

Ordinance 949

An ordinance amending Clallam County Code Chapter 41.10, Solid Waste Regulations

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Section 1. Section 41.10.010, Authority, to read as follows:

(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, 70.93 and 70.95 RCW, and the Clallam County 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.

Section 2. Section 41.10.020, Purpose, to read as follows:

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).

Section 3. Section 41.10.030, Applicability and exemptions, to read as follows:

(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.

Section 4. Section 41.10.040, Definitions, to read as follows:

(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) "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."

(9) "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.

(10) "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 WAC 173-350-360(2) or (3).

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

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

Section 5. Section 41.10.050, Authority and responsibility of the Health Officer, to read as follows:

(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, 70.93 and 70.95 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 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.

(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 70.93.060, according to the terms of the contract. Citations shall be adjudicated as required by RCW Title 7.

Section 6. Section 41.10.060, Owner, operator, and occupant responsibility for solid waste, to read as follows:

(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.

Section 7. Section 41.10.070, Unlawful dumping, depositing, or burning, to read as follows:

(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 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.

(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 (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.

(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).

Section 8. Section 41.10.080, Permits, to read as follows:

(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 ninety (90) day review period started until all required and requested information as required by WAC 173-350-700(1)(a) 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 forty-five (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 ninety (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 ninety (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 ninety (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 (7) days for thirty (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 70.95.185 and 70.95.190.

(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 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.

Section 9. Section 41.10.090, Placement of solid wastes during emergencies, to read as follows:

(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 clean-up 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.

Section 10. Section 41.10.100, Inspections and searches, to read as follows:

(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 Chapter 42.17 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.

Section 11. Section 41.10.110, Inspections and searches, to read as follows:

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.

Section 12. Section 41.10.115, Enforcement - Title 20 alternative, is created to read as follows:

(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 of this Code.

(2) County officials (or their designees) choosing to use either this Chapter or Chapter 20.33 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.

Section 13. Section 41.10.120, Civil infractions and other penalties, to read as follows:

(1) Civil infractions and other penalties shall be imposed pursuant to Chapters 7.80 and 70.93 RCW, including RCW 70.93.060 and 70.93.230, Chapter 70.95 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.

Section 14. Section 41.10.130, Administrative civil penalties, to read as follows:

(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 legally notified, and the violation has continued or continues to exist after thirty (30) days from the date of notification, a monetary penalty may be issued by the Health Officer.

Daily monetary penalties shall begin on the day of issuance of the administrative civil penalty.

(2) Monetary penalty schedule for violations by persons engaged in noncommercial dumping or littering of solid waste:

(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 (4) days	\$500

(3) Monetary penalty schedule for all other violations of this chapter:

(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 (4) days	\$900

(4) Payment of a 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 thirty (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.

Section 15. Section 41.10.140, Additional health hazards and solid waste deposits – Abatement, control or reduction – Summary action – Recovery of costs, to read as follows:

(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.

(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.

(4) If the owner or person responsible for the existence of the health hazard or solid waste accumulation subject to this chapter refuses, neglects, or unsuccessfully attempts to abate, control, or reduce the same, the Department may summarily abate, control, or reduce the health hazard or removal of the solid waste accumulation as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Health Department reserve account moneys may be used by the Department, when available, for this purpose. Moneys recovered by the Department pursuant to this section 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 shall 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 ten (10) days' notice in writing has been given to the owner or reputed owner of the land on which the health hazard or 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 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 add this bill to the property as a lien. Final settlement of this lien shall include interest of eight (8) percent per annum on the lien amount.

Section 16. Section 41.10.150, Criminal penalties, to read as follows:

Criminal penalties may be levied as provided in this chapter and State laws and regulations.

Section 17. Section 41.10.160, Appeals and hearings, to read as follows:

(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 Hearing Officer authorized by the Board to conduct such hearings. Any such appeal must be made within ten (10) days of service of the order and the appeal will conform to the requirements of Chapter 173-350 WAC and this regulation. 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 decision or order.

(a) 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, 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 thirty (30) days from the date the request was received. 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.

(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 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.

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 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 twenty-one (21) days of the close of the hearing. 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, 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 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 fifteen (15) days nor more than thirty (30) 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. 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 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 Solid Waste Violation Not Associated With a Permitted Facility.

(a) Stay of Corrective Action. The filing of a request for 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 thirty (30) 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. 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 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. 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 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 twenty-one (21) days of the close of the hearing. 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 notice and order to correct a violation 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 notice and order to correct violation 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 fifteen (15) days or more than thirty (30) days from the date the appeal was received by the Clerk of the Board of Health unless mutually agreed to by the appellant and Board of Health.

(d) Board of Health hearings shall be open to the public and presided over by the Chairman 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 Health Officer 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.

Section 18. Section 41.10.170, Waivers to provision of this chapter, to read as follows:

Whenever a strict interpretation of provisions of this chapter 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 chapter. Provisions required under State law or regulation may not be waived without written concurrence from Ecology or other applicable State agencies.

Section 19. Section 41.10.180, Variances to Chapter 173-350 WAC, to read as follows:

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).

Section 20. Section 41.10.190, Stringency of this chapter and potential conflict, to read as follows:

(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 70.95 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 21. Section 41.10.200, Severability, to read as follows:

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 21. Section 41.10.210, Effective date, to read as follows:

The effective date of this chapter shall be April 20, 2004

ADOPTED this 10 day of July 2018

BOARD OF CLALLAM COUNTY COMMISSIONERS



Mark Ozias, Chair



Randy Johnson



Bill Peach

ATTEST:



Loni Gores, Clerk of the Board