

ARTICLE VI
RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF
HEALTH GOVERNING NONPOINT SOURCE POLLUTION

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ARTICLE VI

RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH GOVERNING NONPOINT SOURCE POLLUTION

SECTION 1 AUTHORITY. The Thurston County Board of Health is granted authority by Article 11, Section 11 of the State Constitution, Chapter 70.05 of the Revised Code of Washington (RCW) to implement this Article and the following regulations governing nonpoint source pollution. The requirements of this Article are in addition to Article IV and V of the Thurston County Sanitary Code and existing state regulations, including Chapter 90.48 RCW and Chapter 173-201 WAC which regulate nonpoint source pollution.

SECTION 2 PURPOSE, OBJECTIVE AND APPLICABILITY. The purpose of this Article is to establish a Thurston County nonpoint pollution ordinance which fits into a comprehensive package of approaches to nonpoint pollution source control, prevention of pollution, and is consistent with other city, county, and state regulations. This Article establishes a set of practices and procedures which protect the waters of Thurston County against nonpoint source pollution. It applies to all persons, activities and locations in Thurston County. It enables protection of public health, protection and improvement of water quality, and protection of present and future uses of water while recognizing the balance of community viability and environmental protection. Any enforcement action should attempt to minimize the possibility of conversion to non-agricultural uses while ensuring the enforcement of this Article.

SECTION 3 DEFINITIONS. When used in this Article, the following terms have the meanings set out below.

3.1 **Agronomic rates** - means the rates of application of sludges, manures, or crop residues specified by the appropriate fertilizer guide for the crop under cultivation.

3.2 **Animal waste** - means urine or fecal waste (containing fecal coliform bacteria) from domestic animals; animal waste is not limited to solid fecal material.

3.3 **Best Management Practice (BMP)** - an engineered structure or management activity, or combination of these, that eliminates or reduces an adverse environmental effect of a pollutant. These may have specifications or may be something as simple as following label directions. These practices take into account local conditions and are applied to site specific situations.

3.4 **Compliance officer** - means the health officer and any County employee designated by the health officer to enforce the provisions of this Article.

3.5 **Conservation district (District)** - means the Thurston Conservation District.

3.6 **Conservation plan** - means a plan developed by a farm operator in cooperation with a resource agency and approved by the Conservation District board of supervisors for managing resources, such as soil, water, plants and animals, on a farm to protect water quality.

3.7 **Department** - means the Thurston County Public Health and Social Services Department.

3.8 **Domestic animals** - means animals that are habituated to live in or about the habitations of people.

3.9 **Farm operator** - means the person(s) who are responsible for the daily farm management.

3.10 **Ground water** - means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

3.11 **Hazardous materials** - means those materials which are acutely toxic, ignitable, corrosive, reactive, persistent, carcinogenic, or leach hazardous constituents, as described in Chapter 173-303 WAC. Examples include, but are not limited to, pesticides, acids, paint strippers and antifreeze.

3.12 **Hazardous waste** - means those wastes which are acutely toxic, ignitable, corrosive, reactive, persistent, carcinogenic, or specifically listed as hazardous waste or leach hazardous constituents, as described in Chapter 173-303 WAC. Examples include, but are not limited to, pesticides, acids, paint strippers and antifreeze.

3.13 **Health officer** - means the Thurston County health officer or his/her authorized representative.

3.14 **Moderate risk waste** - means two types of hazardous wastes: 1) hazardous waste generated by households, called household hazardous waste; and 2) hazardous waste generated by businesses in amounts less than the quantity exclusion limit established in Chapter 173-303-070 through 173-303-103 WAC, which is most commonly 220 pounds per month or batch, called small quantity generator waste.

3.15 **Nonpoint pollution** - means pollution that enters any waters from any dispersed land-based or water-based activities including, but not limited to, atmospheric

deposition, surface water runoff from agricultural lands, urban areas, or forest lands, subsurface or underground sources or discharges from boats or marine vessels.

3.16 **Person** - means an individual, municipality, political subdivision, government agency, partnership, corporation, business or any other organization.

3.17 **Pollution** - means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

3.18 **Recycling** - means to use, reuse or reclaim a material in a manner allowed by law.

3.19 **Surface water** - means any body of water, whether fresh or marine, which either flows or is contained in natural or artificial depressions for more than five months of the year. Such bodies include, but are not limited to, natural and artificial lakes, ponds, rivers, streams, swamps, marshes, tidal waters, wetlands and natural or man-made drainage systems.

SECTION 4 PRACTICES AND PROCEDURES.

4.1 (a) Moderate risk waste and petroleum products including, but not limited to, oil and grease, shall be disposed of by recycling or use of a hazardous waste management facility operating under interim status or with a permit issued by EPA or an authorized state. Such facilities include, but are not limited to, the County's Hazo House for citizens to deposit household hazardous waste or contracted hazardous waste management facilities for moderate risk waste generators. No person shall, intentionally or negligently, dump or deposit, or permit the dumping or depositing of any such waste in any other manner, including onto or under the surface of the ground or into surface water or ground water.

(b) Moderate risk waste, petroleum products, and hazardous materials shall be kept in containers and shall be stored in such a manner and location that if the container is ruptured, the contents will not discharge, flow, be washed or fall into surface water or ground water. This does not supersede any regulations as stated in the Uniform Fire Code.

(c) Any person violating this section or owning or in possession of the premises, facility, vehicle or vessel from or on which waste is discharged or placed in violation of this section shall notify the Department of the location and nature of the

violation and shall immediately take or cause to be taken all necessary steps to prevent injury and protect waters from pollution. The health officer may notify the Washington State Department of Ecology of the discharge and request their appropriate response.

4.2 (a) Farm operators and animal owners shall prevent domestic animal wastes from being washed into surface water. This protection may be accomplished through appropriate measures; such measures include installing gutters and downspouts which channel storm drainage away from areas receiving animal waste to prevent runoff from mixing with animal waste, maintaining proper stocking rates, locating livestock sacrifice areas as far away as practicable from surface water, maintaining proper pasture management practices, use of fencing, vegetative barriers, vegetative filter strips, natural features or other appropriate measures. Farm operators and animal owners may allow domestic animals to enter surface water only if the following conditions are met: (i) the operator or owner possesses water rights for stock watering purposes or the surface water is the only reasonably available watering source; (ii) watering locations are constructed in the water body through fencing, vegetative barriers or other appropriate means; and (iii) the watering location and its immediate approaches are protected from erosion through rocking or other appropriate means. Provisions in this subsection regarding animals entering surface water do not apply to small domestic animals, such as dogs and cats, kept as pets for noncommercial purposes. However, this subsection does apply to small domestic animals, such as dogs and cats, which are kept for commercial purposes or which are temporarily kept pending placement, retrieval or disposal, whether or not for commercial purposes.

(b) For protection of ground water and surface waters, no person shall exceed agronomic rates in the application of manure sludge, manure, or crop residues. Storage piles of manure sludge, manure, or crop residues shall be located and maintained in a manner that minimizes leaching and runoff. This requirement may be met by covering the piles, applying the stored materials as soon as possible, constructing berms, placing the piles on impervious surfaces, directing storm drainage away from the piles, or other appropriate measures.

(c) No person shall intentionally dump, deposit, or wash any animal wastes from small domestic animals, such as dogs or cats, into surface water, storm drains or man-made drainage systems.

(d) This Section 4.2 does not apply to (i) farm operators with current District approved conservation plans which are being implemented and maintained as scheduled; (ii) animal waste which enters surface water or ground water as a result of a storm event equal to or exceeding the ten year storm event of 4.35 inches in 24 hours, as defined in Appendix H of the Drainage Design and Erosion Control Manual for Thurston County and the Cities of Lacey, Olympia, and Tumwater; (iii) stock watering ponds which are located farther than 300 feet from a drinking water well and do not have outlets to surface water; and (iv) any agricultural operation which has been issued

a National Pollutant Discharge Elimination System (NPDES)/State dairy waste general discharge permit by the Washington State Department of Ecology.

(e) The County shall not initiate any enforcement proceeding under Section 6, 7, or 8 of this Article for violations of this Section 4.2 if, in the opinion of the health officer, the Department of Ecology is actively maintaining a formal enforcement proceeding for the same act. A Department of Ecology enforcement proceeding involves a notice of violation, consent order, administrative order or penalty.

(f) Nothing in this chapter shall be interpreted to divest any person of any water rights.

4.3 (a) Violations of Section 4.1 may occur as incidents or as on-going practices. Each incident and each day in which an on-going violation continues is a separate violation.

(b) Violations of Section 4.2 may occur as incidents or as on-going practices. Following the failure to comply with any notification or order issued by the compliance officer or with any provision of Section 6.4, whichever comes first, each incident and each day in which an on-going violation continues is a separate violation.

SECTION 5 INSPECTIONS AND ADMINISTRATION. The health officer shall request permission from the property owner to enter any property. If permission is denied, the health officer shall have recourse to the courts to obtain a search warrant. Findings shall be noted and kept on file. A copy of the investigation report shall be furnished to the property owner and alleged violator within 14 days of the completion of the investigation.

SECTION 6 CIVIL INFRACTIONS.

6.1 Violations of this Article are civil infractions subject to penalties authorized by Chapter 7.80 RCW and Article I of this Code. The health officer and any designee are the compliance officers authorized to enforce the provisions of this Article.

6.2 (a) If a compliance officer has reasonable cause to believe that a violation of Section 4.1 of this Article has occurred, then the compliance officer shall:

(i) Notify the person responsible by phone or in person and by mail requesting compliance. If the violation continues, then the compliance officer shall issue a notice of violation pursuant to Article I, Section 7, or issue or request the court to issue a notice of civil infraction pursuant to Chapter 7.80 RCW; or

(ii) Issue a notice of violation pursuant to Article I, Section 7. If the violation continues, then the compliance officer shall issue or request the court to issue a civil infraction pursuant to Chapter 7.80 RCW; or

(iii) Issue or request the court to issue a notice of civil infraction pursuant to Chapter 7.80 RCW.

(b) Violations of Section 4.1 of this Article involving the dumping or depositing of moderate risk waste or petroleum products, including but not limited to oil and grease, are Class 1 civil infractions. Violations of Section 4.1 of this Article involving the storage or placement of hazardous materials, moderate risk waste or petroleum products, including but not limited to oil and grease, are Class 3 civil infractions.

6.3 If a compliance officer has reasonable cause to believe that a violation of Section 4.2 of this Article has occurred, the officer shall notify the person responsible in person or by telephone, and by mail. This notification shall give such person 15 working days to seek technical assistance, if needed, and to begin planning and implementing measures to correct the violation. If these steps are not taken within 15 days or if reasonable progress is not subsequently made to correct the violation, the compliance officer may issue or request a court to issue a notice of civil infraction pursuant to RCW 7.80.050. Technical assistance may be sought from the Thurston Conservation District or other qualified person(s) at the discretion of the responsible person. If a conservation plan is required, a conservation plan shall be approved within six months of notification, and implementation of the plan shall occur within 12 months of plan approval. A six month extension for implementation may be sought through an administrative hearing process established in Article I. A maximum of two such extensions may be granted. Violations of Section 4.2 of this Article are Class 3 civil infractions.

SECTION 7 INJUNCTIVE ACTIONS. In addition to any other penalty or method of enforcement, the Prosecuting Attorney may bring actions for injunctive or other relief to enforce this Article.

SECTION 8 CRIMINAL PENALTY. Any violation of Section 4.1 of this Article for which a criminal penalty is not prescribed by state law is a misdemeanor.

SECTION 9 CLEAN UP RESPONSIBILITIES.

9.1 Any person violating this Article shall, as directed by the compliance officer, collect, remove, contain, treat or disperse any materials discharged into surface water or ground water or onto the ground as a result of such violation. Any person violating this Article is responsible for the reasonable expenses incurred by the County in collecting, removing, containing, treating and laboratory testing of such materials.

9.2 The County may, if authorized by the Board of Health, enter property on which material has been discharged in violation of this Article and collect, remove, contain, treat and test such material. However, if immediate action is necessary to prevent illegally discharged material from entering surface water or ground water, such

authorization may be given by a member of the Board of Health. The County may contract with qualified firms to perform said work. Bills for work performed shall be sent to the violator and payment required within 30 days. If a bill is not paid within the required time, the County may take all appropriate measures to collect the amount due, including the bringing of legal action. Amounts not paid within the thirty (30) day period shall constitute a lien against the property on which such work has taken place and shall accrue interest at a rate of eight percent.

SECTION 10 SEVERABILITY. If any provision of this Article or its application to any particular person or circumstance is held to be invalid, the remainder of this Code and its application to other persons or circumstances shall not be affected.

SECTION 11 REVIEW COMMITTEE.

11.1 After this Article has been in effect for 18 months a review committee shall be convened by the Thurston County Board of Health to evaluate this Article, propose changes and make recommendations regarding this Article. The review committee shall have a balanced representation of interests including agriculture, business, general public, water quality and others as appropriate.

11.2 The review committee shall present its findings and make recommendations to the Board of Health within three months of its first meeting.

(Adopted by the Thurston County Board of Health on Nov. 9, 1992 and amended Jan. 31, 1994.)