 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Chapter 173-303 WAC, Dangerous Waste Regulations, Olympic Region Clean Air Agency Rule 6.3 and Chapter 296-65 WAC, Asbestos Removal and Encapsulation.
- (b) **Removal.** Persons removing ACWM shall contact the Olympic Region Clean Air Agency for information and instruction concerning removal and disposal. ACWM must be wetted down during removal to reduce airborne emissions of particulate matter. ACWM shall be sealed into leak tight containers or placed in one or more plastic bags with a combined six (6) mils thickness or greater and identified with the proper warning label.
- (c) **Disposal.** The ACWM shall be disposed of in accordance with 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, at a facility permitted to receive such wastes, in accordance with an approved operations plan, and covered with at least fifteen centimeters (6 inches) of non-asbestos containing waste material immediately following disposal.

8.10.305 (3) BIOMEDICAL WASTE

- (a) **Applicability.** This regulation applies to all persons who generate biomedical waste including, but not limited to, individuals, hospitals, medical and dental clinics, medical laboratories, nursing or intermediate care facilities, veterinary facilities and other institutions, which may generate biomedical wastes as defined in Section 100, without regard to the quantity of biomedical waste produced per month.
- (b) **Storage and Handling.**
 - (i) Containment of biomedical waste shall be in a manner and location which affords protection from animals, rain, and wind and does not provide a breeding place or a food source for insects or rodents.
 - (ii) Biomedical wastes shall be segregated from the general medical waste stream at the point of origin and stored in separate containers. When possible, biomedical wastes should be rendered non-

infectious through chemical or physical treatment procedures as approved by the facility's site safety officer.

- (iii) Biomedical waste, except for sharps, shall be contained in disposable leakproof containers having strength to prevent ripping, tearing or bursting under normal conditions of use. The containers shall be secured to prevent leakage or expulsion of solid or liquid waste during storage, handling or transport. The containers can be of any color and shall be conspicuously labeled with the international biohazard symbol, and the words "Biohazardous Waste" or words that clearly denote the presence of biomedical waste.
- (iv) All sharps, including home-generated sharps, shall be contained in leak-proof, rigid, puncture resistant, break resistant containers that are labeled and tightly lidded during storage, handling and transport. These containers must be capable of maintaining their structural integrity from the point of storage to deposition at an approved disposal or collection site. The containers shall be of any color and shall be conspicuously labeled with the international biohazard symbol, and the words "Biohazardous Waste" or words that clearly denote the presence of biomedical waste.
- (v) Reusable Containers.
 - (A) Reusable containers for biomedical waste storage, handling or transport shall be thoroughly washed and decontaminated by a method approved by the Health Officer each time they are emptied, unless the surfaces of the containers have been protected from contamination by disposable liners, bags or other devices removed with the waste.
 - (B) Approved methods of decontamination are agitation to remove visible solid residue combined with chemical disinfection. Chemical disinfectants should be used in accordance with the manufacturer's recommendations or by disinfectant concentration/contact times approved in writing by the Health Officer. Other decontamination methods may be approved in writing by the Health Officer.
 - (C) Reusable pails, drums or bins used for containment of biomedical waste shall not be used for any other purpose except after being disinfected by procedures as described in this regulation and after the international biohazard symbol and the words "Biohazardous Waste" are removed.
- (vi) The handling and storage of all biomedical waste must prevent the dissemination of biomedical waste into the environment.
- (vii) Trash chutes shall not be used to transfer biomedical waste.
- (viii) Biomedical waste shall not be placed into the general waste stream unless contained and treated.
- (ix) Sharps shall not be placed into the general waste stream.

(c) Disposal.

- (i) All biomedical waste that has been contained as described in Section 305(3)(b) shall be disposed of at a solid waste handling facility permitted to receive such waste.
- (ii) All human or animal body parts, fetuses, and other pathological specimens shall be disposed of either by appropriate interment, incineration or other method approved by the Health Officer.
- (iii) Untreated liquid and liquefied biomedical waste may be disposed of by release into a sanitary sewage system, if this practice is approved by the providing sewer utility, provided that the Health Officer shall have the authority to require the treatment of any biomedical liquid, according to requirements specified by the Health Officer, prior to release into a sanitary sewage system if deemed necessary to protect the public health.

- (iv) Biomedical waste shall be disposed of on a regular basis to avoid nuisance conditions. If any nuisance condition exists, the Health Officer shall have the authority to require a specific disposal or collection frequency.
- (v) Sharps must be contained in accordance with Section 305(3)(b)(iv) and prepared for disposal by a means that protects medical handlers, solid waste workers and the public from injury. The disposal of sharps shall be limited to the following methods unless prohibited by the requirements of Chapter 70.95K RCW, Biomedical Wastes: (No longer exempts home-generated sharps.)
 - (A) Depositing properly contained sharps at a facility that has agreed to accept home generated sharps.
 - (B) Depositing properly contained sharps at a medical facility or pharmacy that provides a program to dispose of sharps waste and that meets the requirements of these regulations.
 - (C) Using a permitted biomedical waste collection service. (E) Other methods approved by the Health Officer.
- (d) Transfer of Biomedical Waste. Any biomedical waste generator, who produces untreated biomedical waste, shall have said waste collected and transported by a permitted biomedical waste collection service.
- (e) Inspection. The Health Officer shall have the authority to inspect any biomedical waste generator, at any reasonable time, to determine if the generator's biomedical waste is being handled, stored, and disposed of in accordance with this regulation, or to determine if the waste generator's solid waste is being disposed of in accordance with this regulation.
- (f) Disposal Service Required. When a person does not dispose of biomedical waste in a manner consistent with these regulations, the Health Officer may order said person to obtain ongoing and regularly scheduled biomedical waste collection and disposal service if said person does not have this service and if commercial biomedical waste collection and disposal service exists in or is offered in the geographic areas where the person resides. Said service shall be from a biomedical waste collection and disposal service holding a Solid Waste Handling Permit issued by Public Health.
- (g) Biomedical Waste Collection Services. In addition to the general operation and maintenance requirements applicable to persons operating a solid waste collection service specified in Section 300, vehicles used by biomedical waste collection services shall have a leak proof and fully enclosed vehicle compartment constructed of durable and easily cleanable materials, and shall be identified on each side of the vehicle with the name or trademark of the biomedical waste collection service.

8.10.305 (4) BULKY WASTE

Bulky wastes shall be stored and transported in such a manner so as not to create a nuisance or safety hazard. Recycling of bulky wastes is encouraged where programs have been established to accept them. If recycling is not feasible, these wastes shall be taken directly to a disposal site permitted to accept oversized waste. Land clearing bulky waste such as tree stumps, trees, portions of buildings and other waste shall be transported directly to a transfer station or landfill designed and permitted to accept these bulky wastes; provided, that nothing herein shall prevent these wastes from being salvaged and/or used as firewood.

8.10.305 (5) DANGEROUS WASTE

- (a) All solid waste must be designated as required by WAC 173-303-070 to prevent the disposal of dangerous waste at a facility not permitted to accept dangerous waste. All solid waste designated as a

dangerous waste must be managed in a manner consistent with these regulations and Chapter 173-303 WAC.

- (b) The Health Officer may require the screening of any waste suspected of being a regulated dangerous waste as defined in Section 100. The screening process may involve analytical testing, a disclosure of the waste constituents and waste generation process, and other additional information necessary to determine if the waste is dangerous. The Health Officer may establish a schedule for compliance as part of the screening process. Based on the results of the required screening, the Health Officer may require the generator or transporter to direct the waste to a facility permitted to handle such waste.

8.10.305 (6) MODERATE RISK WASTE AND USED OIL

(a) Small Quantity Generator (SQG) Waste.

- (i) **Applicability.** This section applies to conditionally exempt small quantity generators (SQGs) as defined in Section 100. In addition to the requirements of this section, SQGs must meet the storage requirements of Section 305(6)(a)
- (ii) **Waste Designation.** SQGs shall designate suspected or known dangerous wastes pursuant to WAC 173-303-070 through WAC 173-303-100.
- (iii) **Container Labeling.** SQGs shall label all containers of MRW and used oil with the name of the waste and identify the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public. Containers of MRW shall also be labeled with the words "hazardous waste" or "dangerous waste".
- (iv) **Secondary Containment.** The Health Officer may require an SQG to provide secondary containment for liquid MRW and/or used oil stored on-site if the Health Officer determines that there is a potential threat to public health or the environment due to the nature of the wastes being accumulated, the location of accumulation, or due to a history of spills or releases from accumulation containers. When required under this section, a secondary containment system must be durable, compatible with the waste it is meant to contain, and large enough to contain a volume equal to ten (10) percent of all containers, or one hundred and ten percent (110 %) of the largest single container, whichever is greater.
- (v) **Hazardous Materials Management Plans.** If a SQG has violated any part of this regulation, the Health Officer may require the SQG to prepare and follow a written Hazardous Materials Management Plan approved by Public Health and in a format prescribed by Public Health.

(b) Storage Requirements.

- (i) SQG Waste, used oil, and hazardous substances shall be stored in containers which are:
 - (A) Compatible with the waste contained therein;
 - (B) In good condition and without any leaks, corrosion or other signs of deterioration;
 - (C) Securely closed at all times except during the addition or removal of contents; and
- (ii) Containers of SQG, used oil, and hazardous substances shall be stored on an impervious surface and in a location(s) that is covered and controlled to prevent:
 - (A) Container deterioration due to weather exposure;
 - (B) Surface water run-on and run-off;
 - (C) Exposure to extreme temperatures;
 - (D) Unintentional discharge to stormwater, soil, or surface water; and

- (E) Any other controllable condition, which may cause or increase the possibility of container failure.
- (c) Accumulation. In addition to the quantity exclusion limits (QELs) for small quantity generators contained in WAC 173-303-070(8), SQG, used oil, and hazardous substances shall not be accumulated in quantities that, in the opinion of the Health Officer, present a threat to public health or the environment.
- (d) Transportation. SQG and used oil shall be transported in accordance with WAC 173-350-300(3)(d) Treatment and Disposal.
- (i) SQG Waste. All SQG shall be transported to a permitted MRW collection facility, or picked up by a permitted dangerous waste transporter for treatment or disposal at a facility permitted to accept such waste. SQG shall not be deposited in the general municipal solid waste collection system, a public sewer system, a storm drain, an on-site sewage system, in surface or ground water, or onto or under the surface of the ground.
- (ii) Pesticides. Usable pesticides shall be utilized in accordance with the EPA approved label requirements, or shall be disposed of, as appropriate, at a permitted hazardous waste treatment, storage, or disposal facility, the Jefferson County Moderate Risk Waste Collection Facility, or through an approved Department of Agriculture collection event. (For additional information call WSDA at 1-877-301-4555) Empty containers from canceled, suspended, or otherwise unusable pesticides should be disposed of as a hazardous waste or triple rinsed in accordance with the requirements under WAC 173-303-160(2)(b). Rinsate from a pesticide container must be reused in a manner consistent with its original intended purpose or disposed of as a hazardous waste under Chapter 173-303 WAC.
- (iii) Used Oil. Used oil shall be recycled or disposed of at a facility permitted or approved for that purpose, or as otherwise allowed by Ecology or the Health Officer. Used oil may be taken to service stations or similar facilities that collect used oil for subsequent reprocessing at a facility specifically permitted for that purpose.
- (e) Mitigation and Control. The person responsible for a spill or non-permitted discharge of SQG, used oil, and/or hazardous substances shall take appropriate and immediate action to protect public health and the environment, including any necessary measure required to prevent the spread of contamination. In addition, the person responsible for a spill or discharge shall:
- (i) Notify Public Health and, when an imminent threat to public health or the environment exists, call 911;
- (ii) Clean up any released hazardous substance, or take such actions as may be required or approved by federal, state, or local officials; and
- (iii) Meet applicable requirements of Section 305(7) as directed by the Health Officer.

8.10.305 (7) PROBLEM WASTE

- (a) Screening. Persons excavating problem waste as defined in Section 100, which is intended for upland fill in Jefferson County and which may contain a hazardous substance, endanger the public health, or adversely impact the environment, shall contact the Health Officer to determine the need for screening in accordance with Section 305(9)(b)
- (b) Management Options.
- (i) Beneficial Reuse. Any person intending to beneficially reuse problem wastes must first contact the Health Officer to determine the appropriate reuse options.

- (ii) Treatment. Problem wastes may be treated to remove contaminants and, following treatment, may be used as upland fill in Jefferson County if the treated waste is determined by the Health Officer not to be a problem waste.
- (iii) Disposal. Problem waste can only be disposed of at a solid waste handling facility permitted to receive such waste.
- (c) Waste Abrasive Blasting Grit Storage. Waste abrasive blasting grit shall be stored under cover in a manner that minimizes contact with process water or stormwater. Persons recycling waste abrasive blasting grit at a facility permitted to recycle such waste are exempt from the provisions of Section 305(7)(b) of these regulations provided that the recycling facility enlists a process and produces a final product that does not endanger human health or the environment as a result of using said material.

8.10.305 (8) SEPTAGE

Septage must be disposed of directly into a sewage treatment works, licensed as such by Ecology, with the permission of and according to the requirements of the sewage treatment works or disposed of into an alternative treatment works or other process approved by the Health Officer. Septage of domestic quality, meeting all applicable requirements for biosolids under Chapter 173-308 WAC, Biosolids Management, may be beneficially reused by being applied to land as approved by the Health Officer on a case-by-case basis.

8.10.310 – Intermediate Solid Waste Handling Facilities

WAC 173-350-310, *Intermediate Solid Waste Handling Facilities* is hereby adopted by reference.

8.10.320 – Piles Used for Storage or Treatment

WAC 173-350-320, *Piles Used for Storage or Treatment* is hereby adopted by reference. Paragraph 320(7) has been revised as follows:

320(7) *Piles used for Storage or Treatment – Financial Assurance requirements.*

- (a) Financial Assurance may be required for certain piles treating or storing solid waste as determined by Public Health.
- (b) If required by Public Health, the owner or operator shall establish a financial assurance mechanism in accordance with 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum amount of wastes that could be present at any time during the operation of the facility and to accomplish closure in accordance with the facility closure plan.
- (c) If required, no owner or operator shall commence or continue to operate any part of the facility until a suitable financial assurance mechanism has been provided to the JHD in accordance with WAC 173-350-600.

8.10.330 – Surface Impoundments and Tanks

WAC 173-350-330, *Surface Impoundments and Tanks*, is hereby adopted by reference. Paragraph 330(7) has been revised as follows:

330(7) *Surface Impoundments and Tanks – Financial Assurance requirements.*

- (a) Financial Assurance may be required for certain surface impoundments and tanks used for treating or storing solid waste as determined by Public Health.
- (b) If required by Public Health, the owner or operator shall establish a financial assurance mechanism in accordance with 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum amount of wastes that could be present at any time during the operation of the facility and to accomplish closure in accordance with the facility closure plan.
- (c) If required, no owner or operator shall commence or continue to operate any part of the facility until a suitable financial assurance mechanism has been provided to the JHD in accordance with WAC 173-350-600.

8.10.350 – Waste Tire Storage and Transportation

WAC 173-350-350, *Waste Tire Storage and Transportation* is hereby adopted by reference.

8.10.360 – Moderate Risk Waste Handling

WAC 173-350-360, *Moderate Risk Waste Handling* is hereby adopted by reference.

8.10.400 – Limited Purpose Landfills

WAC 173-350-400, *Limited Purpose Landfills* is hereby adopted by reference.

8.10.410 – Inert Waste Landfills

WAC 173-350-410, *Inert Waste Landfills* is hereby adopted by reference.

8.10.450 – Municipal Solid Waste Landfills

WAC 173-351, *Criteria for Municipal Solid Waste Landfills* is hereby adopted by reference.

8.10.460 – Construction and Notification Standards Near Landfills

(1) Construction Requirements.

(a) Methane Protection.

- (i) Any person constructing or developing any area within one-thousand (1,000) feet of the footprint of an active, closed, or abandoned landfill shall provide documentation that demonstrates that levels of methane gas within this one-thousand (1,000) foot zone are below the lower explosive limits (LEL) under all conditions. A description of the investigation methodology, all analytical data, and conclusions shall be presented in a report submitted by a licensed professional engineer or professional geologist to the Health Officer and the local building department for review and approval. Copies of this report shall also be provided to the Washington Department of Ecology and the Puget Sound Clean Air Agency; and
- (ii) Any person constructing or developing any area within one-thousand (1,000) feet of the footprint of an active, closed, or abandoned landfill shall provide documentation that demonstrates that all enclosed structures are protected from potential methane migration. The method for ensuring a structure's protection from methane shall be addressed in a report submitted by a licensed professional engineer to the Health Officer and the local building department for approval. Such a report shall contain a description of the mitigation measures to prevent the accumulation of explosive concentrations of methane gas within or under enclosed portions of a building or structure. At the time of final inspection, the engineer shall furnish a signed statement attesting that the building or structure has been constructed in accordance with his/her recommendations for addressing methane gas migration.
- (iii) The Health Officer may grant a variance to the requirements in Section 460(1)(a)(ii) above, based on a review of data submitted pursuant to preceding Section 460(1)(a)(i).
- (b) Stormwater. To minimize erosion impacts and leachate generation, no person shall detain stormwater on a closed or abandoned landfill. Stormwater may be conveyed across a closed or abandoned landfill if the conveyance system has been engineered to minimize the percolation of stormwater into the landfill.
- (c) Construction within the Footprint of the Landfill. No person shall construct within the footprint of a closed or abandoned landfill without first having submitted detailed engineering plans documenting how potential hazards will be controlled. Potential hazards include, but are not limited to, subsidence, methane, odor problems, hazards associated with subsurface utility installation, and leachate generation. A qualified, licensed Professional Engineer (PE) shall sign such plans. These plans must be submitted for review and approval to the jurisdictional building department and Public Health, or Public Health's designated representative.
- (d) Groundwater Supply Wells. No person shall construct a groundwater supply well within one-thousand (1,000) feet of an active, closed, or abandoned landfill property boundary without a formal request for variance as outlined in Chapter 173-160 WAC, Minimum Standards for the Construction and Maintenance of Wells.
- (e) Methane Monitoring. All landfills where methane gas is generated shall provide for adequate venting, collecting, redirecting, or elimination of gases generated by solid waste. It shall be the responsibility of the landfill owner/operator to develop a sampling and testing program to monitor gas production and potential migration.

(2) Notification Requirements for Owners of Landfills.

All owners of active, closed, or abandoned landfills shall:

- (a) File a Notice to Title with the County Auditor's office noting the presence of a landfill on the tax parcel within one-hundred and eighty (180) days of the effective date of these regulations.
- (b) For any property without notice to title, Public Health may file a notice to title regarding the presence of a landfill on the property.

- (c) Disclose the presence of an active, closed, or abandoned landfill to all prospective purchasers of the property.

8.10.490 – Other Methods of Solid Waste Handling

WAC 173-350-490, *Other Methods of Solid Waste Handling* is hereby adopted by reference.

8.10.500 – Ground Water Monitoring

WAC 173-350-500, *Ground Water Monitoring* is hereby adopted by reference.

8.10.600 – Financial Assurance Requirements

WAC 173-350-600, *Financial Assurance Requirements* is hereby adopted by reference. Paragraph 600(1) of the WAC is revised by adding the following subparagraph.

- (d) Certain waste piles; certain surface impoundments and tanks; and certain compost facilities as determined by Public Health.

8.10.700 – Permits and Local Ordinances

WAC 173-350-700, *Permits and Local Requirements*, is hereby adopted by reference. Section 700(1) of the WAC is revised by adding the following subparagraph.

- (d) Landfills closed pursuant to this Chapter 173-351, *Mixed Municipal Solid Waste Landfills* or Chapter 173-304 are required to obtain a closure-post closure permit.
- (e) Permit holders must comply with all rules and intent of the Jefferson County Comprehensive Solid Waste Management Plan (JCCSWMP).

8.10.710 – Permit Application and Issuance

WAC 173-350-710, *Permit Application and Issuance* is hereby adopted by reference. Appeal of a Permit Denial. Any person aggrieved by the denial of permit denial shall:

1. Within ten (10) days of receiving the written letter denying a permit, the appellant shall request a hearing in writing. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the health officer.
2. The hearing authorized by this ordinance and WAC 173-350-710(6) shall be before the Health Officer.
3. 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 or more than thirty (30) business days from the date the request was received.

4. Within thirty (30) days, 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.
5. Any party aggrieved by the Health Officer's written determination resolving an appeal may only then appeal to the Pollution Control Hearings Board by filing with the Board a notice of appeal within thirty (30) days after receipt of notice of the determination of the Health Officer.
6. It is expressly stated in this code that JCC 8.10.710 and WAC 173-350-710(6) do not apply to A) any Notice and Order to Correct Violation sent by Jefferson County Public Health or its Local Health Officer to any person or entity, or B) any written decision by Jefferson County Public Health or its Local Health Officer which allege violations of an existing or issued permit or which serve to revoke an existing or issued permit.

8.10.715 – General Permit Application Contents

WAC 173-350-715, *General Permit Application Contents* is hereby adopted by reference.

8.10.900 – Corrective Action

WAC 173-350-900, *Corrective Action* is hereby adopted by reference.

8.10.950 – Enforcement and Enforcement Alternatives

- (1) Other Laws, Regulations and Agency Requirements
 - (a) All solid waste 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) Chapter 173-350 WAC, Minimum Functional Standards for Solid Waste Handling, is hereby adopted by reference.
 - (c) In order to better protect public health and the environment, if a conflict exists in the interpretation of Chapter 173-350 WAC and these regulations, or in the interpretation of Chapter 173-351 WAC and these regulations, the more stringent regulation shall apply.

8.10.950 (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.

8.10.950 (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 others 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.,

8.10.950 (4) INSPECTIONS – PERMITTED FACILITIES

- (a) General. At a minimum, the Health Officer may, to the extent resources permit, perform annual inspections of all permitted solid waste facilities. Findings shall be noted and kept on file. The Health Officer shall furnish a copy of the inspection report, or annual summary, to the site operator.
- (b) Pre-Operational Inspection. Whenever plans and specifications are required by these regulations to be submitted to the Health Officer, the Health Officer may inspect the proposed solid waste disposal site, solid waste handling facility, or solid waste collection service prior to the start of the operations to verify compliance with approved plans and specifications.

8.10.950 (5) 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 ten 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) Disposal 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 permitted solid waste disposal facility, permitted hazardous waste facility, or the local household hazardous waste facility (moderate risk waste facility) or transporter 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 Section 950(6) of these regulations; 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.

8.10.950 (6) 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.

- (a) Content. A Stop-Work Order shall include the following:
 - (i) The name and address for the person responsible for the alleged violation;

- (ii) 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.
 - (iii) 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;
 - (iv) 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;
 - (v) A statement that the person to whom the Stop Work Order is directed can appeal the Order to the Health Officer in accordance with the §950(7) of this Chapter and that any such appeal must be presented to the Health Officer with ten days.
- (b) 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.
- (c) 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 Code Chapter 8.10, *Solid Waste 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 Code Chapter 8.10, *Solid Waste 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.**

8.10.950 (7) 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.

- (a) 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 RCW 7.48 or §950(6) of this Chapter. The voluntary correction agreement shall include the following:
- (i) The name and address of the person responsible for the alleged violation;
 - (ii) 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;
 - (iii) A description of the alleged violation and a reference to the regulation, which has been violated;

- (iv) The necessary corrective action to be taken, and a date or time by which correction must be completed;
- (v) 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;
- (vi) 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
- (vii) 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.
 - (A) 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, by 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 §970 of this Chapter.
 - (B) 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.
 - (C) Abatement by Public Health. The county may abate the alleged violation in accordance with Section 950(8) if all terms of the voluntary correction agreement are not met, except that the person responsible for the alleged violation shall not have a right to appeal the Abatement Order.
 - (D) 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 Jefferson County Code 8.10, §950(6).

8.10.950(8) 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.

- (a) 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 only 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 no immediate threat to the public health's 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 §950(8) of this Chapter.
- (E) A statement that the costs and expenses incurred by Public Health pursuant to §950(8) of 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 §970 of 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 or relieve any such 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 fifteen 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.

8.10.950(9) 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.

(a) Content. A Notice to Vacate shall include the following:

- (i) The name and address for the person responsible for the alleged violation;
 - (ii) 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;
 - (iii) A description of the violation constituting an emergency and reference to the provisions of the Jefferson County Board of Health regulations, which has been allegedly violated;
 - (iv) 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;
 - (v) The required corrective action;
 - (vi) A statement that the person to whom the Notice to Vacate is directed can appeal the order to the Health Officer in accordance with §970 of this Chapter and that any such appeal must be presented to the Health Officer with ten days.
- (b) 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, 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.
- (c) Posting the Notice. In addition to providing service as states 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 Code 8.10 to occupy this building, or to remove or deface this notice.

_____, Health Officer
Jefferson County Public Health

- (d) 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.

8.10.960 VIOLATIONS, REMEDIES AND PENALTIES

8.10.960(1) Violations.

- (a) Any violation of a permit requirement issued pursuant to these regulations shall be a violation of these regulations
- (b) Violations of these regulations may be addressed through the remedies and penalties provided in this section.
- (c) Each violation of these regulations shall be a separate and distinct offense and in the case of a continuing violation, each day a violation is occurring or present shall be considered a separate and distinct violation.
- (d) The Health Officer may investigate alleged or apparent violations of these regulations. Upon request of the Health Officer, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves.
- (e) 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.

8.10.960(2) Suspension of a Permit

- (a) The Health Officer may temporarily suspend any permit issued under these regulations for:
 - (i) Failure of the holder to comply with the requirements of the permit;
 - (ii) Failure to comply with any notice and order to correct violation issued pursuant to these regulations related to the permitted activity;
 - (iii) Failure to comply with a stop-work or abatement order issued pursuant to Section 950(6) and 950(8) of these regulations; or
 - (iv) The non-payment or dishonor of any check or draft used by the permit holder to pay any Public Health fees associated with the permit.
- (b) Permit suspension shall be carried out through the notice and order to correct violation provisions specified in Section 950(5), and the suspension shall be effective upon service of the notice and order to correct violation upon the holder or operator. The holder or operator may appeal such suspension as provided in Section 970 of these regulations.
- (c) Notwithstanding any other provision of this regulation, whenever the Health Officer finds that a violation of this regulation has created or is creating an unsanitary, dangerous or other condition which, in his/her judgment, constitutes an immediate and irreparable hazard, he/she may, without service of a written notice and order to correct violation, suspend and terminate operations under the permit immediately.

8.10.960(3) Revocation of Permits.

- (a) The Health Officer may permanently revoke any permit issued by him/her for:
 - (i) Failure of the holder to comply with the requirements of the permit;

- (ii) Failure of the holder to comply with any notice and order to correct violation issued pursuant to these regulations related to the permitted activity;
 - (iii) Failure to comply with a stop-work or abatement order issued pursuant to Section 950(6) and 950(8);
 - (iv) Interference with the Health Officer in the performance of his/her duties;
 - (v) Discovery by the Health Officer that a permit was issued in error or on the basis of incorrect information supplied to him/her; or
 - (vi) The non-payment or dishonor of any check or draft used by the holder to pay any Public Health fees associated with the permit.
- (b) Such permit revocation, including any appeal of the decision to revoke, shall be carried out through the notice and order to correct violation provisions specified in Section 950(5) and the revocation shall be effective upon service of the notice and order to correct violation upon the holder or operator. The holder or operator may appeal such revocation, as provided in Section 970 of these regulations.

8.10.960(4) Civil Remedies.

- (a) Except as provided in Section 960(2)(b), the violation of any provision of these regulations is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW, Civil Infractions.
- (b) Any person who unlawfully dumps solid waste as described in Section 025(3)(b) or waste in an amount greater than one (1) cubic foot has committed a Class 1 civil infraction pursuant to Chapter 7.80 RCW, Civil Infractions. Any person who unlawfully dumps solid waste in an amount less than or equal to one (1) cubic foot has committed a Class 3 civil infraction pursuant to Chapter 7.80 RCW. The court may also impose restitution for any violation.
- (c) 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.
- (d) Civil infractions shall be issued, heard and determined as described in Chapter 7.80 RCW, and any applicable court rules.
- (e) 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.

8.10.960(5) Criminal Penalties.

- (a) Any person who unlawfully dumps biomedical waste as described in Section 025(3)(b) 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 ninety (90) days, or both. The court may also impose restitution.
- (b) Any person who unlawfully dumps "dangerous waste" as defined in WAC 173-350-100 and/or RCW 70.105.010(5) in violation of RCW 70.105.090 shall be, upon conviction, guilty of a misdemeanor. The court may also impose restitution.

- (c) Any person who unlawfully dumps "dangerous waste" as defined in WAC 173-350-100 and/or RCW 70.105.010(5) in violation of RCW 70.105.085 shall be, upon conviction, guilty of a felony. The court may also impose restitution.
- (d) Any person who unlawfully dumps solid waste as described in Section 025(3)(b) and in an amount less than one (1) cubic yard, but greater than (1) cubic foot, 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 ninety (90) days, or both. The court may also impose restitution as stated in Chapter 70.95 RCW, Solid Waste Management-Reduction and Recycling.
- (e) Any person who unlawfully dumps solid waste as described in Section 025(3)(b) of these regulations and in an amount greater than (1) cubic yard, shall be, upon conviction, guilty of a gross misdemeanor, and shall be subject to a fine of not more than \$5,000, or imprisonment in the county jail not to exceed one (1) year, or both. The court may also impose restitution as stated in Chapter 70.95 RCW, Solid Waste Management-Reduction and Recycling.
- (f) Any person who fails, neglects, or refuses to obey an order of the Health Officer to correct a violation as set forth in Section 950(5)(g) above shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$100, or imprisonment in the county jail not to exceed ninety (90) days, or both. The court may also impose restitution.
- (g) Any person who fails, neglects, or refuses to comply with a written assurance of discontinuance pursuant to Section 950(5)(h) above shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$100, or imprisonment in the county jail not to exceed ninety (90) days, or both. The court may also impose restitution.
- (h) Any person who operates a solid waste facility or collection service without a permit 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 ninety (90) days, or both. The court may also impose restitution.
- (i) Any person who operates a solid waste facility or collection service after a permit has been revoked 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 ninety (90) days, or both. The court may also impose restitution.

8.10.960(6) Noncompliance Fees.

- (a) Pursuant to the most current Public Health fee schedule adopted by the Board of Health, Public Health may assess a noncompliance fee to a permittee or small quantity generator for the following:
 - (i) Public Health oversight and review required as a result of the Health Officer's determination that a permitted facility or small quantity generator is not in compliance with its permit and/or applicable regulations and has not met the compliance dates specified in a notice and order to correct violation; or
 - (ii) Amendments to an existing Public Health permit required as a result of the permitted facility not being in compliance with its permit and/or applicable regulations.
 - (iii) Second and subsequent re-inspections conducted by Public Health in response to the permittee or small quantity generator not complying with their permit and/or J.C.C. code or the permittee not meeting the requirements outlined in a notice and order to correct violation.

- (b) The noncompliance fee shall not be assessed in addition to the permit fee for permitted facilities where permit fees, as described in the most recent Public Health fee schedule, specifically include those Public Health activities described in Section 950(6)(d)(i).

8.10.960 (7) Whenever a re-inspection fee is assessed by Public Health, the fee shall be due and payable thirty (30) days after receipt of the invoice by the permittee.

8.10.960(8) Other Legal or Equitable Relief

Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of this ordinance, or rules and regulations adopted under it, or any state health law or regulation, or that otherwise threatens public health.

8.10.960(9) Imminent and Substantial Dangers.

Notwithstanding any provisions of this regulation the Health Officer may take immediate action to prevent an imminent and substantial danger to the public health by the improper management of any waste irrespective of quantity or concentration.

8.10.970 APPEALS AND APPELLATE RULES

8.10.970(1) Three Categories of Decisions. There is established in this code three categories of Decisions (as that term is defined herein) that may be appealed, each category having its own rules. Those three categories are:

- (a) Denial of a permit application or suspension of an existing or issued permit, said appeals to be governed by the provisions of WAC 173-350-710(6) as amended by this Code;
 - (i) The initial appeal by the local health jurisdiction shall be with the Health Officer
 - (ii) The appeal of the Health Officers Decision shall be to the Washington State Pollution Controls Hearings Board pursuant to RCW 70.95.210.
- (b) Revocation of an existing or issued permit, said appeals to be governed by this section except that appeals of a permit revocation shall be heard only by the Board of Health and will not come before the Local Health Officer; and
- (c) Any other Decision transmitted, issued, promulgated, distributed or submitted by Jefferson County Public Health or its Local Health Officer, said appeals to be governed by this section.

8.10.970(2) How to Appeal. The process described in this section shall apply to any Decision, as that term is defined herein, which is not subject to the provisions of WAC 173-350-710.

The person(s) or entity wishing to appeal must fulfill all of the following obligations:

- (a) Notify Jefferson County Public Health of their request for a hearing within ten (10) days of the date of the Decision they wish to appeal;

(b) Submit a specific statement(s) in writing describing why error should be assigned to the Decision

(c) Pay the established hearing fee.

8.10.970(3) Obligations of Public Health upon receipt of a request for a hearing:

Upon the appellant's compliance with Section 970(2) above, the Local Health Officer shall notify the appellant of the time, date and place of such hearing, which shall be set a mutually convenient time not less than five (5) business days nor more than thirty (30) business days from the date Public Health determines the appellant has complied with Section 970(2).

8.10.970(4) Hearing Procedures before the Local Health Officer and the Board of Health.

(Except as noted elsewhere in this Chapter, these rules shall apply to hearings held before the Local Health Officer and the Board of Health.

(a) Hearings shall be open to the public.

(b) Hearings shall be presided over by the Health Officer or Chair of the Board of Health.

(c) Such hearings shall be recorded.

(d) Hearings shall be opened with a recording of the time, date and place of the hearing, and a statement of the cause for the hearing.

(e) The Health Officer or Chair of the Board of Health shall then swear in all potential witnesses.

(f) The case shall be presented in the order directed by the Health Officer or Chair of the Board of Health.

(g) The appellant may present his case of rebuttal. The Health Officer or any member of the Board of Health may ask questions. The Health Officer or Chair of the Board of Health may, at his or her option, allow the opportunity for a closing statement or summation.

(h) General rights held by all parties include, but are not limited to:

(i) To be represented by an attorney;

(ii) To present witnesses and obtain testimony from them;

(iii) To cross-examine witnesses;

(iv) To object to evidence for specific grounds.

(i) In the conduct of the proceeding, the Health Officer or Chair of the Board of Health may consider any evidence, including hearsay evidence that a reasonably prudent person would rely upon in the conduct of his or her affairs. Relevant evidence is admissible, if in the opinion of the presiding person (Chair of the Board of Health or Health Officer) 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 presiding person 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.

- (j) Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The health officer shall decide rulings on the admissibility of evidence, and the Washington rules of evidence shall serve as guidelines for those rulings.
- (k) Inasmuch as any appeal to the board of health from a health officer decision is a review on the record, the health officer shall ensure that the record generated contains testimonial and documentary evidence supporting the health officer's determination.
- (l) The health officer may continue the hearing to another mutually acceptable date to allow for additional submission of information or to allow for additional consideration.
- (m) Prior to closing of the hearing, the health officer shall issue its oral ruling unless the health officer determines that the matter should be taken under advisement. Written findings of fact, conclusions of law and orders shall be served on the appellant within fourteen (14) days of the oral ruling. If the matter is taken under advisement, written findings, conclusions and orders shall be mailed to the appellant within thirty (30) days of the close of the hearing.

8.10.970(5) Burden of proof

Any appellant shall bear the burden of proof, which shall be "by a preponderance of the evidence," i.e., that the appellant's factual and legal assertions are more likely than not to be true based on the evidence presented.

8.10.970(6) How to appeal a Ruling by the Local Health Officer

- (a) Any person aggrieved by the findings, conclusions or required actions of an administrative hearing shall have the right to appeal the matter by requesting a hearing before the board of health.
- (b) Such notice of appeal shall be in writing and presented to the health officer within thirty (30) days of the health officers decision.
- (c) The aggrieved person shall pay the fee established in the Public Health fee ordinance for an appeal to the Board of Health.
- (d) The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the health officer and shall be accompanied by a fee as established in the current public health fee schedule. The appellant and the health officer may submit additional information to the board of health for review.
- (e) The notice and order to correct violation shall remain in effect during the appeal.
- (f) 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 (5) business days of the health officer's decision. The health officer will grant or deny the request within five business days.
- (g) 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 fifteen (15) business days or more than thirty (30) business days from the date the appeal was received by the health officer.
- (h) Board of health hearings shall be open to the public and presided over by the chair of the board of health. Such hearings shall be recorded. Board of health hearings shall be opened with a

recording of the time, date and place of the hearing, and a statement of the cause for the hearing. The hearing shall be limited to argument of the parties and no additional evidence shall be taken unless, in the judgment of the chair, such evidence could not have reasonably been obtained through the exercise of due diligence in time for the hearing before the health officer. Argument shall be limited to the record generated before the health officer unless the chair admits additional evidence hereunder.

- (i) 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 thirty (30) business days of the date of the decision.

8.10.970(7) Rules specific to a Board of Health hearing arising from an appeal of a Health Officer Ruling

Any appeal to the Board of Health of a Ruling made by the Health Officer shall be considered a "closed record" hearing, meaning the parties to such an appeal must comply with the following:

- (a) The record created below, including all documents, records or exhibits as well as the audio or written transcript of the hearing before the Health Officer, shall be provided to the Board of Health by Public Health.
- (b) 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 thirty-five (35) days.
- (c) The petitioner shall be given at least five (5) days' notice by certified mail of the 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.
- (d) No additional testimony, written or oral, will be accepted or reviewed by the Board of Health.
- (e) The parties may submit a brief, legal argument or Memorandum of Authorities of no more than ten (10) pages on their behalf (style requirements: letter sized paper, 1" margins on all edges, at least 1.50 spaces between lines). This limit may be amended or waived by the Chair of the Board of Health (in writing) if hardship is shown by the party seeking to submit a longer document.
- (f) The parties may make oral argument to the Board of Health, no longer than fifteen (15) minutes per side.
- (g) The representative or counsel for the party appealing to the Board of Health shall be permitted to have a rebuttal time of not more than five (5) minutes.
- (h) The rules listed above at Section 970(4)(a) through (d) shall also apply.

8.10.970(8) Procedural rules specific only to the Board of Health hearing a revocation of permit case

- (a) Unless otherwise contravened or distinguished here, the rules listed at Section 970(4) shall apply.
- (b) Appeals shall be made in writing and shall be signed and dated by the petitioning party.

- (c) All parties shall be given an opportunity to present evidence, analysis and recommendations.
- (d) The parties are authorized to submit a brief, legal argument or Memorandum of Authorities of no more than ten (10) pages on their behalf (style requirements: letter sized paper, 1" margins on all edges, at least 1.50 spaces between lines). This limit may be amended or waived by the Chair of the Board of Health (in writing) if hardship is shown by the party seeking to submit a longer document.
- (e) Members of the Board of Health may direct questions to any person providing testimony.
- (f) The chairperson of the Board of Health may permit the presentation of testimony by any non-party, but only upon an oral finding by the chairperson that the testimony of the non-party is not "cumulative or repetitive" AND is and will be of "substantial value" to the ultimate decision of the Board of Health.
- (g) 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.
- (h) Should the Board of Health require additional testimony, it may continue the hearing to a date and time not to exceed thirty-five (35) days following the date of the initial 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 thirty-five (35) days following the close of the second hearing conducted to receive additional testimony. There shall be no extensions past the date of the second hearing without the written consent of all parties to the matter.
- (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) The Board of Health shall issue a final Ruling in writing and send same to all parties no more than thirty (30) days after the close of the hearing.
- (k) All decisions shall become a part of the record and shall include a statement of findings and conclusions.

8.10.970(9) Exhaustion of Administrative Remedies

An appellant (aggrieved party) shall not be considered to have exhausted all of its administrative remedies until such time as it has obtained from the Board of Health a final and dispositive Ruling.

8.10.970(10) Further appeals

Unless the challenged Decision was of a type subject to the provisions of WAC 173-350-710(6), a Ruling from the Board of Health constituting a final and dispositive resolution of the issue(s) presented may only be appealed to the Superior Court of the State of Washington

8.10.980 VARIANCES

(a) Applicability. Any person who owns or operates a solid waste facility may apply to the Health Officer for a variance from any paragraph of these regulations except as provided in Section 950(8)(b)(iv) of these regulations.

(b) Granting Requirements.

(i) The Health Officer may grant such variance if it finds that:

(A) The solid waste handling practices or site location do not endanger public health, safety or the environment; and

(B) Compliance with the regulation from which variance is sought would produce hardship on the applicant without equal or greater benefits to the public; and

(C) No other practicable or reasonable alternative exists. A practicable alternative is one that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and better reducing or eliminating impacts to health and the environment. It may include equipment or facilities not owned by the applicant that could have reasonably been or be obtained, utilized, expanded, or managed in order to manage, reduce, or eliminate impacts to health and the environment. A reasonable alternative is one that could feasibly attain or approximate compliance, but would better reduce or eliminate impacts to health and the environment.

(ii) No variance shall be granted pursuant to this paragraph until the Health Officer has considered the relative interests of the applicant, other owners of property likely to be affected by the waste handling practices, and the general public.

(iii) Any variance or renewal shall be granted within the requirements of this paragraph and for time period and conditions consistent with the reasons therefore, and within the following limitations:

(A) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement or control of pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternative measures that the Health Officer may prescribe.

(B) The Health Officer may grant a variance conditioned by a timetable if:

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

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

(iv) No variance from Chapters 173-350 WAC, Minimum Functional Standards for Solid Waste Handling, and 173-351 WAC, Criteria for Municipal Solid Waste Landfills, shall be granted by the Health Officer except with the approval and written concurrence of Ecology prior to action on the variance by the Health Officer.

(v) The Health Officer may grant variances from these regulations for standards that are more stringent than the standards of Chapters 173-350 and 173-351 WAC, or from provisions in these regulations that are not contained in Chapters 173-350 and 173-351 WAC, without Ecology approval.

(c) Application.

(i) The application shall be accompanied by such information as the Health Officer may require.

- (ii) An application for a variance, or for the renewal thereof, submitted to the Health Officer shall be approved or disapproved by the Health Officer within ninety (90) calendar days of receipt unless the applicant and the Health Officer agree to a continuance.
- (iii) Notice shall be given by mailing a notice of the variance application to persons who have written to the Health Officer asking to be notified of all variance requests.
- (d) Renewal. The Health Officer may renew any variance granted pursuant to this paragraph on terms and conditions and for periods that would be appropriate on initial granting of a variance. No renewal shall be granted except on written application. Any such application shall be made at least sixty (60) calendar days prior to the expiration of the variance.

8.10.990 – CRITERIA FOR INERT WASTE

WAC 173-350-990, *Inert Waste Criteria*, is hereby adopted by reference,

APPENDIX A. REFERENCES

The following is a list of Federal, State, and local laws, regulations, and documents referenced in Jefferson County Board of Health Ordinance 09-1020-05, *Solid Waste Regulations*. Copies of these documents may be found at the Port Townsend office of Jefferson County Public Health, the Jefferson County Courthouse, or through your local library.

A. Federal:

1. United States Code (USC):

33 USC 1344	PARAGRAPH 404 OF THE FEDERAL CLEAN WATER ACT (PL 95-217), PERMITS FOR DREDGED OR FILL MATERIAL
42 USC 300	SAFE DRINKING WATER ACT (PL 95-523)
42 USC 2011	ATOMIC ENERGY ACT OF 1954
42 USC 6901	RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (RCRA)
42 USC 9601	COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 (CERCLA)

2. Code of Federal Regulations (CFR):

10 CFR Part 20	STANDARDS FOR PROTECTION AGAINST RADIATION
40 CFR Part 61	NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
40 CFR Part 258	CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS
40 CFR Part 503	STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

3. Environmental Protection Agency:

SW-846	TEST METHODS FOR EVALUATING SOLID WASTE, PHYSICAL/CHEMICAL METHODS
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B. State:

1. Revised Code of Washington (RCW), Chapters:

7.80	CIVIL INFRACTIONS
42.17	DISCLOSURE - CAMPAIGN FINANCES - LOBBYING - RECORDS
43.21A	DEPARTMENT OF ECOLOGY
46.37	VEHICLE LIGHTING AND OTHER EQUIPMENT
46.55	TOWING AND IMPOUNDMENT
70.05	LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS - REGULATIONS
70.93	WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT
70.94	WASHINGTON CLEAN AIR ACT
70.95	SOLID WASTE MANAGEMENT - REDUCTION AND RECYCLING
70.95K	BIOMEDICAL WASTE
76.04	FOREST PROTECTION
90.48	WATER POLLUTION CONTROL

2. Washington Administrative Code (WAC), Chapters:

173-160	MINIMUM STANDARDS FOR CONSTRUCTION AND MAINTENANCE OF WELLS
173-200	WATER QUALITY STANDARDS FOR GROUND WATERS OF THE STATE OF WASHINGTON
173-201A	WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF WASHINGTON
173-218	UNDERGROUND INJECTION CONTROL PROGRAM
173-240	SUBMISSION OF PLANS AND REPORTS FOR CONSTRUCTION OF WASTEWATER FACILITIES
173-303	DANGEROUS WASTE REGULATIONS
173-304	MINIMUM FUNCTIONAL STANDARDS FOR SOLID WASTE HANDLING
173-308	BIOSOLIDS MANAGEMENT
173-314	WASTE TIRE CARRIER AND STORAGE SITE LICENSES
173-350	STANDARDS FOR SOLID WASTE HANDLING
173-351	CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS
173-425	OUTDOOR BURNING
197-11	SEPA RULES
246-203	GENERAL SANITATION
246-220	RADIATION PROTECTION - GENERAL PROVISIONS
246-232	RADIOACTIVE MATERIALS - LICENSING APPLICABILITY
296-24	GENERAL SAFETY AND HEALTH STANDARDS
296-62	OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CARCINOGENS
296-65	ASBESTOS REMOVAL AND ENCAPSULATION
480-70	SOLID WASTE AND/OR REFUSE COLLECTION COMPANIES

3. Washington State Department of Ecology (Ecology):

Ecology document 80-12, Biological Testing Methods
 Ecology document 91-30: Guidance for Remediation of Petroleum Contaminated Soils (revised November 1995)
 Ecology document 93-51, Chemical Testing for Complying with the Dangerous Waste Regulations

C. Local/Regional:

1. Jefferson County Public Health:

Jefferson County Comprehensive Solid Waste Management Plan (JCCSWMP)

JEFFERSON COUNTY BOARD OF HEALTH

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**JEFFERSON COUNTY BOARD OF HEALTH
ORDINANCE NUMBER 09-1020-05**

(Repeals and Replaces Ordinances #09-0715-04 and #08-0919-02)

SOLID WASTE REGULATIONS

October 20, 2005

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JEFFERSON COUNTY BOARD OF HEALTH
ORDINANCE 09-1020-05
SOLID WASTE REGULATIONS

010 – AUTHORITY AND PURPOSE

These solid waste rules and regulations are promulgated under the authority of Chapters 43.20.050, *Powers and Duties of State Board of Health* 70.05, *Local Health Departments, Boards, Officers-Regulations*, and 70.95, *Solid Waste Management-Reduction and Recycling*, in the Revised Code of Washington (RCW), and Chapters 246-203, *General Sanitation*, 173-304, *Minimum Functional Standards for Solid Waste Handling*, 173-350, *Solid Waste Handling Standards*, and 173-351, *Criteria for Municipal Solid Waste Landfills*, in the Washington Administrative Code (WAC), to protect the public health and the environment, and promote the safety and welfare of the citizens of Jefferson County. All references to these RCWs and WACs, and all other RCWs, WACs, and other federal, state, and local regulations, refer to the cited chapters and paragraphs, as amended. The rules and regulations herein govern the handling, storage, collection, transportation, treatment, utilization, processing and final disposal of all solid waste within Jefferson County, including the issuance of permits and enforcement. These regulations shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the Federal Government or recognized Native American Nations and Tribes.

It is expressly the purpose of these rules and regulations to provide for and promote the health of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of these rules and regulations.

It is the specific intent of these rules and regulations to place the obligation of complying with its requirements upon waste generators, haulers, and/or operators of solid waste handling sites, and no provision of, nor term used in these rules and regulations is intended to impose any duty whatsoever upon Public Health nor any of its officers or employees, for whom the implementation or enforcement of these rules and regulations shall be discretionary and not mandatory.

Nothing contained in these rules and regulations is intended to be, nor shall be construed to create or form the basis for any liability on the part of Public Health or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of Public Health.

015 – ADOPTION BY REFERENCE

Pursuant to and by the authority of RCW 70.95, Jefferson County Public Health hereby adopts Chapter 173-350, *Solid Waste Handling Standards*, and Chapter 173-304, *Minimum Functional Standards for Solid Waste Handling*. As provided for by RCW 70.95 Public Health makes the following amendments to Chapter 173-350.

020 – APPLICABILITY

WAC 173-350-020 "*Applicability*", is adopted by reference except that subparagraph (6) is hereby repealed. Single-family residences and single-family farms disposing of their own solid wastes on their own property shall be subject to these regulations.

025 – OWNER RESPONSIBILITY FOR SOLID WASTES

WAC 173-350-025 is revised as follows:

(1) General.

The owner, operator, or occupant of any premise, business, establishment, or industry shall be responsible for the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated by them on the property. An owner is not relieved of the duties and obligations imposed by this Chapter because the owner has leased the property or premises to another or permitted others to occupy the premises or operate there.

(2) Removal.

Solid waste shall be removed from the premises where it was generated to a permitted solid waste handling facility at a frequency that does not create a nuisance or litter problem, or at a frequency otherwise approved by the Health Officer. The Health Officer may require any person who does not store, remove, transport, or dispose of solid waste consistent with these regulations, or who stores solid waste so as to create a nuisance or litter problem, to remove solid waste from the premises where it was generated, or collected, by that person to a permitted solid waste handling facility no less frequently than once per week.

(3) Disposal.

- (a) Generally. All solid wastes shall be disposed of at an appropriate solid waste handling facility permitted to receive such waste, or in a manner consistent with these regulations as approved by the Health Officer. Should a situation arise where disposal of solid waste is not covered under these regulations, the Health Officer shall determine acceptability of a method of disposal for the solid waste on a case-by-case basis
- (b) Unlawful Dumping. It shall be unlawful for any person to dump, deposit, bury, or allow the dumping, depositing or burying of any solid waste onto or under the surface of the ground or into the waters of this state, except at a solid waste disposal site for which there is a valid permit. Unlawful dumping shall include unauthorized deposition of solid waste into a container that is owned or leased by another person.
- (c) Name Appearing on Waste Material and Presumption. Whenever solid waste dumped in violation of this regulation contains three (3) or more items bearing the name of one individual, there shall be a presumption that the individual whose name appears on such items committed the unlawful act of dumping.
- (d) Identification Presumed. When the Health Officer investigates a case of unlawful dumping and finds identification in the solid waste as described in Section 025(3)(c), or other evidence, he/she may then order the person who committed the unlawful dumping to remove and dispose of said solid waste according to these regulations. Following the disposal of said solid waste, the Health Officer may order this person to present to the Health Officer a receipt from the permitted disposal facility as proof of appropriate disposal.

- (e) Lack of Identification. When the Health Officer investigates a case of unlawful dumping and finds no identification in the solid waste, nor evidence, he/she may then order the property owner to remove said solid waste from his/her land, and have the solid waste disposed of according to these regulations. Where this occurs on private land, the property owner or occupant shall be responsible for removal and disposal. Where this occurs on public land, the appropriate governmental agency shall be responsible for removal and disposal.
- (f) Burning Prohibited. It shall be unlawful for any person to burn solid waste including garbage or rubbish unless these materials are burned in an appropriate permitted energy recovery or incinerator facility. The burning of land clearing debris and the residential burning of natural vegetative matter is regulated under Chapter 173-425 WAC, Outdoor Burning.
- (g) Disposal Service Required. When a person does not dispose of solid wastes in a manner consistent with these regulations, the Health Officer may order said person to obtain ongoing and regularly scheduled solid waste collection service if said person does not already have this service and if a solid waste collection service exists or is offered in the geographic area where the person resides. Said service shall be from a solid waste collection service holding a Solid Waste Handling Permit issued by Jefferson County Public Health and necessary certificates issued by the Washington Utilities and Transportation Commission. If said person does not have this service and resides in a geographic area where a single solid waste collection service operates exclusively under covenant or ordinance as required by local government, and said service is mandatory for persons residing within the jurisdiction of the local government, the Health Officer may schedule ongoing regularly scheduled service for said person with this solid waste collection service. If service is cancelled through nonpayment, it will be deemed a violation of this paragraph.
- (h) Disposal Receipts Required. Any person in violation of this paragraph to whom a notice and order to correct violation has been issued is required to produce receipts from a permitted solid waste disposal, recycling and/or reclamation facility or solid waste transporter to demonstrate compliance with the notice and order to correct violation issued by Jefferson County Public Health.

030 – EFFECTIVE DATES.

WAC 173-350-030, *Effective Dates* are hereby adopted by reference. The effective date of these regulations is October 20, 2005.

040 – PERFORMANCE STANDARDS.

WAC 173-350-040, *Performance Standards*, is hereby adopted by reference.

100 – DEFINITIONS.

Terms used in this regulation shall have the meaning provided in WAC 173-350-100, hereby adopted in its entirety by reference herein except as revised or altered by the definitions provided below. Terms related to municipal solid waste landfills are contained in Chapter 173-351 WAC, *Criteria for Municipal Solid Waste Landfills*. Terms related to landfills closed pursuant to Chapter 173-304, *Minimum Functional Standards for Solid Waste Handling*.

Abandoned Landfills: Those sites not closed in accordance with all applicable regulatory requirements in place at the time that waste handling/disposal activities ceased.

Abate: Repair, replace, remove, destroy, or otherwise remedy a condition(s) which constitutes a nuisance or a violation of these regulations by such means, in a manner, and to such an extent as the Health Officer determines is necessary in the interests of the general health, safety and welfare of the community.

Abrasive Blasting: A method of surface preparation in which an abrasive aggregate is sprayed under pressure on to exterior surfaces which include, but are not limited to, boats, ships or other watercraft.

Agricultural Wastes: Non-dangerous wastes on farms resulting from the production of agricultural products including, but not limited to, crop residues, manures, animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds.

Animal Wastes: Wastes generated on a farm, including manure, pet feces, and dead animals.

Asbestos-Containing Material: Any material containing more than one percent (1%) asbestos as determined using the method specified in EPA regulations Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy.

Asbestos-Containing Waste Material: Any waste that contains or is contaminated with friable asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

Ashes: The residue from combustion or incineration of material including solid wastes and any air pollution flue dust.

Biomedical Waste: Biomedical waste means, and is limited to, the following types of waste:

1. "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.
2. "Biosafety level 4 disease waste" is the waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the Centers for Disease Control, National Institute of Health, and Biosafety in Microbiological and Biomedical Laboratories, current edition.
3. "Cultures and stocks" are wastes infectious to humans including specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

4. "Human blood and blood products" are waste human blood and blood components, and materials containing free-flowing blood and blood products.
5. "Pathological waste" is human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for internment or cremation.
6. "Sharps waste" is all hypodermic needles, syringes with needles attached, intravenous tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

Biomedical Waste Collection Service: Any agency, business, or service operated by a person for the purpose of biomedical waste collection and transportation.

Biomedical Waste Generator: Any producer of biomedical waste to include without limitation the following categories: General acute care hospitals, skilled nursing facilities or convalescent hospitals, intermediate care facilities, in-patient care facilities for the developmentally disabled, chronic dialysis clinics, community clinics, health maintenance organizations, surgical clinics, urgent care clinics, acute psychiatric hospitals, laboratories, medical buildings, physicians offices and clinics, veterinary offices and clinics, dental offices and clinics, funeral homes or other similar facilities.

Biomedical Waste Treatment: Means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting infectious disease.

Board of Health: The Jefferson County Board of Health.

* **Buffer Zone:** That part of a facility that lies between the active area and the property boundary. Junk cars are not allowed in a Buffer Zone as defined in Title 18 of Jefferson County Code.

Bulky Waste: Large items of refuse, such as appliances (white goods), furniture, junk vehicles, and other oversize wastes which would typically not fit into reusable or disposable containers.

Construction Waste: Non-dangerous solid waste, largely inert waste, generated as the result of construction of buildings, roads, and other man-made structures. Construction waste consists of, but is not limited to: concrete, asphalt, brick, rock, wood and masonry, composition roofing and roofing paper, shakes, shingles, plastic and paper wrappings, plastic pipe, fiberglass insulation, carpeting, floor tile, glass, steel, and minor amounts of other metals like copper.

Demolition Waste: Non-dangerous solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition waste consists of, but is not limited to: concrete, asphalt, brick, rock, wood and masonry, composition roofing and roofing paper, shakes, shingles, plastic pipe, fiberglass insulation, carpeting, floor tile, glass, steel, minor amounts of other metals like copper, and incidental amounts of soil associated with these wastes. Plaster (i.e., sheet rock or plaster board), yard wastes, stumps, or any other materials that are likely to produce gases or leachate during the decomposition process are not considered to be demolition waste for the purposes of this definition. Bulky wastes, white goods, and asbestos-containing materials are not considered to be demolition waste for the purpose of this regulation.

Discarded Commodity: Products or items that because of damage, misuse, wear, or neglect, are no longer being utilized for its intended purpose.

Disposal Site: The location where any final treatment, utilization, processing or deposition of solid waste occurs. See also the definition of interim solid waste handling site.

Drop Box Facility: A facility used for the placement of a detachable container, including the area adjacent for necessary entrance and exit roads, unloading and turnaround areas. Drop box facilities normally serve the general public with loose loads and receive waste from off-site

Ecology: The Washington State Department of Ecology.

Emission: The release of air contaminants from solid waste into the outdoor atmosphere.

*** Environmentally Sensitive Areas or "ESA":** shall be as defined at RCW 36.70A.030(5) (or as hereafter amended) to include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas (and buffers for all such areas) as those terms are defined and described in Title 18 of the Jefferson County Code in its current form or as it may be in the future, amended, supplemented or replaced. Junk cars are not allowed in an ESA as defined in Title 18 of Jefferson County Code.

EPA: The United States Environmental Protection Agency.

Hazardous Substance: Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or WAC 173-303-100.

Health Officer: The Health Officer or the Health Officer's representative, of the Jefferson County Public Health.

*** Junk Vehicle:** A vehicle certified under RCW 46.55.230 as meeting at least three of following requirements:

1. Three (3) years old or older;
2. Extensively damaged, such damage including but not limited to the following: a broken window or windshield, or missing wheels, tires, motor, or transmission;
3. Apparently inoperable; and/or
4. Has approximate fair market value equal only to the approximate value of the scrap in it.

For enforcement purposes, possessing three (3) junk cars on a single property of any size is not allowed under this regulation.

Minimum Functional Standards (MFS): Chapter 173-304 WAC, *Minimum Functional Standards for Solid Waste Handling*.

Nuisance: Consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the, repose, health or safety of others; or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. To the extent applicable, the County adopts the definitions of nuisance found in Ch. 7.48 RCW.

Owner: The person, business entity or partnership that is the title owner of record with the Jefferson County Auditor for the parcel or parcels where the violation is allegedly occurring.

Person responsible: The owner, lessee, occupant or operator of the premises, business, activity or action that is allegedly a violation of this Chapter.

Problem Wastes:

1. Any solid material removed during a remedial action, a dangerous waste site closure, other cleanup efforts, or other actions, which contain hazardous substances, but are not designated dangerous wastes;
2. Dredge spoils resulting from the dredging of surface waters of the state where contaminants are present in the dredge spoils at concentrations not suitable for open water disposal and the dredge spoils are not dangerous wastes and are not regulated by Section 404 of the Federal Clean Water Act (PL 95-217); or
3. Waste abrasive blasting grit or other material used in abrasive blasting. Common aggregates include, but are not limited to silica sand, utility slag or copper slag. Waste abrasive blasting grit does not include blasting grit that will be reused for its intended purpose.

Public Health: Jefferson County Public Health or any person acting on behalf of or employed by Jefferson County Public Health.

Remedial Action: Any action to identify, eliminate or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessment or health effects studies conducted to determine the risk or potential risk to human health.

Rubbish: All non-putrescible wastes from all public and private establishments and from all residences.

Solid Waste: All putrescible and non-putrescible solid and semi-solid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, animal wastes, construction and demolition wastes, land clearing wastes, contaminated soils, contaminated dredged spoils, junk vehicles or parts thereof (including waste tires), and discarded commodities. This includes all liquid, solid and semi-solid, materials that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste also includes, but is not limited to, woodwaste, dangerous waste, yard waste, bulky waste, biomedical waste, animal waste, waste tires, recyclable materials, and problem wastes. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, *Criteria for Municipal Solid Waste Landfills*, Chapter 173-308 WAC, *Biosolids Management*, and a solid waste handling permit issued by the Health Officer.

Used Oil:

1. Lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, truck, bus, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; or

2. Any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; or
3. Any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser; and
4. Used oil does not include oil to which dangerous wastes have been added, or oil that would otherwise be considered used oil except that it is used as a fuel in an industrial furnace, which meets the emission standards of the Puget Sound Clean Air Agency.

200 – Beneficial Use Permit Exemptions

WAC 173-350-100 *Beneficial Use Permit Exemptions* is hereby adopted by reference.

210 – Recycling

WAC 173-350-210, *Recycling* is hereby adopted by reference.

220 – Composting Facilities

WAC 173-350-220, *Compost Facilities* is hereby adopted by reference. Paragraph 220(7) has been revised as follows:

220(7) Compost Facilities – Financial Assurance requirements.

(a) Financial Assurance may be required for certain compost facilities as determined by Public Health.

(b) If required by Public Health, the owner or operator shall establish a financial assurance mechanism in accordance with 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum amount of wastes that could be present at any time during the operation of the facility and to accomplish closure in accordance with the facility closure plan.

(c) If required, no owner or operator shall commence or continue to operate any part of the facility until a suitable financial assurance mechanism has been provided to the JHD in accordance with WAC 173-350-600.

230 – Land Application

WAC 173-350-240, *Land Application* is hereby adopted by reference.

240 – Energy Recovery and Incineration

WAC 173-350-240, *Energy Recovery and Incineration* is hereby adopted by reference.

300 – On-site Storage, Collection, and Transportation Standards

WAC 173-350-300, *On-Site Storage, Collection, and Transportation Standard* is hereby adopted by reference and revised with the addition of the following paragraphs.

300(2)(b)(iv) Containers of mixed municipal solid waste, putrescible waste, and rubbish shall be closed at all times except when waste is being added or removed. Commercial containers located at public or private collection facilities may be kept open during routine hours of operation, as long as the container drain plugs remain in place.

300(2)(b)(v) The owner, operator or occupant of any premises, business establishment or industry shall store all recyclable materials so as not to produce unsafe or unsanitary conditions.

305 – Solid Waste Handling Standards for Specific Waste Stream

(1) Animal Waste.

- (a) Animal waste, as defined in Section 100, shall be disposed of in a manner consistent with these regulations, or other method approved by the Health Officer.
- (b) Any animal waste that is deemed biomedical waste as defined in Section 100, shall be handled, treated, and disposed of as required in Section 305(b).
- (c) **Animal Manure.** Animal manure shall not be deposited, or allowed to accumulate, in any ditch, gulch, ravine, river, stream, lake, pond, marine water, or upon the surface of the ground, or on any highway or road right of way, where it may become a nuisance or menace to health, as determined by the Health Officer, through the breeding of flies, harboring of rodents, or pollution of water. Manure shall not be allowed to accumulate in any place where it can pollute any source of drinking water.
- (d) **Dead Animals.** Except as otherwise provided in Section 305(3), dead animals shall be disposed of in a manner to protect the public health and the environment. Their disposal shall be consistent with local codes. Dead animals may be taken to a rendering plant, a veterinary clinic, an animal shelter, pet cemetery, or can be disposed of directly at permitted operating landfills or transfer stations so as not to create a nuisance. Property owners may bury dead animals on their property, so long as no nuisance is created. If the dead animal is buried, it shall be placed so that every part shall be covered by at least two (2) feet of earth and at a location not less than one-hundred (100) feet from any well, spring, stream, or other surface waters, and in a place not subject to overflow. In all cases of death from communicable disease, the dead animal, if disposed of by burial, shall first be thoroughly enveloped in unslaked lime.
- (e) **Pet Feces.** Pet feces, especially dog droppings, shall be disposed of in a manner, such as burial, or bagging and placement into containers described in Section 300(2), which does not create a nuisance or pollute surface waters of the state. Pet feces shall not be disposed of into the sanitary sewer unless approved by the sewer purveyor. This waste shall not be put into a storm sewer or on-site sewage system.

(2) Asbestos-Containing Waste.

- (a) **General.** Asbestos-containing waste material (ACWM), as defined in Section 100, shall be handled and disposed of pursuant to 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Chapter 173-303 WAC, Dangerous Waste Regulations, Puget Sound Clean Air Agency Regulation III Article 4, and Chapter 296-65 WAC, Asbestos Removal and Encapsulation.

- (b) Removal. Persons removing ACWM shall contact the Puget Sound Clean Air Agency for information and instruction concerning removal and disposal. ACWM must be wetted down during removal to reduce airborne emissions of particulate matter. ACWM shall be sealed into leak tight containers or placed in one or more plastic bags with a combined six (6) mils thickness or greater and identified with the proper warning label.
- (c) Disposal. The ACWM shall be disposed of in accordance with 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, at a facility permitted to receive such wastes, in accordance with an approved operations plan, and covered with at least fifteen centimeters (6 inches) of non-asbestos containing waste material immediately following disposal.

(3) Biomedical Waste.

- (a) Applicability. This regulation applies to all persons who generate biomedical waste including, but not limited to, individuals, hospitals, medical and dental clinics, medical laboratories, nursing or intermediate care facilities, veterinary facilities and other institutions, which may generate biomedical wastes as defined in Section 100, without regard to the quantity of biomedical waste produced per month.

(b) Storage and Handling.

- (i) Containment of biomedical waste shall be in a manner and location which affords protection from animals, rain, and wind and does not provide a breeding place or a food source for insects or rodents.
- (ii) Biomedical wastes shall be segregated from the general medical waste stream at the point of origin and stored in separate containers. When possible, biomedical wastes should be rendered non-infectious through chemical or physical treatment procedures as approved by the facility's site safety officer.
- (iii) Biomedical waste, except for sharps, shall be contained in disposable leakproof containers having strength to prevent ripping, tearing or bursting under normal conditions of use. The containers shall be secured to prevent leakage or expulsion of solid or liquid waste during storage, handling or transport. The containers can be of any color and shall be conspicuously labeled with the international biohazard symbol, and the words "Biohazardous Waste" or words that clearly denote the presence of biomedical waste.
- (iv) All sharps, including home-generated sharps, shall be contained in leak-proof, rigid, puncture resistant, break resistant containers that are labeled and tightly lidded during storage, handling and transport. These containers must be capable of maintaining their structural integrity from the point of storage to deposition at an approved disposal or collection site. The containers shall be of any color and shall be conspicuously labeled with the international biohazard symbol, and the words "Biohazardous Waste" or words that clearly denote the presence of biomedical waste.
- (v) Reusable Containers.
 - (A) Reusable containers for biomedical waste storage, handling or transport shall be thoroughly washed and decontaminated by a method approved by the Health Officer each time they are emptied, unless the surfaces of the

containers have been protected from contamination by disposable liners, bags or other devices removed with the waste.

- (B) Approved methods of decontamination are agitation to remove visible solid residue combined with chemical disinfection. Chemical disinfectants should be used in accordance with the manufacturer's recommendations or by disinfectant concentration/contact times approved in writing by the Health Officer. Other decontamination methods may be approved in writing by the Health Officer.
- (C) Reusable pails, drums or bins used for containment of biomedical waste shall not be used for any other purpose except after being disinfected by procedures as described in this regulation and after the international biohazard symbol and the words "Biohazardous Waste" are removed.
- (vi) The handling and storage of all biomedical waste must prevent the dissemination of biomedical waste into the environment.
- (vii) Trash chutes shall not be used to transfer biomedical waste.
- (viii) Biomedical waste shall not be placed into the general waste stream unless contained and treated.
- (ix) Sharps shall not be placed into the general waste stream.

(c) Disposal.

- (i) All biomedical waste that has been contained as described in Section 305(3)(b) shall be disposed of at a solid waste handling facility permitted to receive such waste.
- (ii) All human or animal body parts, fetuses, and other pathological specimens shall be disposed of either by appropriate interment, incineration or other method approved by the Health Officer.
- (iii) Untreated liquid and liquefied biomedical waste may be disposed of by release into a sanitary sewage system, if this practice is approved by the providing sewer utility, provided that the Health Officer shall have the authority to require the treatment of any biomedical liquid, according to requirements specified by the Health Officer, prior to release into a sanitary sewage system if deemed necessary to protect the public health.
- (iv) Biomedical waste shall be disposed of on a regular basis to avoid nuisance conditions. If any nuisance condition exists, the Health Officer shall have the authority to require a specific disposal or collection frequency.
- (v) Sharps must be contained in accordance with Section 305(3)(b)(iv) and prepared for disposal by a means that protects medical handlers, solid waste workers and the public from injury. The disposal of sharps shall be limited to the following methods unless prohibited by the requirements of Chapter 70.95K RCW, Biomedical Wastes:(No longer exempts home-generated sharps.)
 - (A) Depositing properly contained sharps at a facility that has agreed to accept home generated sharps.
 - (B) Depositing properly contained sharps at a medical facility or pharmacy that provides a program to dispose of sharps waste and that meets the requirements of these regulations.

- (C) Using a permitted biomedical waste collection service.
- (E) Other methods approved by the Health Officer.
- (d) **Transfer of Biomedical Waste.** Any biomedical waste generator, who produces untreated biomedical waste, shall have said waste collected and transported by a permitted biomedical waste collection service.
- (e) **Inspection.** The Health Officer shall have the authority to inspect any biomedical waste generator, at any reasonable time, to determine if the generator's biomedical waste is being handled, stored, and disposed of in accordance with this regulation, or to determine if the waste generator's solid waste is being disposed of in accordance with this regulation.
- (f) **Disposal Service Required.** When a person does not dispose of biomedical waste in a manner consistent with these regulations, the Health Officer may order said person to obtain ongoing and regularly scheduled biomedical waste collection and disposal service if said person does not have this service and if commercial biomedical waste collection and disposal service exists in or is offered in the geographic areas where the person resides. Said service shall be from a biomedical waste collection and disposal service holding a Solid Waste Handling Permit issued by Public Health.
- (g) **Biomedical Waste Collection Services.** In addition to the general operation and maintenance requirements applicable to persons operating a solid waste collection service specified in Section 300, vehicles used by biomedical waste collection services shall have a leak proof and fully enclosed vehicle compartment constructed of durable and easily cleanable materials, and shall be identified on each side of the vehicle with the name or trademark of the biomedical waste collection service.

(4) Bulky Waste.

Bulky wastes shall be stored and transported in such a manner so as not to create a nuisance or safety hazard. Recycling of bulky wastes is encouraged where programs have been established to accept them. If recycling is not feasible, these wastes shall be taken directly to a disposal site permitted to accept oversized waste. Land clearing bulky waste such as tree stumps, trees, portions of buildings and other waste shall be transported directly to a transfer station or landfill designed and permitted to accept these bulky wastes; provided, that nothing herein shall prevent these wastes from being salvaged and/or used as firewood.

(5) Dangerous Waste.

- (a) All solid waste must be designated as required by WAC 173-303-070 to prevent the disposal of dangerous waste at a facility not permitted to accept dangerous waste. All solid waste designated as a dangerous waste must be managed in a manner consistent with these regulations and Chapter 173-303 WAC.
- (b) The Health Officer may require the screening of any waste suspected of being a regulated dangerous waste as defined in Section 100. The screening process may involve analytical testing, a disclosure of the waste constituents and waste generation process, and other additional information necessary to determine if the waste is dangerous. The Health Officer may establish a schedule for compliance as part of the screening process. Based on the results of the required screening, the Health Officer may require the generator or transporter to direct the waste to a facility permitted to handle such waste.

(6) Moderate Risk Waste and Used Oil.

(a) Storage Requirements.

- (i) Moderate Risk Waste (MRW), used oil, and hazardous substances shall be stored in containers which are:
 - (A) Compatible with the waste contained therein;
 - (B) In good condition and without any leaks, corrosion or other signs of deterioration;
 - (C) Securely covered at all times except during the addition or removal of contents; and
 - (D) In the case of hazardous substances which are unused products, stored in their original container.
- (ii) Containers of MRW, used oil, and hazardous substances shall be stored on an impervious surface and in a location(s) that is covered and controlled to prevent:
 - (A) Container deterioration due to weather exposure;
 - (B) Surface water run-on;
 - (C) Exposure to extreme temperatures; and
 - (D) Any other controllable condition, which may cause or increase the possibility of container failure.

(b) Accumulation. In addition to the quantity exclusion limits (QELs) for small quantity generators contained in WAC 173-303-070(8), MRW, used oil, and hazardous substances shall not be accumulated in quantities that, in the opinion of the Health Officer, present a threat to public health or the environment.

(c) Transportation. MRW and used oil shall be transported in accordance with Section 300(3)

(d) Treatment and Disposal.

- (i) Moderate Risk Waste. All MRW shall be transported to a permitted MRW collection facility, or picked up by a permitted dangerous waste transporter for treatment or disposal at a facility permitted to accept such waste. MRW may also be processed using an on-site treatment system approved by Ecology that renders the waste non-dangerous. MRW shall not be deposited in the general municipal solid waste collection system, a public sewer system, a storm drain, an on-site sewage system, in surface or ground water, or onto or under the surface of the ground.
- (ii) Pesticides. Usable pesticides shall be utilized in accordance with the EPA approved label requirements, or shall be disposed of, as appropriate, at a permitted hazardous waste treatment, storage, or disposal facility, the Jefferson County Moderate Risk Waste Collection Facility, or through an approved Department of Agriculture collection event. Empty containers from canceled, suspended, or otherwise unusable pesticides should be disposed of as a hazardous waste or triple rinsed in accordance with the requirements under WAC 173-303-160(2)(b). Rinsate from a pesticide container must be reused in a manner consistent with its original intended purpose or disposed of as a hazardous waste under Chapter 173-303 WAC.

(iii) Used Oil. Used oil shall be recycled or disposed of at a facility permitted or approved for that purpose, or as otherwise allowed by Ecology or the Health Officer. Used oil may be taken to service stations or similar facilities that collect used oil for subsequent reprocessing at a facility specifically permitted for that purpose.

(e) Mitigation and Control. The person responsible for a spill or non-permitted discharge of MRW, used oil, and/or hazardous substances shall take appropriate and immediate action to protect public health and the environment, including any necessary measure required to prevent the spread of contamination. In addition, the person responsible for a spill or discharge shall:

(i) Notify Public Health and, when an imminent threat to public health or the environment exists, call 911;

(ii) Clean up any released hazardous substance, or take such actions as may be required or approved by federal, state, or local officials; and

(iii) Meet applicable requirements of Section 305(7) as directed by the Health Officer.

(7) Problem Waste.

(a) Screening. Persons excavating problem waste as defined in Section 100, which is intended for upland fill in Jefferson County and which may contain a hazardous substance, endanger the public health, or adversely impact the environment, shall contact the Health Officer to determine the need for screening in accordance with Section 305(9)(b)

(b) Management Options.

(i) Beneficial Reuse. Any person intending to beneficially reuse problem wastes must first contact the Health Officer to determine the appropriate reuse options.

(ii) Treatment. Problem wastes may be treated to remove contaminants and, following treatment, may be used as upland fill in Jefferson County if the treated waste is determined by the Health Officer not to be a problem waste.

(iii) Disposal. Problem waste can only be disposed of at a solid waste handling facility permitted to receive such waste.

(c) Waste Abrasive Blasting Grit Storage. Waste abrasive blasting grit shall be stored under cover in a manner that minimizes contact with process water or stormwater. Persons recycling waste abrasive blasting grit at a facility permitted to recycle such waste are exempt from the provisions of Section 305(7)(b) of these regulations provided that the recycling facility enlists a process and produces a final product that does not endanger human health or the environment as a result of using said material.

(8) Septage.

Septage must be disposed of directly into a sewage treatment works, licensed as such by Ecology, with the permission of and according to the requirements of the sewage treatment works or disposed of into an alternative treatment works or other process approved by the Health Officer. Septage of domestic quality, meeting all applicable requirements for biosolids under Chapter 173-308 WAC, Biosolids Management, may be beneficially reused by being applied to land as approved by the Health Officer on a case-by-case basis.

(9) Conditionally Exempt Small Quantity Generator (CESQG) Waste.

- (a) **Applicability.** This section applies to conditionally exempt small quantity generators (CESQGs) as defined in Section 100. In addition to the requirements of this section, CESQGs must meet the storage requirements of Section 305(6)(a)
- (b) **Waste Designation.** CESQGs shall designate suspected or known dangerous wastes pursuant to WAC 173-303-070 through WAC 173-303-100.
- (c) **Container Labeling.** CESQGs shall label all containers of MRW and used oil with the name of the waste and identify the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public. Containers of MRW shall also be labeled with the words "hazardous waste" or "dangerous waste".
- (d) **Secondary Containment.** The Health Officer may require an CESQG to provide secondary containment for liquid MRW and/or used oil stored on-site if the Health Officer determines that there is a potential threat to public health or the environment due to the nature of the wastes being accumulated, the location of accumulation, or due to a history of spills or releases from accumulation containers. When required under this section, a secondary containment system must be durable, compatible with the waste it is meant to contain, and large enough to contain a volume equal to ten (10) percent of all containers, or one hundred and ten percent (110 %) of the largest single container, whichever is greater.
- (e) **Hazardous Materials Management Plans.** If a CESQG has violated any part of this regulation, the Health Officer may require the CESQG to prepare and follow a written Hazardous Materials Management Plan approved by Public Health and in a format prescribed by Public Health.

310 – Intermediate Solid Waste Handling Facilities

WAC 173-350-310, *Intermediate Solid Waste Handling Facilities* is hereby adopted by reference.

320 – Piles Used for Storage or Treatment

WAC 173-350-320, *Piles Used for Storage or Treatment* is hereby adopted by reference. Paragraph 320(7) has been revised as follows:

320(7) Piles used for Storage or Treatment – Financial Assurance requirements.

(a) Financial Assurance may be required for certain piles treating or storing solid waste as determined by Public Health.

(b) If required by Public Health, the owner or operator shall establish a financial assurance mechanism in accordance with 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum amount of wastes that could be present at any time during the operation of the facility and to accomplish closure in accordance with the facility closure plan.

(c) If required, no owner or operator shall commence or continue to operate any part of the facility until a suitable financial assurance mechanism has been provided to the JHD in accordance with WAC 173-350-600.

330 – Surface Impoundments and Tanks

WAC 173-350-330, *Surface Impoundments and Tanks*, is hereby adopted by reference. Paragraph 330(7) has been revised as follows:

330(7) *Surface Impoundments and Tanks – Financial Assurance requirements.*

(a) Financial Assurance may be required for certain surface impoundments and tanks used for treating or storing solid waste as determined by Public Health.

(b) If required by Public Health, the owner or operator shall establish a financial assurance mechanism in accordance with 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum amount of wastes that could be present at any time during the operation of the facility and to accomplish closure in accordance with the facility closure plan.

(c) If required, no owner or operator shall commence or continue to operate any part of the facility until a suitable financial assurance mechanism has been provided to the JHD in accordance with WAC 173-350-600.

350 – Waste Tire Storage and Transportation

WAC 173-350-350, *Waste Tire Storage and Transportation* is hereby adopted by reference.

360 – Moderate Risk Waste Handling

WAC 173-350-360, *Moderate Risk Waste Handling* is hereby adopted by reference.

400 – Limited Purpose Landfills

WAC 173-350-400, *Limited Purpose Landfills* is hereby adopted by reference.

410 – Inert Waste Landfills

WAC 173-350-410, *Inert Waste Landfills* is hereby adopted by reference.

450 – Municipal Solid Waste Landfills

WAC 173-351, *Criteria for Municipal Solid Waste Landfills* is hereby adopted by reference.

460 – Construction and Notification Standards Near Landfills

(1) Construction Requirements.

(a) Methane Protection.

- (i) Any person constructing or developing any area within one-thousand (1,000) feet of the footprint of an active, closed, or abandoned landfill shall provide documentation that demonstrates that levels of methane gas within this one-thousand (1,000) foot zone are below the lower explosive limits (LEL) under all conditions. A description of the investigation methodology, all analytical data, and conclusions shall be presented in a report submitted by a licensed professional engineer or

professional geologist to the Health Officer and the local building department for review and approval. Copies of this report shall also be provided to the Washington Department of Ecology and the Puget Sound Clean Air Agency; and

(ii) Any person constructing or developing any area within one-thousand (1,000) feet of the footprint of an active, closed, or abandoned landfill shall provide documentation that demonstrates that all enclosed structures are protected from potential methane migration. The method for ensuring a structure's protection from methane shall be addressed in a report submitted by a licensed professional engineer to the Health Officer and the local building department for approval. Such a report shall contain a description of the mitigation measures to prevent the accumulation of explosive concentrations of methane gas within or under enclosed portions of a building or structure. At the time of final inspection, the engineer shall furnish a signed statement attesting that the building or structure has been constructed in accordance with his/her recommendations for addressing methane gas migration.

(iii) The Health Officer may grant a variance to the requirements in Section 460(1)(a)(ii) above, based on a review of data submitted pursuant to preceding Section 460(1)(a)(i).

(b) Stormwater. To minimize erosion impacts and leachate generation, no person shall detain stormwater on a closed or abandoned landfill. Stormwater may be conveyed across a closed or abandoned landfill if the conveyance system has been engineered to minimize the percolation of stormwater into the landfill.

(c) Construction within the Footprint of the Landfill. No person shall construct within the footprint of a closed or abandoned landfill without first having submitted detailed engineering plans documenting how potential hazards will be controlled. Potential hazards include, but are not limited to, subsidence, methane, odor problems, hazards associated with subsurface utility installation, and leachate generation. A qualified, licensed Professional Engineer (PE) shall sign such plans. These plans must be submitted for review and approval to the jurisdictional building department and Public Health, or Public Health's designated representative.

(d) Groundwater Supply Wells. No person shall construct a groundwater supply well within one-thousand (1,000) feet of an active, closed, or abandoned landfill property boundary without a formal request for variance as outlined in Chapter 173-160 WAC, Minimum Standards for the Construction and Maintenance of Wells.

(e) Methane Monitoring. All landfills where methane gas is generated shall provide for adequate venting, collecting, redirecting, or elimination of gases generated by solid waste. It shall be the responsibility of the landfill owner/operator to develop a sampling and testing program to monitor gas production and potential migration.

(2) Notification Requirements for Owners of Landfills.

All owners of active, closed, or abandoned landfills shall:

(a) File a Notice to Title with the County Auditor's office noting the presence of a landfill on the tax parcel within one-hundred and eighty (180) days of the effective date of these regulations.

- (b) For any property without notice to title, Public Health may file a notice to title regarding the presence of a landfill on the property.
- (c) Disclose the presence of an active, closed, or abandoned landfill to all prospective purchasers of the property.

490 – Other Methods of Solid Waste Handling

WAC 173-350-490, *Other Methods of Solid Waste Handling* is hereby adopted by reference.

500 – Ground Water Monitoring

WAC 173-350-500, *Ground Water Monitoring* is hereby adopted by reference.

600 – Financial Assurance Requirements

WAC 173-350-600, *Financial Assurance Requirements* is hereby adopted by reference. Paragraph 600(1) of the WAC is revised by adding the following subparagraph.

(d) Certain waste piles; certain surface impoundments and tanks; and certain compost facilities as determined by Public Health.

700 – Permits and Local Ordinances

WAC 173-350-700, *Permits and Local Requirements*, is hereby adopted by reference. Section 700(1) of the WAC is revised by adding the following subparagraph.

(d) Landfills closed pursuant to this Chapter 173-351, *Mixed Municipal Solid Waste Landfills* or Chapter 173-304 are required to obtain a closure-post closure permit.

(e) Permit holders must comply with all rules and intent of the Jefferson County Comprehensive Solid Waste Management Plan (JCCSWMP).

710 – Permit Application and Issuance

WAC 173-350-710, *Permit Application and Issuance* is hereby adopted by reference.

715 – General Permit Application Contents

WAC 173-350-715, *General Permit Application Contents* is hereby adopted by reference.

900 – Corrective Action

WAC 173-350-900, *Corrective Action* is hereby adopted by reference.

950 – Administration And Enforcement

(1) Other Laws, Regulations and Agency Requirements

- (a) All solid waste 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) Chapter 173-350 WAC, Minimum Functional Standards for Solid Waste Handling, is hereby adopted by reference.
- (c) If a conflict exists in the interpretation of Chapter 173-350 WAC and these regulations, or in the interpretation of Chapter 173-351 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 others 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) Inspections – Permitted Facilities

- (a) **General.** At a minimum, the Health Officer may, to the extent resources permit, perform annual inspections of all permitted solid waste facilities. Findings shall be noted and kept on file. The Health Officer shall furnish a copy of the inspection report, or annual summary, to the site operator.
- (b) **Pre-Operational Inspection.** Whenever plans and specifications are required by these regulations to be submitted to the Health Officer, the Health Officer may inspect the proposed solid waste disposal site, solid waste handling facility, or solid waste collection service prior to the start of the operations to verify compliance with approved plans and specifications.

(5) 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 ten 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) **Disposal 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 permitted solid waste disposal facility or transporter 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 Section 950(6) of these regulations; 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.

(6) 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, 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 Section 950(6)(b)(ii), 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) Any person who unlawfully dumps solid waste as described in Section 025(3)(b) or waste in an amount greater than one (1) cubic foot has committed a Class 1 civil infraction pursuant to Chapter 7.80 RCW, Civil Infractions. Any person who unlawfully dumps solid waste in an amount less than or equal to one (1) cubic foot has committed a Class 3 civil infraction pursuant to Chapter 7.80 RCW. The court may also impose restitution for any violation.
- (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 unlawfully dumps biomedical waste as described in Section 025(3)(b) 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 ninety (90) days, or both. The court may also impose restitution.
- (ii) Any person who unlawfully dumps "dangerous waste" as defined in WAC 173-350-100 and/or RCW 70.105.010(5) in violation of RCW 70.105.090 shall be, upon conviction, guilty of a misdemeanor. The court may also impose restitution.
- (iii) Any person who unlawfully dumps "dangerous waste" as defined in WAC 173-350-100 and/or RCW 70.105.010(5) in violation of RCW 70.105.085 shall be, upon conviction, guilty of a felony. The court may also impose restitution.
- (iv) Any person who unlawfully dumps solid waste as described in Section 025(3)(b) and in an amount less than one (1) cubic yard, but greater than (1) cubic foot, 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 ninety (90) days, or both. The court may also impose restitution as stated in Chapter 70.95 RCW, Solid Waste Management-Reduction and Recycling.
- (v) Any person who unlawfully dumps solid waste as described in Section 025(3)(b) of these regulations and in an amount greater than (1) cubic yard, shall be, upon conviction, guilty of a gross misdemeanor, and shall be subject to a fine of not more than \$5,000, or imprisonment in the county jail not to exceed one (1) year, or both. The court may also impose restitution as stated in Chapter 70.95 RCW, Solid Waste Management-Reduction and Recycling.
- (vi) Any person who fails, neglects, or refuses to obey an order of the Health Officer to correct a violation as set forth in Section 950(5)(g) above shall be, upon

conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$100, or imprisonment in the county jail not to exceed ninety (90) days, or both. The court may also impose restitution.

- (vii) Any person who fails, neglects, or refuses to comply with a written assurance of discontinuance pursuant to Section 950(5)(h) above shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$100, or imprisonment in the county jail not to exceed ninety (90) days, or both. The court may also impose restitution.
- (viii) Any person who operates a solid waste facility or collection service without a permit 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 ninety (90) days, or both. The court may also impose restitution.
- (viii) Any person who operates a solid waste facility or collection service after a permit has been revoked 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 ninety (90) days, or both. The court may also impose restitution.

(d) Noncompliance Fees.

- (i) Pursuant to the most current Public Health fee schedule adopted by the Board of Health, Public Health may assess a noncompliance fee to a permittee for the following:
 - (A) Public Health oversight and review required as a result of the Health Officer's determination that a permitted facility is not in compliance with its permit and/or applicable regulations and has not met the compliance dates specified in a notice and order to correct violation; or
 - (B) Amendments to an existing Public Health permit required as a result of the permitted facility not being in compliance with its permit and/or applicable regulations.
 - (C) Second and subsequent re-inspections conducted by Public Health in response to the permittee not complying with their permit or the permittee not meeting the requirements outlined in a notice and order to correct violation.
 - (ii) Whenever a noncompliance fee is assessed by Public Health, the fee shall be due and payable thirty (30) days after receipt of the invoice by the permittee.
 - (iii) The noncompliance fee shall not be assessed in addition to the permit fee for permitted facilities where permit fees, as described in the most recent Public Health fee schedule, specifically include those Public Health activities described in Section 950(6)(d)(i).
- (e) 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 the §950(7) of this Chapter and that any such appeal must be presented to the Health Officer with ten 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 Ordinance 09-1020-05, *Solid Waste 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 Ordinance 09-1020-05, *Solid Waste 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.**

- (f) 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 RCW 7.48 or §950(6)(g) of 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, by 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 §950(7) of this Chapter.
 - (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 Section 950(6)(g) if all terms of the voluntary correction agreement are not met, except that the person responsible for the alleged violation shall not have a right to appeal the Abatement Order.
 - (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 Jefferson County Public Health Ordinance 09-1020-05, §950(6)(g).
- (g) 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 only 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 no immediate threat to the public health's 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 §950(6)(g) of this Chapter.
- (E) A statement that the costs and expenses incurred by Public Health pursuant to §950(6)(g) of 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 §950(7) of 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 or relieve any such 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 fifteen 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.
- (h) 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 has 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 §950(7) of this Chapter and that any such appeal must be presented to the Health Officer within ten 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, 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 the Notice. In addition to providing service as states 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 Ordinance 09-1020-05 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.

(i) Permit Violation, Suspension, Revocation, and Appeal.

(i) Permit Violation. Any violation of a permit requirement issued pursuant to these regulations shall be a violation of these regulations.

(ii) Suspension of Permits.

(A) The Health Officer may temporarily suspend any permit issued under these regulations for:

(1) Failure of the holder to comply with the requirements of the permit;

(2) Failure to comply with any notice and order to correct violation issued pursuant to these regulations related to the permitted activity;

(3) Failure to comply with a stop-work or abatement order issued pursuant to Section 950(6)(e) and (g) of these regulations; or

(4) The non-payment or dishonor of any check or draft used by the permit holder to pay any Public Health fees associated with the permit.

(B) Permit suspension shall be carried out through the notice and order to correct violation provisions specified in Section 950(5), and the suspension shall be effective upon service of the notice and order to correct violation upon the holder or operator. The holder or operator may appeal such suspension as provided in Section 950(7) and Section 950(6)(i)(iv) of these regulations.

(C) Notwithstanding any other provision of this regulation, whenever the Health Officer finds that a violation of this regulation has created or is creating an unsanitary, dangerous or other condition which, in his/her judgment, constitutes an immediate and irreparable hazard, he/she may, without service of a written notice and order to correct violation, suspend and terminate operations under the permit immediately.

(iii) Revocation of Permits.

(A) The Health Officer may permanently revoke any permit issued by him/her for:

(1) Failure of the holder to comply with the requirements of the permit;

(2) Failure of the holder to comply with any notice and order to correct violation issued pursuant to these regulations related to the permitted activity;

(3) Failure to comply with a stop-work or abatement order issued pursuant to Section 950(6)(e) and (g);

- (4) Interference with the Health Officer in the performance of his/her duties;
 - (5) Discovery by the Health Officer that a permit was issued in error or on the basis of incorrect information supplied to him/her; or
 - (6) The non-payment or dishonor of any check or draft used by the holder to pay any Public Health fees associated with the permit.
- (B) Such permit revocation shall be carried out through the notice and order to correct violation provisions specified in Section 950(5) and the revocation shall be effective upon service of the notice and order to correct violation upon the holder or operator. The holder or operator may appeal such revocation, as provided in Section 950(7) and Section 950(6)(i)(iv) of these regulations.
 - (C) A permit may be suspended pending its revocation or a hearing relative to revocation pursuant to the provisions of Section 950(6)(i)(iii)(B). above.
- (iv) Permit Appeal.
- (A) Subject to Appeal. Any denial, suspension or revocation of a solid waste permit by the Health Officer may be appealed.
 - (B) Appellant Defined. The appellant shall be the applicant for a solid waste permit or holder of a solid waste permit who appeals a decision denying, suspending or revoking a solid waste permit.
 - (C) Appeal Procedure. The appeal procedure shall be carried out through the appeals process specified in Section 950(7).
- (j) Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of this ordinance, or rules and regulations adopted under it, or any state health law or regulation, or that otherwise threatens public health.
 - (k) Imminent and Substantial Dangers. Notwithstanding any provisions of this regulation the Health Officer may take immediate action to prevent an imminent and substantial danger to the public health by the improper management of any waste irrespective of quantity or concentration.

(7) Appeals

- (a) 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 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 ten (10) business days of the action appealed; except in the case of a suspension, the request for a hearing must be made within five (5) 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 (5) business days nor more than thirty (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.

(b) Appeal of Administrative Hearing.

- (i) 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 (5) business days of the findings and actions from the administrative hearing. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer, and which shall be accompanied by a fee as established in the current Public Health fee schedule. The appellant and the Health Officer may submit additional information to the Board of Health for review.
- (ii) 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 (5) business days of the Health Officer's decision. The Health Officer will grant or deny the request within five (5) business days.
- (iii) 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 (5) business days or more than thirty (30) business days from the date the appeal was received by the Health Officer.
- (iv) 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 thirty (30) business days of the date of the decision.

(8) Variances

- (a) Applicability. Any person who owns or operates a solid waste facility may apply to the Health Officer for a variance from any paragraph of these regulations except as provided in Section 950(8)(b)(iv) of these regulations.
- (b) Granting Requirements.
 - (i) The Health Officer may grant such variance if it finds that:
 - (A) The solid waste handling practices or site location do not endanger public health, safety or the environment; and
 - (B) Compliance with the regulation from which variance is sought would produce hardship on the applicant without equal or greater benefits to the public; and
 - (C) No other practicable or reasonable alternative exists. A practicable alternative is one that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and better reducing or eliminating impacts to health and the environment. It may include equipment or facilities not owned by the applicant that could have reasonably been or be obtained, utilized, expanded,

or managed in order to manage, reduce, or eliminate impacts to health and the environment. A reasonable alternative is one that could feasibly attain or approximate compliance, but would better reduce or eliminate impacts to health and the environment.

- (ii) No variance shall be granted pursuant to this paragraph until the Health Officer has considered the relative interests of the applicant, other owners of property likely to be affected by the waste handling practices, and the general public.
 - (iii) Any variance or renewal shall be granted within the requirements of this paragraph and for time period and conditions consistent with the reasons therefore, and within the following limitations:
 - (A) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement or control of pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternative measures that the Health Officer may prescribe.
 - (B) The Health Officer may grant a variance conditioned by a timetable if:
 - (1) Compliance with this regulation will require spreading of costs over a considerable time period; and
 - (2) The timetable is for a period that is needed to comply with this regulation.
 - (iv) No variance from Chapters 173-350 WAC, Minimum Functional Standards for Solid Waste Handling, and 173-351 WAC, Criteria for Municipal Solid Waste Landfills, shall be granted by the Health Officer except with the approval and written concurrence of Ecology prior to action on the variance by the Health Officer.
 - (v) The Health Officer may grant variances from these regulations for standards that are more stringent than the standards of Chapters 173-350 and 173-351 WAC, or from provisions in these regulations that are not contained in Chapters 173-350 and 173-351 WAC, without Ecology approval.
- (c) Application.
- (i) The application shall be accompanied by such information as the Health Officer may require.
 - (ii) An application for a variance, or for the renewal thereof, submitted to the Health Officer shall be approved or disapproved by the Health Officer within ninety (90) calendar days of receipt unless the applicant and the Health Officer agree to a continuance.
 - (iii) Notice shall be given by mailing a notice of the variance application to persons who have written to the Health Officer asking to be notified of all variance requests.
- (d) Renewal. The Health Officer may renew any variance granted pursuant to this paragraph on terms and conditions and for periods that would be appropriate on initial granting of a variance. No renewal shall be granted except on written application. Any such application shall be made at least sixty (60) calendar days prior to the expiration of the variance.

960 – REPEALER

Jefferson County Board of Health Solid Waste Regulations, Ordinance #09-0715-04, dated July 15, 2004 and Ordinance #08-0919-02, dated September 19, 2002, are hereby repealed. In addition, if any resolution, code, words, rules or regulations of Jefferson County Public Health is in conflict with this regulation, they are hereby repealed to the extent necessary to give these regulations full force and effect.

970 – SEVERABILITY

Should any paragraph, phrase, sentence or clause of these regulations be declared invalid or unconstitutional for any reason, the remainder of these regulations shall not be affected thereby.

990 – CRITERIA FOR INERT WASTE

WAC 173-350-990, *Inert Waste Criteria*, is hereby adopted by reference.

APPENDIX A. REFERENCES

The following is a list of Federal, State, and local laws, regulations, and documents referenced in Jefferson County Board of Health Ordinance 09-1020-05, *Solid Waste Regulations*. Copies of these documents may be found at the Port Townsend office of Jefferson County Public Health, the Jefferson County Courthouse, or through your local library.

A. Federal:

1. United States Code (USC):

- | | |
|-------------|--|
| 33 USC 1344 | PARAGRAPH 404 OF THE FEDERAL CLEAN WATER ACT (PL 95-217), PERMITS FOR DREDGED OR FILL MATERIAL |
| 42 USC 300 | SAFE DRINKING WATER ACT (PL 95-523) |
| 42 USC 2011 | ATOMIC ENERGY ACT OF 1954 |
| 42 USC 6901 | RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (RCRA) |
| 42 USC 9601 | COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 (CERCLA) |

2. Code of Federal Regulations (CFR):

- | | |
|-----------------|--|
| 10 CFR Part 20 | STANDARDS FOR PROTECTION AGAINST RADIATION |
| 40 CFR Part 61 | NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS |
| 40 CFR Part 258 | CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS |
| 40 CFR Part 503 | STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE |

3. Environmental Protection Agency:

- | | |
|--------|--|
| SW-846 | TEST METHODS FOR EVALUATING SOLID WASTE, PHYSICAL/CHEMICAL METHODS |
|--------|--|

B. State:

1. Revised Code of Washington (RCW), Chapters:

7.80	CIVIL INFRACTIONS
42.17	DISCLOSURE - CAMPAIGN FINANCES - LOBBYING - RECORDS
43.21A	DEPARTMENT OF ECOLOGY
46.37	VEHICLE LIGHTING AND OTHER EQUIPMENT
46.55	TOWING AND IMPOUNDMENT
70.05	LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS - REGULATIONS
70.93	WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT
70.94	WASHINGTON CLEAN AIR ACT
70.95	SOLID WASTE MANAGEMENT - REDUCTION AND RECYCLING
70.95K	BIOMEDICAL WASTE
76.04	FOREST PROTECTION
90.48	WATER POLLUTION CONTROL

2. Washington Administrative Code (WAC), Chapters:

173-160	MINIMUM STANDARDS FOR CONSTRUCTION AND MAINTENANCE OF WELLS
173-200	WATER QUALITY STANDARDS FOR GROUND WATERS OF THE STATE OF WASHINGTON
173-201A	WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF WASHINGTON
173-218	UNDERGROUND INJECTION CONTROL PROGRAM
173-240	SUBMISSION OF PLANS AND REPORTS FOR CONSTRUCTION OF WASTEWATER FACILITIES
173-303	DANGEROUS WASTE REGULATIONS
173-304	MINIMUM FUNCTIONAL STANDARDS FOR SOLID WASTE HANDLING
173-308	BIOSOLIDS MANAGEMENT
173-314	WASTE TIRE CARRIER AND STORAGE SITE LICENSES
173-350	STANDARDS FOR SOLID WASTE HANDLING
173-351	CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS
173-425	OUTDOOR BURNING
197-11	SEPA RULES
246-203	GENERAL SANITATION
246-220	RADIATION PROTECTION - GENERAL PROVISIONS
246-232	RADIOACTIVE MATERIALS - LICENSING APPLICABILITY
296-24	GENERAL SAFETY AND HEALTH STANDARDS
296-62	OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CARCINOGENS
296-65	ASBESTOS REMOVAL AND ENCAPSULATION
480-70	SOLID WASTE AND/OR REFUSE COLLECTION COMPANIES

3. Washington State Department of Ecology (Ecology):

Ecology document 80-12, Biological Testing Methods

Ecology document 91-30: Guidance for Remediation of Petroleum Contaminated Soils
(revised November 1995)
Ecology document 93-51, Chemical Testing for Complying with the Dangerous Waste
Regulations

C. Local/Regional:

1. Jefferson County Public Health:

Jefferson County Comprehensive Solid Waste Management Plan (JCCSWMP)

JEFFERSON COUNTY BOARD OF HEALTH



Geoff Masci, Chairman



Jill Buhler, Member



David Sullivan, Vice Chairman



Sheila Westerman, Member



Roberta Frissell, Member

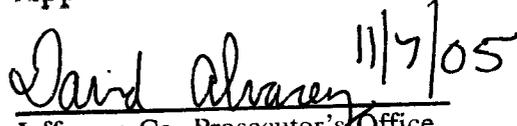


Phil Johnson, Member



Patrick M. Rodgers, Member

Approved as to form only:



David Alvarez 11/7/05
Jefferson Co. Prosecutor's Office

JEFFERSON COUNTY BOARD OF HEALTH
ORDINANCE 09-1020-05
SOLID WASTE REGULATIONS

January 18, 2007

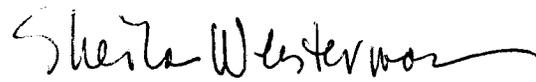
- * Re-executed by the Board of Health upon approval of a motion to re-execute this Ordinance (re-execution made necessary in order to insert language previously legislatively approved but not included due to scrivener's error) at a public meeting of the Board of Health held on June 15, 2006.

JEFFERSON COUNTY BOARD OF HEALTH


Geoff Masci, Member


Jill Buhler, Member


David Sullivan, Chairman


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Phil Johnson, Member

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Patrick M. Rodgers, Member

January 18, 2007

April 10, 2019 - 4:28 PM

Transmittal Information

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Appellate Court Case Number: 51500-8
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Jefferson County ordinance 09-1020-05 Appendix

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**JEFFERSON COUNTY BOARD OF HEALTH
ORDINANCE NUMBER 09-0715-04**

SOLID WASTE REGULATIONS

Pertaining to the Management of Solid Waste

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Pertaining to the Management of Solid Waste

1. Authority

1.1 These regulations have been adopted by the Jefferson County Board of Health under the authority of Article XI, Section 11 of the Washington State Constitution, Chapter 70.05 Revised Code of Washington (RCW), Chapter 70.95 RCW and, Chapter 70.93 RCW.

1.2 The Jefferson County Board of Health retains the authority to hold hearings, adopt findings and decide cases as authorized under the laws of the State of Washington.

1.3 The Board may appoint a Hearing Officer to hold hearings and decide cases or make recommendations for decisions, as determined by the Board and stated in the letter of appointment by the Board.

2. Purpose

The purpose of these regulations is to prevent, control, mitigate, and correct the health hazards; nuisances, and the air, water, and land pollution associated with the disposal of solid wastes, and to achieve compliance with Chapter 173-350-700 (2) WAC.

3. Applicability and Exemptions

3.1 These regulations shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the Federal Government or recognized Native American Nations and Tribes.

3.2 Chapter 173-304 WAC, Chapter 173-350 WAC, Chapter 173-351 WAC, shall be enforced by the Health Officer as applicable.

3.3 These regulations are intended to allow the Health Officer all of the authority needed to implement and enforce the regulation of solid waste in Jefferson County. All valid statutes and regulations that apply to the regulation and management of solid waste in Washington State may be employed by the Health Officer when he or she has cause to do so.

4. Definitions

Agricultural Wastes: Non-dangerous wastes on farms resulting from the production of agricultural products including, but not limited to: crop residues, manures, animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds.

Board of Health: or "the Board", the Jefferson County Board of Health.

Commercial Dumping: The dumping or depositing of commercially generated solid waste.

Construction Waste: Non-dangerous solid waste, largely inert waste, generated as the result of construction of buildings, roads, and other man-made structures. Construction waste consists of, but is not limited to: concrete, asphalt, brick, rock, wood and masonry, composition roofing and roofing paper, shakes, shingles, plastic and paper wrappings, plastic pipe, fiberglass insulation, carpeting, floor tile, glass, steel, and minor amounts of other metals.

Container: A portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to: re-useable containers, disposable containers, and detachable containers.

County: Jefferson County, Washington

Demolition Waste: Non-dangerous solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition waste consists of, but is not limited to: concrete, asphalt, brick, rock, wood and masonry, composition roofing and roofing paper, shakes, shingles, plastic pipe, fiberglass insulation, carpeting, floor tile, glass, steel, minor amounts of other metals, and incidental amounts of clean soil associated with these wastes. Plaster (i.e., sheet rock or plaster board), yard wastes, stumpage, or any other materials that are likely to produce gases or leachate during the decomposition process are not considered to be demolition waste for the purposes of this definition. Additionally, an item of waste having exterior dimensions (height + length + depth) in excess of 72 inches, waste items such as appliances, and asbestos-containing materials are not considered to be demolition waste for the purposes of this regulation.

Department, or Jurisdictional Health Department: the Jefferson County Health and Human Services Department.

Drop Box Facility: A facility used for the placement of a detachable container, including the area adjacent for necessary entrance and exit roads, unloading and turnaround areas. Drop box facilities normally serve the general public with loose loads and receive waste from off-site. Drop box facilities may also include containers for separate or mixed recyclables, which need to be clearly labeled.

Ecology: the Washington State Department of Ecology.

Health Officer: the Jefferson County Health Officer as defined in RCW 70.05.010 and RCW 70.05.050, and/or his or her authorized representative.

Hearing Officer: the person authorized by the Health Officer to conduct appeal hearings, or permit hearings, and to make findings and decisions from those hearings.

Illegal Dumping: Any dumping or depositing of any type of solid waste in violation of this Chapter or in violation of any applicable state law, state regulation or County Ordinance.

Litter: All waste material including, but not limited to: disposable packages or containers thrown or deposited as herein prohibited, and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, saw-milling, farming, or manufacturing. This definition of "Litter" includes the material described in subsection 13 as Potentially Dangerous Litter.

Moderate Risk Waste (MRW): Solid waste that is limited to Conditionally Exempt Small Quantity Generator (CESQG) Waste and Household Hazardous Waste (HHW) as later defined in this regulation.

MRW Facility means a solid waste handling unit that is used to collect, treat, recycle, exchange, store, consolidate, and/or transfer Moderate Risk Waste. This does not include mobile systems and collection events or limited MRW facilities that meet the applicable terms and conditions of Chapter 173-350 WAC-360 (2) or (3).

Notice and Order to Correct Violation: NOCV: This is an official notice sent by the Department to the alleged violator, notifying him or her of the violation, and laying out a timeframe for correction.

Nuisance: A condition created by unlawfully performing an act, or failing to perform a legal requirement, which act or omission either annoys, injures or endangers the repose, health or safety of others; or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of any property and any other act or omission by a person or business entity that constitutes a nuisance according to state law.

Person: Any individual, corporation, company, association, society, firm, partnership, joint stock company, other form of business entity, any branch of federal, state, or local government or any other entity.

Potentially Dangerous Litter: Material that is likely to injure a person or cause damage to a vehicle or any other real property. This includes, but is not limited to:

1. Cigarettes, cigars or other tobacco products that are capable of starting a fire;
2. Glass;
3. A container or other product made primarily of glass;
4. A hypodermic needle or other instrument designed to cut or pierce;
5. Raw human waste, including soiled diapers, regardless of whether the waste is in a container of any sort; and,
6. Nails or tacks.

Problem Wastes:

1. Any solid material removed during a remedial action, a dangerous waste site closure, other cleanup efforts, or other actions, which contain hazardous substances, but are not designated "dangerous wastes";
2. Dredge spoils resulting from the dredging of surface waters of the state where contaminants are present in the dredge spoils at concentrations not suitable for open water disposal and the dredge spoils are not dangerous wastes and are not regulated by Section 404 of the Federal Clean Water Act (PL 95-217); or
3. Waste abrasive blasting grit or other material used in abrasive blasting. Common aggregates include, but are not limited to: silica sand, utility slag or copper slag. "Waste abrasive blasting grit" does not include blasting grit that will be reused for its intended purpose.

Solid Waste: All putrescible and non-putrescible solid and semi-solid wastes including, but not limited to: garbage, rubbish, ashes, industrial wastes, swill, construction and demolition wastes, land clearing wastes, abandoned vehicles or parts thereof (including waste tires), and discarded commodities. This includes all solid and semi-solid materials that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, (*Criteria for Municipal Solid Waste Landfills*), Chapter 173-308 WAC, (*Biosolids Management*), and a solid waste handling permit issued by the Health Officer.

Solid Waste Handling: The management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms, or combinations thereof.

Vector: A living animal, including, but not limited to, insects, rodents, and birds, which is capable of transmitting an infectious disease from one organism to another.

5. Authority and Responsibility of the Health Officer

5.1 The Health Officer of Jefferson County shall have the authority and responsibility to implement and enforce these regulations as stated in Chapter 70.05 RCW, Chapter 70.95 RCW, Chapter 173-351 WAC, and Chapter 173-304 unless repealed or superseded by Chapter 173-350 WAC.

5.2. The Health Officer shall have the authority to take action or bring any legal proceeding as stated in RCW 43.70.190, including, but not limited to the special proceedings authorized in Title 7, RCW (Special Proceedings and Actions).

5.3 The Health Officer, with the approval of the Board of Health, and/or the Board of County Commissioners, may contract with Ecology to assume responsibility and authority for all or part of Chapter 70.93 RCW, as stated in RCW 70.93.050. The Health Officer, subject to approval of the Board, shall also have the authority to negotiate a contract with Ecology dividing or sharing responsibilities with other entities as allowed by RCW 70.93.050.

5.4 The Health Officer and any Jefferson County department named in a contract, or inter-local agreement as in section 5.3 above, shall have authority to enforce the requirements and levy the penalties cited in RCW 70.93.060, according to the terms of the contract. Citations shall be adjudicated as required by Title 7, RCW ("Special Proceedings and Actions").

6. Owner, Operator and Occupant Responsibility for Solid Waste

6.1 The owners of any property, premises, business establishment, or industry shall be responsible for the legal and satisfactory arrangement for the proper handling and disposal of all solid waste generated or accumulated by them on the property. Putrescible solid waste and any waste that attracts vectors shall be stored in watertight containers with lids securely fastened.

6.2 The operators, occupants, or tenants of any property, premises, business establishment, or industry shall be responsible for the legal and satisfactory arrangement for the solid waste handling of all solid waste generated or accumulated by them on the property. Putrescible solid waste and waste that attracts vectors shall be stored in watertight containers with lids securely fastened.

6.3 It shall be unlawful for persons to allow or permit solid waste to be deposited on or to remain on property or premises under their control without a permit as required by this Chapter. The Health Officer is authorized to require the owners, operators, occupants, tenants or other persons responsible for solid waste handling to abate illegal dumping or disposal maintained on property under their control, as part of a "Notice and Order to Correct Violation (NOCV)" issued because of these regulations or other actions permitted by law.

7. Unlawful Dumping, Depositing or Burning

7.1 Violations and Exemptions. It shall be a violation of these regulations for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of the state except at a facility that is permitted to accept the solid waste:

(a) PROVIDED, that this Chapter does not apply to the facilities, activities and wastes cited in WAC 173-350-020, "Solid Waste Handling Standards", when those facilities, activities and wastes are in compliance with applicable standards and legal requirements, and there has not been a violation of the performance standards as discussed in WAC 173-350-040, or a health hazard or nuisance has not been created.

(b) The exemptions in section (a) above that may be applied to single family residences or family farms is limited to twelve (12) cubic feet for any single family residence lot or twelve (12) cubic yards per five (5) acres on acreage tracts to accumulate no more than twenty-five (25) cubic yards per single family residence or family farm.

(c) If any owner or operator of any solid waste facility, or exempt facility or activity as cited in WAC 173-350-020 fails to comply with the performance standards in WAC 173-350-040, the Health Officer may initiate any action authorized by or cited in this Chapter.

7.2 Presumption. Whenever solid waste dumped in violation of Section 7.1 of this regulation contains three (3) or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of solid waste dumping.

7.3 Burning of Solid Waste Prohibited. It shall be a violation of these regulations for any person to burn solid waste in violation of Chapter 173-425 WAC and the regulations of the Olympic Region Clean Air Agency. It shall be a violation of this regulation for any person to cause or allow any open fire containing prohibited materials which include, but are not limited to: garbage, dead animals, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, processed wood, construction debris, metal or any substance which, when burned, releases toxic emissions, dense smoke or obnoxious odors.

7.4 Disposal Service Required. When a person does not dispose of solid wastes in a manner consistent with these regulations, the Health Officer may order said person to obtain ongoing and regularly scheduled solid waste collection service if said person does not already have this service and if a solid waste collection service exists or is offered in the geographic area where the person resides. If said person does not have this service and resides in a geographic area where a single solid

waste collection service operates exclusively under covenant or ordinance as required by local government, and said service is mandatory for persons residing within the jurisdiction of the local government, the Health Officer may schedule ongoing regularly scheduled service for said person with this solid waste collection service. If service is cancelled through nonpayment, it will be deemed a violation of this paragraph.

7.5 Disposal Receipts Required. Any person in violation to whom a "Notice and Order to Correct Violation (NOCV)" has been issued is required to produce receipts from a permitted solid waste disposal, recycling and/or reclamation facility or solid waste transporter to demonstrate compliance with the NOCV issued by the Department.

8. Permits

8.1 Permit Required. No solid waste disposal site or facility in Jefferson County shall be maintained, established, substantially altered, expanded, or improved until the county, city or other person operating or owning such site or facility has obtained a permit from the Department.

8.1.1 Only persons complying with these regulations, Chapter 173-350 WAC, Chapter 173-351 WAC, the Jefferson County Comprehensive Solid Waste Management Plan (JCCSWMP), applicable county/city ordinances, and the conditions of the issued solid waste permit shall be entitled to receive or maintain such a permit.

8.1.2 The Health Officer may require a permit, or take other enforcement action, for any site or facility handling fifty (50) cubic yards or more of any solid waste as stated in Chapter 173-350-020 WAC, if the handling of the solid waste at the site or facility poses risk of environmental degradation (including, but not limited to: surface or ground water pollution, air pollution or methane generation) or has potential impacts on public health.

8.2 Permit Applications

8.2.1 Applications for new or expanded solid waste disposal sites or facilities shall be submitted on a form approved by the Health Officer in accordance with Chapter 173-350 WAC and/or Chapter 173-351 WAC. Filing shall not be complete until the Department has received:

- (a) two copies of the completed application and attachments signed by the property owner and applicant,
- (b) the Department has evaluated application materials to ensure all required information has been included,

- (c) the applicant has filed an environmental checklist required under the State Environmental Policy Act (SEPA) rules, Chapter 197-11 WAC, completed all hearing requirements of County SEPA and land-use regulations, and
- (d) the applicant has paid all applicable review fees.

8.2.2 Permit applications for solid waste facilities shall be prepared by a licensed civil or sanitary engineer with experience in the areas necessary for submitting acceptable solid waste designs and specifications. Applications shall comply with the requirements of Chapter 173-350-710 WAC and Chapter 173-350-715 WAC. The Health Officer may exempt certain solid waste facilities from the engineering design requirements depending upon the nature and type of solid waste material handled.

8.2.3 The Health Officer may request additional information if it is deemed necessary for consideration of an application. The permit application shall not be considered complete, and the ninety (90) day review period started until all required and requested information as required by WAC 173-350-700(1)(a) and WAC 173-350-715 has been received by the Department.

8.2.4 When the application is complete, the Department shall forward one copy of the complete application to Ecology for a forty-five (45) day review, as discussed in WAC 173-350-710(1)(c)(i).

8.2.5 Every completed solid waste permit application shall be approved or disapproved within ninety (90) days after its receipt by the Department or the applicant shall be informed as to the status of the application.

8.3 Permit Issuance

8.3.1 The Health Officer may issue a permit for a period of up to five years when it has been determined that the facility meets the requirements of these regulations and all other applicable laws and regulations, conforms with the approved JCCSWMP, and complies with applicable county/city ordinances. The initial period of validity shall be determined by the Health Officer, and may be based on the Health Officer's need to determine adequacy of compliance with permit conditions or may be based on the stages of development of the solid waste facility, or other aspects of the permitted facility.

8.3.2 Permit issuance shall comply with Chapter 173-350 WAC-710 (2) and, Chapter 173-351 WAC, or Chapter 173-304 WAC, as applicable. Permits will be valid from February 1 through January 31st of each calendar year.

8.3.3 Post-closure permits shall comply with Chapter 173-350 WAC, WAC 173-351, and all conditions contained in the post-closure plan.

8.3.4 The permit shall be displayed at the solid waste facility at all times of operation.

8.4 Permit Renewal

8.4.1 The owner or operator of a facility shall apply for renewal of the facility's permit thirty (30) days prior to permit expiration, in accordance with Chapter 173-350-710 WAC, Chapter 173-351 WAC, or Chapter 173-304 as applicable, and these regulations. Previous information submitted to the Department may be referred to on the application forms. Changes in operating methods or other changes must be noted on the application in order to be authorized by permit, unless the changes in operating methods are at the direction of the Health Officer.

8.4.2 The renewal application will be reviewed for compliance with these regulations and all other applicable regulations. Other information from inspections, complaints, or known changes in the operations will also be reviewed.

8.4.3 Every completed solid waste permit renewal application shall be approved or disapproved within forty five (45) days after its receipt by the Department, or the applicant shall be informed as to the status of the application.

8.4.4 Any facility not in complete conformance with these regulations or any other applicable regulations may be made subject to a Performance Contract.

8.4.5 All facilities subject to post-closure permits and conditions are also subject to modification if site conditions or monitoring results indicate the need for changed permit conditions.

8.5 Department of Ecology Reviews. All solid waste facility permits issued or renewed will be forwarded within seven days of issuance to the Department of Ecology for a thirty (30) day review. Upon review, Ecology may appeal the Department issuance or renewal of a solid waste facility-operating permit to the State Pollution Control Hearings Board, as stated in RCW 70.95.185 and RCW 70.95.190.

8.6 Permit Fees.

8.6.1 An annual permit fee shall be charged as specified in the fee schedule adopted by the Jefferson County Board of Health.

8.6.2 Facilities that continue operation past January 31st of the permit year without having paid all required fees shall be considered a) not to have a valid permit, b) may be considered in violation of this regulation and/or c) may be ordered closed by the Health Officer.

8.6.3 Facilities monitored under a post-closure permit shall pay annual fees as required by the adopted fee schedule.

8.7 Permit Conditions

8.7.1 Each permit issued by the Department may include conditions set by the Health Officer. The conditions of the permit shall assure that the permitted facility conforms with the purpose and objectives of this regulation.

8.7.2 The conditions that may be set by the Health Officer include, but are not limited to:

- (a) compliance schedules
- (b) types and quantities of wastes accepted;
- (c) operating procedures;
- (d) scheduling and hours of operation;
- (e) types and frequency of any environmental monitoring;
- (f) addition of pollution control and reduction systems;
- (g) other relevant conditions that have been identified by the SEPA compliance review process;
- (h) conditions based on the inspection of the facility or the review of the facility at the time of permit renewal; and
- (i) conditions based on the results of required facility environmental monitoring data.

8.7.3 The conditions under which the permit is granted shall be specified in writing and shall be in addition to applicable regulations and approved operating plans and specifications included in the solid waste application. In the absence of any additional conditions set forth by the Health Officer, the approved operating plans and specifications shall constitute the conditions of the solid waste facility operating permit.

8.8 Permit Suspension

The Health Officer may suspend all or part the activity permitted by a solid waste permit upon discovery of actions or physical conditions that are a violation of these regulations, state solid waste laws, or the conditions of the issued permit.

9. Placement of Solid Wastes During Emergencies

9.1 Upon request, the Health Officer may allow the transportation and storage of solid wastes to a location approved by the Health Officer during or after an emergency. The materials that may be so placed include building materials and foundations, utility pipes, wires, materials from roads and bridges, materials from floods or landslides or other geologic events, materials from fires or explosions, or other materials as determined by the Health Officer.

9.2 The purpose of allowing this emergency transportation and storage is to allow the clean up or restoration of critical community facilities in a timely fashion while reserving the right to make further changes at a later time.

9.3 The Health Officer may limit the nature and quantity of materials so placed in order to prevent health hazards, nuisances or other issues cited in these regulations.

9.4 The Health Officer may require the subsequent removal or relocation of any materials found to be unsuitable for long-term storage or disposal on the originally approved location.

10. Inspections and Searches

10.1 Inspections and Searches of Permitted Facilities. All facilities that have applied for a solid waste permit or have received a solid waste permit have by accepting the permit consented to and are subject to inspection by the Health Officer without notification. These inspections are necessary to determine compliance with permit conditions, and to prevent the hiding or burying, or improper destruction of materials subject to those conditions. The Health Officer may enter and inspect and take samples at any such facility or location, private or public, at any reasonable time or during the facility's regular business hours to determine compliance with legal, permit, or environmental conditions. For this purpose, facilities include all real property, buildings, equipment, vehicles, storage containers, and structures related to waste handling, and all records, both print and electronic, that are related to the reception, storage, handling or disposition of solid waste materials.

10.1.1 The Health Officer may require that solid waste permit applicants or permit holders produce records for inspection.

10.1.2 The Health Officer shall notify all applicants for solid waste permits and all holders of solid waste permits that they are subject to inspection as in section (1) above. A similar notice shall be included in all issued solid waste permits.

10.1.3 The Health Officer may only release records to the public when such release is in compliance with Chapter 42.17 RCW.

10.2 Obtaining a Search Warrant. If the Health Officer is refused entry to any facility as in 10.1 above, he or she may seek and obtain a search warrant from a court of competent jurisdiction. A non-specific search warrant may be issued by the court because of the extremely variable nature of solid waste and because solid waste disposal is a pervasively regulated industry.

10.3 Inspections and Searches Not Associated with Permitted Facilities. The Health Officer may view and inspect the areas outside the buildings of private or public property at any reasonable time when he or she has cause to believe that a violation of these regulations has occurred or is occurring. Said viewing and inspecting must occur from a public right-of-way or from an adjacent property if the owner or occupier of that adjacent property has given his, her or its consent.

10.3.1 The Health Officer may inspect any location on property or premises, including, but not limited to, the interiors of buildings or structures, when granted permission by the property owner or person in control of the property or having obtained and presented a valid search warrant issued by the court. The Health Officer may seek and the court may issue a search warrant based on probable cause that a violation exists without first seeking voluntary permission for access or entry.

11. Fee Schedule

The Board of Health shall adopt a fee schedule and revise as needed, covering the permit and service categories relevant to the solid waste program. Categories shall include, but not be limited to: permits, penalties, waivers, services, and appeals.

12. Civil and Criminal Penalties

12.1 Civil infractions shall be imposed pursuant to Chapter 7.80 RCW, Chapter 70.93 RCW, Chapter 70.95 RCW, Chapter 173-350 WAC, and Chapter 173-351 WAC, and these regulations. Appeals to such citations shall be in the appropriate court, i.e., either the Jefferson County District Court or the Jefferson County Superior Court, according to which court has jurisdiction. All lawful enforcement options, including judicial solutions, may be used to enforce state law or regulation or any local ordinance as stated in the Jefferson County Policy on Complaint Review and Enforcement, Resolution No 42-03.

12.2 The Health Officer shall work cooperatively with the Washington State Department of Ecology, the Jefferson County Sheriff and the Jefferson County Code Enforcement Officers to implement the enforcement in section (1) above.

13. Performance of Work, Abatements and Liens

Failure to comply as directed by an order of the Health Officer may result in efforts by the Health Officer to mitigate actual or potential health risks, environmental risks or public nuisances by:

13.1 performing necessary corrective work and billing the cost of that work to the violator (or the violator's heirs or assigns) at established rates; or,

13.2 contracting with qualified firms or persons to perform said work or any combination of 13.1 and 13.2. Billings for work performed under this Section shall be sent to the violator and payment is required within thirty (30) days. If a bill is not paid within the given time period, the County Assessor may be directed to attach this bill to the property as a special assessment with the same priority as real estate taxes and with the same ability on the part of the County to foreclose. Final settlement of this lien may include interest of 8% per annum on the lien amount.

14. Additional Health Hazards and Solid Waste Deposits -- Abatement, Control or Reduction -- Summary Action -- Recovery of Costs.

(1) The owner of land where a health hazard or an illegal solid waste accumulation exists and the person responsible for the existence of a health hazard or illegal solid waste accumulation shall take reasonable measures to reduce the dangers associated with the health hazard or solid waste accumulation from the area and may abate the hazard by actions approved by the Health Officer.

(2) The Department shall use these regulations and existing solid waste and litter control laws when directing a person responsible to abate an accumulation of solid waste.

(3) The owners or persons responsible for the existence of the health hazard or solid waste accumulation are required to abate, control or reduce the hazard. The duty to abate, control, or reduce, and liability under this, arises upon creation of the health hazard or illegal solid waste accumulation. Liability shall include, but not be limited to, all enforcement and administrative expenses incurred by the Department, regardless of cause.

(4) If the owner or person responsible for the existence of the health hazard or illegal solid waste accumulation subject to these regulations refuses, neglects, or unsuccessfully attempts to abate, control, or reduce the same, the Department may summarily abate, control, or reduce the health hazard or remove the solid waste accumulation as required by these regulations and recover two times the actual cost thereof from the owner or person responsible. The Department's reserve account monies may be used for this purpose, when available. Monies recovered by the Department pursuant to these regulations shall be returned to the Health Department reserve account.

(5) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the Department. All such costs may also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(6) The summary action may be taken only after twenty-one (21) days' notice in writing has been given to the owner or reputed owner of the land on which the health hazard or illegal solid waste accumulation exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence.

(7) Billings for work performed under these regulations shall be sent to the violator and payment is required within thirty (30) days. If a bill is not paid within the given time period, the County Assessor may be directed to attach this bill to the property as a lien. Final settlement of this lien shall include interest of eight percent (8%) per annum on the lien amount.

15. Hearings and Appeals

The Health Officer will act as the Hearings Officer or will appoint a delegate to the position.

(a) (1) **Appeal of Solid Waste Permit Decisions.** Any solid waste permit applicant or owner of property on or for which a solid waste permit has been submitted or issued, or a person whose property is adjacent to property subject to the solid waste permit, or other person who is aggrieved by a permit issuance, permit denial, permit suspension, or action by the Health Officer, shall have the right to appeal the matter and have a hearing before a Hearings Officer authorized by the Board to conduct such hearings. Any such appeal must be made within ten (10) days of service of the NOCV, Abatement Order or other lawful notice to the owner, occupier or operator. The appeal will conform to the requirements of WAC 173-350 and these regulations. The decision of the Hearing Officer regarding solid waste permits or notice or order may be appealed to the Board of Health. Any action to review the Hearing Officer's decision must be filed within thirty (30) days of the date of the decision. Except for conditions causing risks to human health or safety, appeals shall act as a stay of the Health Officer's decision or order. **Hearing Officer Administrative Hearing.** Any person aggrieved by a permit decision or notice or order of the Health Officer may request, in writing, a hearing before the Hearing Officer. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer. Such request shall be presented to the Hearing Officer within ten (10) days of the action appealed. Upon receipt of such request, together with any applicable hearing fees, the Hearing Officer shall notify the appellant, and permit holder or applicant, if different from the appellant, in writing of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than twenty (20) days nor more than fifty (50) days from the date the request was received. The Hearing Officer will issue a decision affirming, reversing, or modifying the Health Officer's decision, which has been appealed. The Hearing Officer may require additional actions as part of the decision.

(b) **Hearing Procedures.** Hearings shall be open to the public and presided over by the Hearing Officer. Such hearings shall be recorded. Hearings shall be opened with a recording of the time, date and place of the hearing and a statement of the cause for the hearing. The Hearing Officer shall then swear in all potential witnesses. The case shall be presented in the order directed by

the Hearing Officer. The appellant may present rebuttal. The Hearing Officer may question either party. The Hearing Officer may allow for a closing statement or summation. General rights include:

- (i) To be represented by an attorney;
- (ii) To present witnesses;
- (iii) To cross-examine witnesses;
- (iv) To object to evidence for specific grounds. In the conduct of the proceeding, the Hearing Officer may consider any evidence, including hearsay evidence that a reasonably prudent person would rely upon in the conduct of his or her own affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The Hearing Officer shall decide rulings on the admissibility of evidence, and the Washington State "Rules of Evidence" shall serve as guidelines for those rulings but need not be strictly followed.

(c) **Record.** Inasmuch as any appeal to the Board of Health from a Hearing Officer's decision is a review on the record, the Hearing Officer shall ensure that the record generated contains all testimonial and documentary evidence supporting the Hearing Officer's issuance of the hearing decision.

The Hearing Officer may continue the hearing to another date to allow for additional submission of information or to allow for additional consideration. The Hearing Officer shall issue his/her oral ruling on/or before the tenth business day after the hearing closes. The appellant shall bear the burden of proof and may challenge the permit decision based on the preponderance of the evidence.

(d) **Appeals.** Any decision of the Hearing Officer shall be final and may be reviewable by an appeal filed with the Board of Health. Any action to review the Hearing Officer's decision must be filed within thirty (30) days of the date of the decision.

(2) Appeal of Decision of the Hearing Officer Regarding Solid Waste Permits.

(a) Any solid waste permit applicant or owner of property on or for which a solid waste permit has been submitted or issued, or a person whose property is adjacent to property subject to the solid waste permit, or other person who is aggrieved by a permit issuance, permit denial, permit suspension, or action by the Health Officer, or aggrieved by the findings, conclusions or orders of the Hearing Officer 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 clerk of the Board of Health within thirty (30) days of the Hearing Officer's decision. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Hearing Officer.

(b) The decisions of the Hearing Officer shall remain in effect during the appeal. Any person affected by the solid waste permit decision may make a written request for a stay of the decision to the Hearing Officer within five (5) business days of the Hearing Officer's decision. The Hearing Officer will then grant or deny the request within five (5) business days.

(c) Upon receipt of a timely written notice of appeal, the clerk of the Board of Health 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 twenty (20) days or more than fifty (50) days from the date the appeal was received by the clerk of the Board of Health unless mutually agreed to by the appellant and clerk of the Board of Health.

(d) Board of Health hearings shall be open to the public and presided over by the Chair of the Board of Health. Such hearings shall be recorded. Board of Health hearings shall be opened with a recording of the time, date and place of the hearing and a statement of the cause for the hearing. The hearing shall be limited to argument of the parties and no additional evidence shall be taken unless, in the judgment of the Chair, such evidence could not have reasonably been obtained through the exercise of due diligence in time for the hearing before the Hearing Officer. Arguments shall be limited to the record generated before the Hearing Officer unless the Chair admits additional evidence hereunder.

(e) Any decision of the Board of Health regarding the appeal of a decision by the Hearing Officer or the Health Officer relative to a solid waste permit shall be final and may be appealed to the Pollution Control Hearings Board pursuant to RCW 70.95.210.

(3) Appeal to Hearing Officer of a Solid Waste Violation Not Associated with a Permitted Facility.

(a) **Stay of Corrective Action.** The filing of a request for a hearing pursuant to this section shall operate as a stay from the requirement to perform corrective action ordered by the Health Officer while the hearing is pending, except there shall be no stay from the requirement for immediate compliance with an emergency order issued by the Health Officer or from the requirements regarding human health and safety.

(b) **Hearing Officer Administrative Hearing.** The owner or occupant of property on or for which a solid waste violation has been submitted or issued, or a person whose property is adjacent to property subject to the solid waste violation, or other person aggrieved by a notice and order to correct a violation may request, in writing, a hearing before the Hearing Officer. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer. Such request shall be presented to the Hearing Officer within ten (10) days of the action appealed. Upon receipt of such request, together with any applicable hearing fees, the

Hearing Officer shall notify the person in writing of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than twenty (20) days nor more than fifty (50) days from the date the request was received. The Hearing Officer will issue a decision affirming, reversing, or modifying the "Notice and Order to Correct Violation". The Hearing Officer may require additional actions as part of the decision.

(c) **Hearing Procedures.** Hearings shall be open to the public and presided over by the Hearing Officer. Such hearings shall be recorded. Hearings shall be opened with a recording of the time, date and place of the hearing and a statement of the cause for the hearing. The Hearing Officer shall then swear in all potential witnesses. The case shall be presented in the order directed by the Hearing Officer. The appellant may present rebuttal. The Hearing Officer may ask questions. The Hearing Officer may allow the opportunity for a closing statement or summation.

General rights include:

- (i) To be represented by an attorney,
- (ii) To present witnesses,
- (iii) To cross-examine witnesses,
- (iv) To object to evidence for specific grounds. In the conduct

of the proceeding, the Hearing Officer may consider any evidence, including hearsay evidence that a reasonably prudent person would rely upon in the conduct of his or her affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The Health Officer shall decide rulings on the admissibility of evidence, and the Washington "Rules of Evidence" shall serve as guidelines for those rulings, but need not be strictly followed. Inasmuch as any appeal to the Board of Health from a Hearing Officer's decision is a review on the record, the Hearing Officer shall ensure that the record generated contains testimonial and documentary evidence supporting the hearing officer's issuance of the "Notice and Order to Correct Violation". The Hearing Officer may continue the hearing to another date to allow for additional submission of information or to allow for additional consideration. Written findings of fact, conclusions of law and orders shall be served on the appellant within ten (10) business days of the oral ruling. The appellant shall bear the burden of proof and may overcome the "Notice and Order to Correct Violation" by a preponderance of the evidence.

(d) **Appeals.** Any decision of the Hearing Officer shall be final and may be reviewable by an appeal filed with the Board of Health. Any action to review the Hearing Officer's decision must be filed within thirty (30) days of the date of the decision.

(4) Appeal of Decision of Hearing Officer Regarding Solid Waste Violation Not Associated with a Permitted Facility.

- (a) The owner or occupant of property on or for which a solid waste violation has been submitted or issued, or a person whose property is adjacent to property subject to the solid waste violation, or other person aggrieved by a NOCV may appeal the decision of the Hearing Officer by requesting a hearing before the Board of Health. Such notice of appeal shall be in writing and presented to the clerk of the Board of Health within thirty (30) days of the Hearing Officer's decision. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the hearing officer.
- (b) The decisions of the Hearing Officer shall remain in effect during the appeal. Any person affected by the NOCV may make a written request for a stay of the decision to the Hearing Officer within five (5) business days of the Hearing Officer's decision. The Hearing Officer will grant or deny the request within five (5) business days.
- (c) Upon receipt of a timely written notice of appeal, the clerk of the Board of Health 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 twenty (20) days or more than fifty (50) days from the date the appeal was received by the clerk of the Board of Health unless mutually agreed to by the appellant and the Board of Health.
- (d) Board of Health hearings shall be open to the public and presided over by the Chair of the Board of Health. Such hearings shall be recorded. Board of Health hearings shall be opened with a recording of the time, date and place of the hearing, and a statement of the cause for the hearing. The hearing shall be limited to argument of the parties and no additional evidence shall be taken unless, in the judgment of the Chair, such evidence could not have reasonably been obtained through the exercise of due diligence in time for the hearing before the Hearing Officer. Argument shall be limited to the record generated before the Hearing Officer unless the Chair admits additional evidence hereunder.
- (e) Any decision of the Board of Health regarding the Health Officer's actions not related to permitted facilities shall be final and may be reviewable by an action filed in Superior Court. Any action to review the Board's decision must be filed within thirty (30) days of the date of the decision.

16. Waivers to Provisions of this Regulation

Whenever a strict interpretation of provisions of this regulation, which are not required by Chapter 173-350 WAC, would result in extreme hardship, the Health Officer or an appointed Hearing Officer may waive the provision(s) causing extreme hardship in accordance with the provisions of this regulation. Provisions

required under state laws or regulations may not be waived without written concurrence from the Department of Ecology or other applicable state agencies.

17. Variances to Chapter 173-350 WAC

Any person who owns or operates a solid waste handling facility subject to a solid waste permit may apply to the Department for a variance as stated in Chapter 173-350 WAC-710 (7).

18. Conflict

Whenever a conflict between statutes, or regulations is discovered or is alleged, the Health Officer shall interpret the laws and conditions and shall take an action that protects public health and is the most compatible with this regulation.

19. Severability

If any section of this regulation or its application to any particular person and/or circumstance is held to be invalid, the remainder of this regulation and its application to other persons and/or circumstances shall not be affected.

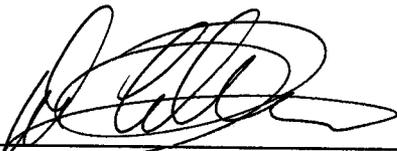
Effective Date.

The effective date of this regulation shall be July 15, 2004.

ADOPTED this 15th day of July 2004

JEFFERSON COUNTY BOARD OF HEALTH

JEFFERSON COUNTY HEALTH OFFICER



Dan Titterness, Chair

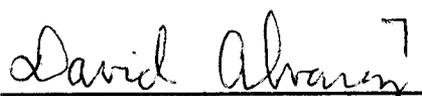


Thomas H. Locke, M.D.

7/15/04
Date

7/15/04
Date

Approved as to form only:

 7/30/2004

Jefferson Co. Prosecutor's Office

April 10, 2019 - 4:40 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51500-8
Appellate Court Case Title: Jefferson County, Respondent v. Michael Anderson, Appellant
Superior Court Case Number: 06-2-00348-8

The following documents have been uploaded:

- 515008_Briefs_20190410163309D2760278_0361.pdf
This File Contains:
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A copy of the uploaded files will be sent to:

- phunsucker@co.jefferson.wa.us
- phunsucker@hgnlaw.com

Comments:

Jefferson County ordinance 09-0715-04 Appendix

Sender Name: Joan Best - Email: joanbest-lawyer@earthlink.net
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