



Board of Health Ordinance 9

An Ordinance repealing Clallam County Code Chapter 41.10, Article I, entitled "Solid Waste Regulations," and replacing it with County Code Chapter 41.11 having the same title

BE IT ORDAINED BY CLALLAM COUNTY BOARD OF HEALTH:

AN ORDINANCE OF THE CLALLAM COUNTY BOARD OF HEALTH AMENDING AND MODERNIZING CHAPTER 41.10, ENTITLED "SOLID WASTE REGULATIONS," BY CREATING A NEW CHAPTER 41.11

BE IT ORDAINED, by the Clallam County Board of Health

Section 1: Repeal. Chapter 41.10 of the County Code, entitled "Solid Waste Regulations" be and hereby is repealed in its entirety

Section 2: Re-enactment and renumbering. Article I of former Chapter 41.10 of the County Code entitled "Solid Waste Regulations" is renumbered as Article I of Chapter 41.11 of the County Code and re-adopted as amended in Section 3 below.

Section 3: Text of Ch. 41.11, Article I. Article I of Chapter 41.11, entitled "Solid Waste Regulations" is hereby enacted and shall read as follows:

41.11.010 Authority.

(1) This regulation has been adopted by the Clallam County Board of Health under the authority of Article 11, Section 11 of the Washington State Constitution, Chapters 46.55, 70.05, 70A.200 (former Ch. 70.93 RCW) and 70A.205 RCW (former Ch. 70.95 RCW), and the Clallam County Home Rule Charter.

(2) The Clallam 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.

41.11.020 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 WAC 173-350-700(2).

41.11.030 Applicability and exemptions.

(1) These regulations shall apply to all persons and in all territory within the boundaries of Clallam County except actions by persons on lands under the jurisdiction of the federal government or recognized Native American tribes.

(2) Chapters 173-304, 173-350 and 173-351 WAC shall be enforced by the Health Officer as applicable.

(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 Clallam County. All 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.

41.11.040 Definitions.

(1) "Board of Health" or "the Board" means the Clallam County Board of Health.

(2) "Commercial dumping" means the dumping or depositing of solid waste, with the exception of dumping by any person of solid waste generated from the person's residential activities.

(3) "County" means Clallam County.

(4) "Department" or "jurisdictional health department" means the Clallam County Environmental Health Services Division.

(5) "Ecology" means the Washington State Department of Ecology.

(6) "Health Officer" means the Clallam County Health Officer as stated in RCW 70.05.010 and RCW 70.05.050, and his or her authorized representatives.

(7) "Hearing Officer" means the Health Officer serving as the Hearing Officer for all administrative hearings who may delegate this responsibility to the County Hearing Examiner when appropriate.

(8) "Household hazardous waste" means any waste that exhibits any of the properties of dangerous waste but is exempt from regulation under chapter 70A.300 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70A.300 RCW, Hazardous waste management.

(9) "Litter" means 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, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (14) of this section, "potentially dangerous litter."

(10) "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.

(11) "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, limited MRW facilities, or product take-back centers that meet the applicable terms and conditions of WAC 173-350-360(2).

(12) "Noncommercial dumping" means the dumping or depositing of solid waste that has resulted from the person's own personal residential activities.

(13) "Nuisance" consists of 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.

(14) "Person" means any individual, sole proprietorship, corporation, company, association, society, firm, partnership, joint stock company, limited liability company, or any branch of federal, State, or local government or any other entity.

(15) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. Potentially dangerous litter is defined as, but not limited to:

- (a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;
- (b) Glass;
- (c) A container or other product made predominantly or entirely of glass;
- (d) A hypodermic needle or other medical instrument designed to cut or pierce;
- (e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and
- (f) Nails or tacks.

(16) "Product take-back center" means a retail outlet or distributor that accepts household hazardous waste of comparable types as the products offered for sale or distributed at that outlet.

(17) "Solid waste," "waste materials," 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, contaminated soils and contaminated dredged material, and recyclable materials or as defined in WAC 173-350-021.

(18) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, 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.

41.11.050 Authority and responsibility of the Health Officer.

(1) The Health Officer of Clallam County shall have the authority and responsibility to implement and enforce these regulations, as stated in RCW 46.55.230, Chapters 70.05, 70A.200 and 70A.205 RCW, and Chapters 173-304, 173-350 and 173-351 WAC.

(2) The Health Officer shall have the authority to take action or bring any legal proceeding as authorized by law.

(3) The Health Officer, with the approval of the Board, and/or the Board of County Commissioners, may contract with Ecology to assume responsibility and authority for all or part of Chapter 70A.200 RCW, as stated in RCW 70A.200.050. 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 70A.200.050.

(4) The Health Officer and any Clallam County department named in a contract as in subsection (3) of this section shall have authority to enforce the requirements and levy the penalties cited in RCW 70A.200.060, according to the terms of the contract. Citations shall be adjudicated as required by RCW Title 7.

41.11.060 Owner, operator, and occupant responsibility for solid waste.

(1) The owner 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 on the property.

(2) The operator, occupant, or tenant 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.

(3) It shall be unlawful for any person 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 owner, operator, occupant, tenant or other person responsible for solid waste handling to abate illegal dumping or disposal maintained on property under their control, as part of a notice of violation or order issued pursuant to these regulations or other actions permitted by law.

41.11.070 Unlawful dumping, depositing, or burning.

(1) Violation and Exemption. It shall be a violation of this chapter 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 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 subsection (1)(a) of this section that may be applied to single-family residences or family farms is limited to 12 cubic feet for any single-family residence lot or 12 cubic yards per five acres on acreage tracts to accumulate no more than 25 cubic yards.

(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.

(2) Presumption. Whenever solid waste dumped in violation of subsection (1) of this section contains three 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.

(3) Burning of Solid Waste Prohibited.

(a) It shall be a violation of this chapter for any person to burn solid waste resulting in violation of Chapter 173-425 WAC and the regulations of the Olympic Region Clean Air Agency. It shall be a violation of this chapter 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.

(b) This section shall not apply to fires that are started and burned as part of a fire fighting instructional fire as stated in WAC 173-425-050(1)(a) and (b).

41.11.080 Permits.

(1) Permit Required. No solid waste disposal site or facility in Clallam 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.

(a) Only persons complying with this chapter, Chapters 173-304, 173-350 and 173-351 WAC, as applicable, the Comprehensive Solid Waste Management Plan of Clallam County, applicable County/city ordinances, and the conditions of the issued solid waste permit shall be entitled to receive or maintain such a permit.

(b) The Health Officer may require a permit, or take other enforcement action, for any site or facility discussed in WAC 173-350-020, 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, or violates WAC 173-350-040.

(c) Moderate Risk Waste Facilities. All moderate risk waste facilities shall comply with WAC 173-350-360, and any current moderate risk waste guidelines, as published by the Department of Ecology.

(2) Permit Applications.

(a) 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 and/or 173-351 WAC. Filing shall not be complete until the Department has received:

(i) Two copies of the application signed by the property owner and applicant;

(ii) The Department has evaluated application materials to ensure all required information has been included;

(iii) The applicant has filed an environmental checklist required under the State Environmental Policy Act (SEPA) rules, Chapter 197-11 WAC; and

(iv) The applicant has paid all applicable review fees.

(b) Applications for solid waste facilities shall be prepared and certified by an engineer licensed in the State of Washington, in an engineering discipline appropriate for the solid waste facility type or activity. Applications shall comply with the requirements of WAC 173-350-710 and 173-350-715. 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.

(c) 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 90-day review period started until all required and requested information as required by WAC 173-350-700(1) and 173-350-715 has been received by the Department.

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

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

(3) Permit Issuance.

(a) When it has been determined that the facility meets the requirements of this chapter, and all other applicable laws and regulations, including SEPA and any other applicable land-use regulations, conforms with the approved Comprehensive Solid Waste Management Plan, and complies with applicable County/City ordinance, the Health Officer may issue a permit for a period of up to five (5) years. 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.

(b) Permit issuance shall comply with WAC 173-350-710(2) and (3), and Chapter 173-304 or 173-351 WAC as applicable. Permits shall expire on December 31st of the final year of permit validity.

(c) Post-closure permits shall comply with Chapters 173-304, 173-350 and 173-351 WAC, as applicable, and all conditions contained in the post-closure permit.

(d) The permit shall be displayed at the solid waste facility at all times of operation.

(4) Permit Renewal.

(a) The owner or operator of a facility shall apply for renewal of the facility's permit 90 days prior to permit expiration, in accordance with WAC 173-350-710, Chapter 173-351 WAC, and this chapter. Previous information submitted to the Department may be referred to on the application renewal 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.

(b) Permit renewal shall comply with WAC 173-350-710(3), and Chapter 173-304 or 173-351 WAC, as applicable. Permits shall expire on December 31st of the final year of permit validity.

(c) The renewal application will be reviewed for compliance with this chapter and all other applicable regulations. Other information from inspections, complaints, or known changes in the operations will also be reviewed. Renewal forms and the annual fee will be due December 31st of each year.

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

(e) Any facility not in complete conformance with this chapter or any other applicable regulations may be placed upon a compliance schedule as part of the issued permit.

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

(5) Department of Ecology Review. All solid waste facility permits issued or renewed by the Department will be forwarded within seven days for 30-day review by Ecology. 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 70A.205.185 and 70A.205.190.

(6) Permit Fees.

(a) An annual permit fee shall be charged as specified in the fee schedule adopted by the Clallam County Board of Health.

(b) Facilities which continue operation, including facilities in active closure, past February 15th of the year following expiration or without having paid all required fees shall be considered not to have a valid permit and may be ordered closed by the Health Officer and be considered in violation of this regulation.

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

(7) Permit Conditions.

(a) 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.

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

(i) Compliance schedules;

(ii) Types of wastes accepted;

(iii) Operating procedures;

(iv) Scheduling and hours of operation;

(v) Types and frequency of any environmental monitoring;

(vi) Addition of pollution control and reduction systems;

(vii) Other relevant conditions that have been identified by the SEPA compliance review process:

(viii) Conditions based on the inspection of the facility or the review of the facility at the time of permit renewal; and

(ix) Conditions based on the results of facility monitoring data.

(c) 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 and applicable regulations shall constitute the conditions of the solid waste facility operating permit.

(8) Permit Suspension. The Health Officer may suspend all or part of the activity permitted by a solid waste permit upon discovery of actions or physical conditions that are a violation of this chapter, State solid waste laws or the conditions of the issued permit.

Except for emergencies regarding human health and safety, appeal of a permit suspension shall act as a stay of the action required by the Health Officer. Appeals shall be submitted and conducted according to CCC 41.10.160.

41.11.090 Placement of solid wastes during emergencies.

(1) 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.

(2) The purpose of allowing emergency transportation and storage is to allow the cleanup or restoration of critical community facilities in a timely fashion while reserving the right to make further changes at a later time.

(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.

(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.

41.11.100 Inspections and searches.

(1) Inspections and Searches of Permitted Facilities. All facilities that have applied for a solid waste permit or have received a solid waste permit are subject to inspection by the Health Officer without notification. These inspections, sometimes called administrative searches, do not require that a warrant first be obtained. These inspections are necessary to determine compliance with permit conditions, and to prevent the hiding or burying, or improper destruction of materials subject to this chapter. The Health Officer may enter and inspect and take samples at any such facility, at any reasonable time on any day of the week to determine compliance with legal, permit conditions, 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.

(a) The Health Officer may require that solid waste permit applicants or permit holders produce records for inspection if those records are kept at any location off the permitted site.

(b) 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 subsection (1) of this section. A similar notice shall be included in all issued solid waste permits.

(c) The Health Officer may only release records to the public when such release is in compliance with the Public Records Act, Chapter 42.56 RCW.

(2) If the Health Officer is refused entry to any facility as in subsection (1) of this section, he or she may seek and obtain a search warrant from a court of competent jurisdiction. A nonspecific 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.

(3) Inspections and Searches Not Associated With Permitted Facilities. The Health Officer may enter 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. If he or she is refused entry to such property, the Health Officer may seek and a court may issue a search warrant upon demonstrating probable cause that a violation exists.

(4) 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 by the 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.

41.11.110 Fee schedule.

A fee schedule shall be adopted by the Board, and revised from time to time, 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. The fee schedule, adopted as "Resolution 1 by the Clallam County Board of Health" on December 17, 2002, or as later amended, shall be considered an appendix to this chapter.

41.11.115 Enforcement – CCC Title 20 alternative.

(1) In addition to all enforcement methods (including penalties) available to the County's Health Officer and the County's Sheriff in this chapter, those County officials (or their designees) may choose to enforce all state and local laws and regulations applicable to solid waste in a manner consistent with Chapter 20.33 CCC.

(2) County officials (or their designees) choosing to use either this chapter or Chapter 20.33 CCC for the enforcement of solid waste laws and regulations may only utilize one of those chapters in enforcement proceedings at a time. Use of one of these chapters does not preclude later using the other chapter, as long as enforcement proceedings against an alleged violator are proceeding under only one of these two chapters at a particular time.

(3) Nothing in this section shall be deemed to prevent or hinder any cooperation between the County and the State Department of Ecology and the County's efforts to enforce the laws and regulations applicable to solid waste.

41.11.120 Civil infractions and other penalties.

(1) Civil infractions and other penalties shall be imposed pursuant to Chapters 7.80 and 70A.200 RCW, including RCW 70A.200.060 and 70A.200.230, Chapter 70A.205

RCW. and Chapters 173-350 and 173-351 WAC and these regulations. Adjudication of and appeals to such citations shall be in the Clallam County District Court.

(2) The Health Officer shall work cooperatively with the Washington State Department of Ecology and the Clallam County Sheriff to implement the enforcement in subsection (1) of this section.

41.11.130 civil penalties.

(1) When the Health Officer determines that a violation of these regulations has occurred or is occurring and the person responsible for the violation has been notified, and the violation has continued or continues to exist after 30 days from the date of that notification, the civil penalties listed in subsection (2) shall begin to accrue on the 31st day after that notification.

(2) Civil monetary penalty schedule for violations by persons engaged in noncommercial dumping or littering of solid waste shall be as listed below. Penalties against a violator engaged in unlawful noncommercial dumping or littering of solid waste shall not during any one calendar year exceed Fourteen Thousand Dollars or \$14,000.00.

(a) First day of each violation	\$100
(b) Second day of each violation	\$200
(c) Third day of each violation	\$300
(d) Fourth day of each violation	\$400
(e) Each subsequent day of violation beyond four days	\$500

(3) Civil Monetary penalty schedule for all other violations of this chapter shall be as listed below. Penalties against a violator engaged in a violation of this Code other than those listed in subsection (2) above shall not during any one calendar year exceed Twenty Six Thousand Dollars or \$26,000.00.

(a) First day of each violation	\$500
(b) Second day of each violation	\$600
(c) Third day of each violation	\$700
(d) Fourth day of each violation	\$800
(e) Each additional day of violation after four days	\$900

(4) Payment of any civil penalty shall be made to the Clallam County Treasurer and placed in the Health and Human Services – Environmental Health Division account. Payment of the civil penalty does not relieve any person of his or her duty to comply with these regulations.

(5) The accumulation of civil penalties may be stopped by the Health Officer if the violator begins compliance with this and lawful orders by the Health Officer.

(6) The civil penalty may be reduced by the Health Officer or a Hearing Officer if the violation is corrected within 30 days from the date of issuance of the administrative civil penalty, or according to a time schedule approved by the Health Officer. The penalty should not be reduced below recovery of the costs of administration and enforcement of these regulations. In exercising discretion for the reduction of civil penalties, the Health Officer shall consider the seriousness of the violation, the percentage of compliance achieved by the violator and other relevant factors.

(7) These civil penalties are a separate and independent method of civil enforcement and are supplementary to all other enforcement methods cited in these regulations.

41.11.140 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 solid waste accumulation exists and the person responsible for the existence of a health hazard or 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. The landowner and the person responsible for the existence of a health hazard or solid waste accumulation at that location shall be jointly and severally liable to remedy the violation, including, but not limited to, paying all expenses incurred to abate or remedy same and all costs the County may incur in abating the violation, including court costs and reasonable attorney's fees.

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

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

41.11.150 Criminal prosecutions.

Criminal prosecutions may be initiated against persons alleged to have violated this chapter in a manner consistent with the federal and state constitutions, court rules and related published precedents.

41.11.160 Appeals and hearings.

(1) This subsection establishes deadlines and timelines for appeals arising from:

- a) Solid waste permit decisions; and
- b) Alleged solid waste code violations not associated with a permitted facility

(2) This subsection establishes two types of hearings for appeals of decisions arising from the subsection (1) above:

- a. Open record hearings before the Hearing Officer; and

b. Closed record hearings before the County Board of Health

(3) With respect to appeals 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 other person who is aggrieved by a permit issuance, permit denial, permit suspension, or action by the Health Officer, shall be authorized to appeal the matter and have a hearing before a Hearing Officer authorized by the Board to conduct such hearings

(4) With respect to appeals arising from alleged solid waste code violations not associated with a permitted facility 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, i.e., abutting, to property subject to the alleged solid waste violation, or other person aggrieved by a notice and order to correct a violation is authorized to request, in writing, a hearing before the Hearing Officer.

(5) With respect to the types of appeals established by subsection 1 any appeal to the Hearing Officer shall not be valid (timely) unless it is filed with the applicable fee amount with Health & Human Services no later than the close of business on the 14th day after the date of the decision or action being appealed. For purposes of counting 14 days, the day of the date of the decision does NOT count. If the last day for filing such an appeal falls on a weekend or federal holiday, the deadline shall be considered the close of business on the next business day. Untimely appeals will not be heard by the Hearing Officer and the fee will be returned to the appellant.

(6) With respect to the types of appeals established by subsection 1 any appeal to the Board of Health shall not be valid (timely) unless it is filed with the applicable fee amount with the Clerk to the Board of Health no later than the close of business on the 30th day after the date of the decision or action being appealed. For purposes of counting 30 days, the day of the date of the decision does NOT count. If the last day for filing such an appeal falls on a weekend or federal holiday, the deadline shall be considered the close of business on the next business day. Untimely appeals will not be heard by the Board of Health and the fee will be returned to the appellant.

(7) With respect to any appeal made to either the Hearing Officer or the Board of Health the appellant shall submit specific statements in writing listing the reasons why the appellant assigns error(s) to the decision of the Health Officer.

(8) The date for the hearing before the Hearing Officer shall be a date mutually agreed to by the Hearing Officer, the appellant and HHS and should be a date within 30 days of the date when HHS received the appeal and the applicable fee. The parties and the Hearing Officer may agree to set the date for the "open record" hearing at a date more than 30 days after the date HHS received the appeal and the fee.

(9) The hearing before the Hearing Officer will be an "open record" hearing and the procedure to be followed during such a hearing will substantially conform to the procedure listed here, subject to changes the Hearing Officer may make at their discretion. In no event shall the "open record" hearing not be open to the public.

a) 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.

b) General rights of all parties 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 Hearing Officer shall decide rulings on the admissibility of evidence, and the Washington rules of evidence shall serve as guidelines for those rulings.

(c) Record. Inasmuch as any appeal to the Board of Health from a Hearing Officer 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 hearing decision, thereby creating the record for the "closed record" hearing that may occur before the Board of Health.

(d) The Hearing Officer may continue the hearing to another date to allow for additional submission of information or to allow for additional consideration. Prior to closing of the hearing, the Hearing Officer shall issue its oral ruling, unless the Hearing 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 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 21 days of the close of the hearing.

e) The appellant shall bear the burden of proof and may challenge the permit decision based on the preponderance of the evidence.

(10) The Hearing Officer will issue a decision affirming, reversing, or modifying the Health Officer decision which has been appealed. The Hearing Officer may require additional actions as part of the decision. The Hearing Examiner may also issue a decision that simultaneously includes more than one of their three options, meaning they may, for example, affirm in part and reverse in part.

(11)The date for the hearing before the Board of Health shall be a date mutually agreed to by the Board of Health (through the Clerk to the Board), and the parties and should be a date within 30 days of the date when the Clerk to the Board of Health received the appeal and the applicable fee. The parties may agree to set the date for the "closed record" hearing at a date more than 30 days after the date when the Clerk to the Board of Health received the appeal and the fee.

(12)Board of Health "closed record" 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. This 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.

(13)Except for conditions causing risks to human health or safety or conditions that are the subject of an emergency order from the Local Health Officer, appeals to the Hearing Officer shall act as a stay of the Health Officer's decision or order. Such a stay will remain in effect if the decision of the Hearing Officer is appealed to the Board of Health.

(14)With respect to appeals to the Board of Health regarding appeals listed in subsection (1)(a) above any person affected by the solid waste permit decision under appeal may make a written request for a stay of the decision to the Hearing Officer within five business days of the Hearing Officer's decision. The Hearing Officer will grant or deny the request within five business days.

(15)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 decision shall be final and may be appealed to the Pollution Control Hearings Board in a manner consistent with RCW 70A.205.210.

(16)Any decision of the Board of Health regarding Health Officer actions not related to permitted solid waste facilities shall be final and may only be appealed by an action filed in Superior Court. Any action to review the Board's decision must be filed within 30 days of the date of the decision.

41.11.170 Waivers to provision of this chapter.

Whenever a strict interpretation of provisions of this chapter which are not required by Chapter 173-350 WAC would result in extreme hardship to the applicant based on special circumstances not created, caused, generated or worsened by the applicant, the Health Officer or an appointed Hearing Officer may waive the provision(s) causing extreme hardship in accordance with the provisions of this chapter. Provisions required under State law or regulation may not be waived without written concurrence from Ecology or other applicable State agencies.

41.11.180 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 WAC 173-350-710(7).

41.11.190 Stringency of this chapter and potential conflict.

(1) If any section of this chapter is shown to be less stringent than Chapters 173-304, 173-350 and 173-351 WAC, the corresponding paragraphs in Chapters 173-350 or 173-351 WAC or Chapter 70A.205 RCW will be automatically in effect and such inconsistencies shall not hold the remainder of this chapter invalid.

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

Section 4: Re-enactment (in part) of former Ch. 41.10 CCC, Article II. Article II of former Ch. 41.10 of the County Code, entitled “Secure Medicine Return Regulations,” specifically and only former Ch. 41.10.220 through and including Ch. 41.10.380, is hereby re-enacted without any text changes and renumbered such that, for example, former Section 41.10.220 shall now be numbered as Section 41.11.220.

Section 5: Repeal of certain sections of Ch. 41.10, Article II. Article II of former Ch. 41.10 of the County Code, entitled “Secure Medicine Return Regulations,” specifically and only former Ch. 41.10.390 through and including Ch. 41.10.410, is hereby repealed.

Section 6: Severability. If any section of this chapter or its application to any particular person and/or circumstance is held to be invalid, the remainder of this chapter and its application to other persons and/or circumstances shall not be affected.

Section 7: Effective date. The effective date of this Chapter shall be ten (10) days after its enactment by the Clallam County Board of Health.

ADOPTED this 20th day of October, 2020

CLALLAM COUNTY BOARD OF HEALTH

Dr. Gerald Stephanz, approved telephonically

Dr. Gerald Stephanz, M.D.
Board of Health Chair



Dr. Allison Berry Unthank, M.D., MPH
Clallam County Health Officer

ATTEST:

Chelsea Lierly

Chelsea Lierly, Clerk of the Board