

ORDINANCE NO. 3209

AN ORDINANCE REPLACING CHAPTER 17.100, "WATER SUPPLY PROTECTION" OF THE LONGVIEW MUNICIPAL CODE, IN ITS ENTIRETY AND PROVIDING FOR PROTECTION OF THE MUNICIPAL GROUNDWATER SUPPLY FOR THE CITY OF LONGVIEW, AND REPEALING ORDINANCE NO. 3127.

WHEREAS, the Longview City Council approved development of a municipal groundwater supply to provide potable water to customers in the City of Longview and Beacon Hill Water and Sewer District water service areas, to replace the existing surface water supply from the Cowlitz River; and

WHEREAS, the Council believes it is important to strike a balance between protection of the critical groundwater aquifer resource, private property rights, and the need for economic development; and

WHEREAS, this ordinance is intended to increase water supply protection and prevent the potential for contamination of the groundwater aquifer being developed as the source of municipal supply, to protect the health, safety and welfare of the citizens.

NOW THEREFORE, The City Council of the City of Longview do ordain as follows:

Section 1. In order to preserve the health, safety and welfare of all the public and the customers of the City of Longview and Beacon Hill Water and Sewer District water utilities, that Longview Municipal Code Chapter 17.100 shall be, and is hereby, deleted and replaced in its entirety to read as follows; provided manifest and numbering errors shall be corrected prior to publication:

CHAPTER 17.100

WATER SUPPLY PROTECTION

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17.100.010 Background and Purpose

Residents and businesses in the City of Longview and Beacon Hill Water and Sewer District water service areas have relied on surface water from the Cowlitz River for all or the majority of their potable water. On January 28, 2010, the Council approved development of a municipal groundwater supply to provide potable water to customers in the City of Longview and Beacon Hill Water and Sewer District water service areas, to replace the existing surface water supply from the Cowlitz River. Construction of this new groundwater supply is in progress and scheduled to be commissioned in October 2012.

Groundwater is contained in underground layers of permeable rock, sand, gravel and/or soil called aquifers. These aquifers are important public resources and fundamental components of the overall hydrological cycle. Aquifers serve as reservoirs for storing, transmitting, and yielding water through wells, and they provide natural filtration for groundwater, which is especially important for potable water supplies. The percolation of water through the layers of the aquifer filters many impurities and improves the quality of the groundwater.

It is important for the health, safety and welfare of all to protect aquifers from activities that may cause contamination or unacceptably increase the potential for contamination, and especially aquifers providing water for municipal water systems. The aquifer targeted for development as the City's municipal water supply is a gravel aquifer located underneath the area known as the Mint Farm Industrial Park in the city of Longview. The target aquifer is typically located between a protective confining layer of silts and clays and a bedrock formation, and is generally encountered from 230 feet to 380 feet below ground surface near the southern boundary of the Mint Farm Industrial Park.

- (1) The purpose of this chapter is to protect the municipal water supply by establishing development regulations and minimum standards to reduce the risks of contaminants entering the water supply source aquifer.
- (2) In furtherance of this purpose, the City prohibits the discharge of contaminants within the wellhead protection area as set forth in Section 17.100.070 and requires certain operations to utilize best management practices as set forth in Sections 17.100.080, 17.100.090, and 17.100.100.
- (3) The City also recognizes that efforts to achieve successful contaminant control must include a groundwater pollution prevention education component for businesses, industries, and the general public. In implementing this chapter, the City will offer education and technical assistance to businesses, industries, and the general public to explain how to implement water resource protection and pollution control practices. Enforcement actions will normally be implemented when:
 - (a) Education and technical assistance measures are unsuccessful at protecting the public interest;
 - (b) Best management practices are not followed; or
 - (c) Persons willfully contaminate or attempt to contaminate the drinking water or drinking water source of the City.
- (4) It is not the intent of this chapter to have the City pursue enforcement actions against businesses, industries, or persons whose actions or activities result in the discharge of de minimus amounts, as defined at Section 17.100.030 herein, of contaminants onto the ground or into the groundwater in the wellhead protection area.
- (5) The City finds this chapter necessary to protect the health, safety, and welfare of the residents of the City and the integrity of the water supply for the benefit of all City and Beacon Hill Water and Sewer District consumers.
- (6) The City recognizes the importance of maintaining economic viability while providing necessary environmental protection. This chapter helps achieve both goals.

17.100.020 Interpretation

The provisions of this chapter shall be liberally construed by the City to serve the purposes of this chapter.

17.100.030 Definitions

- (1) "Aquifer" means a soil formation containing layers of rock, sand, gravel, and/or soil that stores, transmits, and yields water.
- (2) "Best management practices" or "BMPs" means the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Washington State Department of Ecology and/or the City of Longview that, when used singly or in combination, control, prevent, or reduce the release of pollutants and other adverse impacts to waters of Washington State.
- (3) "Bulk Petroleum Fuel Operation" means an operation that manages a cumulative total of 12,000 gallons or more of petroleum fuel on-site in tanks capable of holding volumes of at least 4,000 gallons.
- (4) "CAS" numbers are unique numerical identifiers assigned by the Chemical Abstracts Service to every chemical described in the open scientific literature including elements, isotopes, organics and inorganic compounds, ions, organometallics, metals and nonstructurable materials (ie., materials of unknown, variable composition or biological origin).
- (5) "Chemical Lagoons and Pits" means any earthen basin or uncovered concrete basin or depression, lined or unlined, containing hazardous materials.
- (6) "City" means the City of Longview.
- (7) "Closure of Operation" means the cessation of activity such that hazardous materials are no longer managed at the operation. For the purposes of this chapter, an operation is considered closed if it has been non-operational for a continuous period of two years.
- (8) "Connection" means a link or channel between two otherwise separate conveyance systems whereby there may be flow from one system to the other.
- (9) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
- (10) "Dangerous Waste" means waste designated in the Washington State Dangerous Waste Regulations (WAC 173-303) as dangerous or extremely hazardous due to its physical, chemical, or biological properties.
- (11) "De Minimus Amounts" means a small or miniscule amount of contaminant in a discharge that is determined not to be harmful to the environment.
- (12) "Direct Infiltration Facility" means any mechanism that is intended to direct stormwater or process wastewater directly into the ground without providing treatment. Examples include, but are not limited to, drywells, ponds, trenches, and perforated pipe systems.
- (13) "Director" means the director of the City of Longview Public Works department or designee.

- (14) "Discharge" means the release of materials such that the materials may enter or be emitted to the air, land, surface water or groundwater.
- (15) "Disposal" means discharging, discarding, or abandoning materials into or on any land, air, surface water or groundwater.
- (16) "Disposal Site" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application site as defined in Section 17.100.030 herein, surface impoundment, injection well, or waste pile.
- (17) "Drywell" means a hole, pit, or precast concrete manhole with perforations, created and/or installed below ground surface with drain rock or other material to provide for exfiltration of surface water runoff or other drainage to the subsurface.
- (18) "Existing Operations, Uses, Activities" means operations, uses, or activities established prior to the effective date of this chapter.
- (19) "Groundwater" means water in a saturated zone or stratum beneath the surface of the land or below the bed of a surface water body.
- (20) "Hard Chrome Plating" means chrome plating applied in a sufficient thickness to provide a hardened protective surface rather than merely a decorative surface. A hard chrome shop is more likely to be a large single-purpose plating shop with higher quantities of hazardous plating materials onsite; whereas, facilities which do decorative plating may do so as just one of the steps in their manufacturing process.
- (21) "Hazardous Material" means any product, substance, commodity, or waste in liquid, solid, or gaseous form that exhibits a characteristic that presents a risk to drinking water. Risk may be due to ignitability, toxicity, reactivity, instability, corrosivity, or persistence. This definition extends to all "dangerous wastes" and "hazardous substances" that are defined in WAC 173-303 (State Dangerous Waste Regulations). It also includes the chemicals and/or substances defined in the federal Emergency Planning and Community Right to Know Act (EPCRA) and/or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- (22) "Hydraulic fracturing" or "fracking" means a human-caused technique of cracking or fracturing rocks and other geologic formations to create, restore, or increase the capacity or rate at which fluids or gases such as petroleum oil, natural gas, or water, can be stored in, transmitted through, or withdrawn from the geologic formations. Hydraulic fracturing frequently involves introducing materials, chemicals, and compounds into the geologic formations to promote the cracking process and to maintain the cracks in an open condition.
- (23) "Illicit connection" means any man-made conveyance connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include, but are not limited to, sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.
- (24) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than

the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(25) "Land Application Site" means a place where wastes such as sludge or gray water are applied to the land.

(26) "Leachable Constituents" means these constituents are determined using the Toxicity Characteristic Leaching Procedure (TCLP), Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

(27) "Manage" means a general term that includes, but is not limited to, the use, transfer, storage, processing, and re-packaging of materials. This does not include the active or immediate transportation of materials.

(28) "Mint Farm Aquifer" means the aquifer targeted by the City of Longview for development as a municipal water supply, identified as the gravel aquifer boundary in Figure 3-1, Delineation of Source Area for the Mint Farm Wellfield, of the City of Longview Mint Farm Regional Water Treatment Plant Preliminary Design Report prepared by Kennedy/Jenks Consultants, dated March 2010.

(29) "Municipal Waste" means general residential and commercial wastes, including the waste collected by garbage haulers and the waste delivered to transfer or disposal sites by the waste generators themselves (self-haul).

(30) "Municipal Water Supply Well" means a City-owned drinking water well supplying a water system meeting the definition of a Group A community water system as defined by WAC 246-290-020, and/or a City-owned water well supplying water to maintain or improve water quality in Waters of Washington State. Locations of such wells are depicted on the well head protection area maps maintained by the City.

(31) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under the Federal Clean Water Act for the discharge of pollutants to waters of the State from point and non-point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology.

(32) "New development" means land disturbing activities, including Class IV general forest practices, that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision, and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

(33) "New Operations, Uses, Activities" means operations, uses, or activities established on or after the effective date of this chapter. Development or activities requiring a building or other permit are new operations, uses, or activities. In addition, when a change in an operation places that operation into a higher classification per Section 17.100.090 paragraph (1), the operation shall be considered and treated as a new operation.

(34) "Operation(s)" means any industrial, commercial, institutional, or residential activity, whether publicly or privately-owned and operated, that involves the use of stationary or portable facilities, equipment, transport vehicles, or transfer equipment. To the extent allowed by state or federal law, this definition includes all federal, state, or local government entities.

(35) "Outdoor Wood Preservation" means the act of pressure treating wood products for weather resistance and outdoor use, using organic-based preservatives such as creosote or pentachlorophenol, typically used to treat poles or heavy timbers, and inorganic-based preservatives such as chromium, copper, and arsenic typically used to treat dimension lumber.

(36) "Permeable surface" means soil or other ground cover with a sufficiently rapid infiltration rate so as to reduce or eliminate surface runoff.

(37) "Person" means any human being, firm, labor organization, partnership, corporation, unincorporated association, trustee, trustee in bankruptcy, receiver, or any other legally recognized entity.

(38) "Petroleum Fuel" means petroleum-based liquid products refined from crude oil specifically for fuel purposes. Fuel includes, but is not limited to, all grades and blends of vehicle fuel, aviation and agricultural fuel, diesel, heating oil, and kerosene, and includes ethanol and similar fuel products and additives prior to blending.

(39) "Potentially Harmful Materials" means hazardous materials as defined at Section 17.100.030 as well as other materials including, but not limited to, the following, which if discharged or improperly disposed, may present a risk to drinking water:

Petroleum products including but not limited to petroleum fuel and petroleum based coating and preserving materials; oils containing PCBs; antifreeze and other liquid automotive products; metals, either in particulate or dissolved form, in concentrations above established regulatory standards; flammable or explosive materials; radioactive material; used batteries; corrosives, acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers; solvents; construction materials; drain cleaners and other toxic liquid household products; pesticides, herbicides, fungicides, or fertilizers unless applied in accordance with local, state, and federal standards; steam cleaning and carpet cleaning wastes; pressure cleaning wastes; car wash water; laundry wastewater; soaps, detergents, or ammonia; swimming pool backwash; chlorine, bromine, and other disinfectants; heated water; domestic animal wastes; sewage; recreational vehicle waste; animal carcasses, excluding salmonids; food wastes; collected lawn clippings, leaves, or branches; trash or debris; silt, sediment, or gravel; dyes; and untreated or unapproved wastewater from industrial processes.

(40) "Process Wastewater" means wastewater discharged from one or more industrial processes or industrial cleanup procedures.

(41) "Redevelopment" means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation, or expansion of a building or other structure; replacement of impervious surfaces; and land disturbing activities.

(42) "Releasing" or "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment including, but not limited to, the abandonment or discarding of barrels, containers, and other closed receptacles.

(43) "Responsible Government Official" means a person employed by the federal, state, or a local government with authority to protect the public health and safety of drinking water. Examples include, but are not limited to, persons employed by the City, law enforcement or fire department personnel, and employees of the Washington State Department of Ecology, Washington State Department of Health, the United States Environmental Protection Agency, Cowlitz County, and Cowlitz County Public Health.

(44) "Sewage Disposal Cesspool" means a lined excavation in the ground which receives the discharge of a drainage system, designed to retain solids and organic matter while permitting liquids to seep through the sides and bottom.

(45) "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

(46) "Stormwater Drainage System" means constructed and natural features that function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat, or filter stormwater.

(47) "Stormwater facility" means a constructed component of a stormwater drainage system, designed and constructed to perform a particular function or multiple functions. Stormwater facilities include, but are not limited to: pipes, swales, ditches, open channels, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, storage basins, infiltration devices, catch basins, manholes, dry wells, oil/water separators, biofiltration swales, and sediment basins.

(48) "Stormwater Manual" means the most current version of the City of Longview Stormwater Manual, which adopts and supplements the Stormwater Management Manual for Western Washington prepared by the Washington State Department of Ecology.

(49) "Stormwater Treatment Facility" means a stormwater facility that is intended to remove pollutants from stormwater. Stormwater treatment facilities include, but are not limited to, wetponds, oil/water separators, biofiltration swales, and constructed wetlands.

(50) "Surface Water" means water that flows across the land surface, in channels, or is contained in depressions in the land surface, including but not limited to ponds, lakes, rivers, and streams.

(51) "Tank" means a portable or stationary device designed to contain liquids used or stored at an operation which may include hazardous materials, chemicals, or dangerous wastes and which is constructed primarily of non-earthen materials to provide structural support.

(52) "Toxicity" means having properties that cause or significantly contribute to death, injury, or illness in humans or wildlife. A material exhibits the characteristic of toxicity if it contains certain leachable constituents at sufficient concentrations to be considered dangerous to human health

and the environment. Leachable constituents and toxicity concentrations are referenced in the Toxicity Characteristic List of WAC 173-303-090(8) as amended.

(53) "Transfer Warehouse" means any enclosed and covered transportation-related warehouse where shipments of products, which may be hazardous materials but not dangerous wastes, are held in portable containers for transfer.

(54) "Underground Injection Control" or "UIC" well means a manmade subsurface infiltration system designed to discharge fluids into the ground, consisting of an assemblage of perforated pipes, drain tiles, or other similar mechanisms, or a dug hole that is deeper than the largest surface dimension. Subsurface infiltration systems include drywells, pipe or french drains, drain fields, and other similar devices.

(55) "Water Resources" means surface water, storm water, and groundwater.

(56) "Wellhead Protection Area (WHPA)" means the area surrounding or contributing to the City's municipal water supply wells, including a buffer area, designated for special protection as established by a hydrogeological model, and identified on wellhead protection area maps maintained by and available from the City.

17.100.040 Additional Authority

The City may impose additional requirements whenever specific circumstances applicable to an operation threatening municipal water supplies are documented.

17.100.050 Adoption of Other Regulations and Standards

(1) For purposes of regulation of activities subject to this chapter, the City hereby adopts 173-303 WAC, Dangerous Waste Regulations.

(2) At least one copy of the Dangerous Waste Regulations adopted by this chapter shall be filed in the Office of the City Clerk for use and examination by the public.

(3) Where provisions of this chapter conflict with other provisions of the Longview Municipal Code, the more stringent requirements which have the most protective effect on water supply and quality, shall apply.

17.100.060 Applicability

(1) Operations: All operations are subject to the provisions of this chapter. Each operation shall meet the Minimum Standards defined in Section 17.100.080. Operations that manage hazardous materials may also be required to meet the Greater Standards for Hazardous Materials Management, as defined in Sections 17.100.090 and 17.100.100.

(2) Development and Redevelopment: The City shall apply development and redevelopment restrictions as defined in Section 17.100.110 to activities inside the WHPA.

(3) Emergency Response Exclusion: Emergency response activities shall be excluded from the requirements of this chapter, if and only if such an activity is initiated and completed within a timeframe too short to allow for full compliance with this chapter. This exclusion shall only apply

to immediate actions that are undertaken in response to an imminent threat to drinking water, public health, or safety. This exclusion shall not apply unless a responsible government official as defined in Section 17.100.030 is notified and agrees the event is a qualifying emergency.

17.100.070 Discharges to Wellhead Protection Area

(1) Prohibited Discharges: No person or operation shall discharge any potentially harmful materials within the WHPA. Persons or operations shall use all known, available, and reasonable means and BMP's to prevent the discharge of any potentially harmful materials within the WHPA.

(2) Illicit Connections:

(a) Any connection that could allow conveyance and discharge any solid, liquid, or gaseous material not composed entirely of surface and storm water, into the WHPA is considered an illicit connection and is prohibited, except:

- i. Connections conveying allowable discharges as set forth in Section 17.100.070 paragraphs (3) and (4) herein;
- ii. Connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit or a state waste discharge permit; and
- iii. Connections conveying effluent from permitted or authorized onsite sewage disposal systems to subsurface soils.

(b) Floor drains shall not be installed inside an operation which stores or uses hazardous materials unless approved by the City for connection to sanitary sewer. Existing floor drains connected to storm drains or to surface water drains located in or near indoor hazardous material storage or use areas are considered unauthorized connections and shall be sealed or removed to prevent liquid entry, piped to the sanitary sewer (with approval and appropriate shut-off valves), or be directed to additional containment or treatment systems meeting the standards of this chapter.

(3) Allowable Discharges to Stormwater Drainage System: The following types of discharges shall be permitted unless the City determines these discharges (whether singly or in combination with others) are causing unacceptable contamination of the municipal water supply:

- (a) Uncontaminated water from crawl space/basement pumps or footing drains;
- (b) Runoff from materials placed as part of an approved habitat restoration or bank stabilization project;
- (c) Natural uncontaminated surface water or ground water;
- (d) Flows from riparian habitats and wetlands;

- (e) City-approved dye testing;
- (f) Any discharge allowed by an operation's National Pollutant Discharge Elimination System (NPDES) permit or other authorized discharge permit;
- (g) Any discharge specifically allowed in writing by a local, state, or federal agency for remedial action in an agreed order, a consent decree, or in a voluntary cleanup effort.

(4) Allowable Discharges to Permeable Surfaces. The following types of discharges shall be permitted onto a permeable surface unless the City determines these discharges (whether singly or in combination with others) contain greater than de minimus amounts of contaminants:

- (a) All allowable discharges specified in Section 17.100.070 (3);
- (b) Potable water;
- (c) Potable water line flushing;
- (d) Landscape watering;
- (e) Residential car and boat washing;
- (f) Residential swimming pool and spa water;
- (g) Common flushing practices from water wells and distribution systems.

(5) Non-stormwater Discharges to the Stormwater Drainage System Prohibited Unless Conditions Met. The following categories of non-stormwater discharges are prohibited discharges to the Stormwater Drainage System unless the stated conditions are met:

- (a) Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the Stormwater Drainage System.
- (b) Discharges from landscape watering and other irrigation runoff. These shall be minimized through, at a minimum, public education activities and water conservation efforts.
- (c) Chlorinated swimming pool discharges. The discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the Stormwater Drainage System. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the Stormwater Drainage System.

- (d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. The City shall reduce these discharges through, at a minimum, public education activities and/or water conservation efforts. To avoid washing pollutants into the Stormwater Drainage System, the City must minimize the amount of street wash and dust control water used.
- (e) Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan received by the City, which addresses control of construction site de-watering discharges.

17.100.080 Minimum Standards

- (1) Operational Best Management Practices (BMPs): All operations shall adopt the following best management practices to ensure their operations minimize potential risks to drinking water.
 - (a) Precautions: The owner/operator shall take precautions to prevent accidental releases of hazardous materials. Hazardous materials shall be separated and prevented from entering Stormwater Drainage Systems, septic systems, and drywells.
 - (b) Hazardous Materials Management: Hazardous materials shall be managed so they do not threaten human health or the environment, or enter drinking water or the WHPA.
 - (c) Hazardous Material Releases: All hazardous materials that have been released shall be contained and abated immediately, and the hazardous materials shall be recycled or disposed of properly. The City shall be notified immediately of any release of hazardous materials that has the potential to impact the municipal water supply, but no later than 24 hours after the release. The Stormwater Manual provides applicable operational BMPs for spills of oils and hazardous substances.
 - (d) Oil/Water Separators: Oil/water separators shall be inspected, cleaned, and maintained as stipulated in the Stormwater Manual. The City may allow an operation to modify the frequency of cleaning if the operation can demonstrate to the City's satisfaction that the separator operates effectively at less frequent cleaning intervals.
 - (e) Pesticide and Fertilizer Management. All pesticides, herbicides, fungicides, and fertilizers shall be applied and managed according to the applicable BMPs for landscaping and lawn/vegetation management in the Stormwater Manual.
 - (f) Stormwater Treatment Systems: Stormwater Drainage Systems and treatment facilities including, but not limited to, catch basins, wetponds, vaults, biofilters, settling basins, and infiltration systems shall be cleaned and maintained by the responsible party according to the applicable operational BMPs for the maintenance of stormwater, drainage, and treatment systems specified in the Stormwater Manual.
 - (g) Decommissioning Water Wells: Any water well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety, or public health hazard, shall be decommissioned according to the provisions of the Washington Administrative Code WAC 173-160-381.

- (h) Operation Closure: At the closure of an operation, all hazardous materials shall be removed from the closing portion of the operation and disposed of in accordance with local, state, and federal laws.
- (i) Mobile Washing and Pressure Cleaning: Operations which engage in activities such as pressure washing, steam cleaning, carpet cleaning, and equipment and vehicle washing shall apply best management practices according to applicable BMPs in the Stormwater Manual. Mobile washing operations shall ensure all of their employees are knowledgeable of proper discharge practices. Washwater from such operations shall be captured and directed to an approved discharge location. Non-approved washwater shall not be discharged into the City's Stormwater Drainage System.
- (j) Operations constructing pilings, piers, and other structural supports requiring excavation and drilling shall submit to the City a geotechnical report demonstrating that these activities will not result in a conduit or pathway allowing potential contaminants into the Mint Farm Aquifer underlying the WHPA.

(2) Commercial Operations Requiring Additional BMPs: Operations which engage in the following commercial activities shall implement the applicable source control BMPs from the Stormwater Manual: Commercial animal handling, commercial composting, printing operations, fueling stations, log sorting, railroad yards, recyclers, scrap yards, and wood treatment facilities.

(3) Specific Activities Requiring Additional BMPs: Operations performing the following activities shall implement the applicable source control BMPs from the Stormwater Manual and shall comply with the requirements of WAC 173-303: construction/repair/maintenance of boats/ships, airfield/street deicing, dust control, landscaping, loading/unloading of trucks and railcars, repair/maintenance/parking of vehicles/equipment, erosion control at industrial sites, maintenance of utility corridors, maintenance of roadside ditches/culverts, outdoor manufacturing, mobile fueling of vehicles/equipment, painting/coating of vehicles/buildings/equipment, storing dangerous wastes, and managing raw materials.

17.100.090 Application of Greater Standards

(1) Classifications: Certain non-residential operations present a greater potential risk to the groundwater supply because of the volume and type of hazardous materials that are managed. These non-residential operations are classified in Table 90 A and are subject to the stipulated actions defined in this section.

Table 90 A – CLASSIFICATIONS	
Classification	Definition
Class I Operations	Operations that at any time within a one year time period will manage over 220 pounds in total of the following: A. Hazardous materials, including any mixtures thereof, that contain constituents referenced in the Code of Federal Regulations, 40 CFR 302.4 (referenced in Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)); or B. Hazardous materials, including any mixtures thereof, that contain

	<p>constituents from the lists specified for Class II Operations (below).</p> <p><u>Concentration Declassification.</u> A Class I operation shall no longer be a classified operation if the Class I constituents (40 CFR 302.4) contained in a product or waste are individually present at less than one percent by weight for non-carcinogenic hazardous materials, and less than 0.1 percent by weight for known or suspected carcinogenic hazardous materials. (Operators should review the Material Safety Data Sheet for the hazardous materials to make this determination).</p> <p><u>Consumer Quantity Declassification.</u> A Class I operation shall no longer be a classified operation if both of the following conditions are met:</p> <ul style="list-style-type: none"> A. The operation is focused on research, education, distribution, or consumer oriented activities, including but not limited to laboratories, hospitals, schools, cargo handlers, distributors, warehouses, or retailers; and B. Products containing Class I or Class II hazardous materials are managed in closed containers or sealed bags with individual capacities of no more than 10 gallons for a liquid material and no more than 80 pounds for a dry or solid material. <p><u>Metal and Metal Alloy Declassification.</u> Solid metals and solid metal alloys, including but not limited to roll stock, bar stock, sheet stock, and manufactured articles such as equipment, parts, building materials, and piping that contain one or more metals listed in 40 CFR 302.4 or WAC 173-303-090(8) shall be declassified; except where machining, forming, grinding, cutting, melting, or other activities produce residues such as shavings, grindings, swarf, fume, or other finely divided particulate forms of a listed metal or metal alloy that may present a threat to the municipal water supply, such residues shall not be declassified.</p> <p><u>Personal and Commercial Vehicle Fuel Tank Declassification.</u> The greater standards of Sections 17.100.090 and 17.100.100 shall not be applied to personal and commercial vehicles designed to hold quantities of fuel that would otherwise cause them to be classified under this section.</p>
<p>Class II Operations</p>	<p>Operations that at any time within a one year time period will manage over 2,200 pounds in total of the following:</p> <ul style="list-style-type: none"> A. Hazardous materials, including any mixtures thereof, that exhibit the characteristic of toxicity because they contain leachable constituents from the Toxicity Characteristic List of WAC 173-303-090(8) as amended; or B. Hazardous materials, including any mixtures thereof that contain constituents referenced in the Halogenated Solvent Table set forth in Section 17.100.190.

	<p><u>Site Cleanup Reclassification.</u> A Class II operation shall be reclassified as a Class I operation if the primary activity is site remediation or cleanup pursuant to an approved settlement agreement or a remedial action under RCW 70.105B.</p> <p><u>Concentration Reclassification.</u> A Class II operation shall be reclassified as a Class I operation if the Class II constituents (from WAC 173-303-090(8) or the Halogenated Solvent Table set forth in Section 17.100.190) are present in the hazardous materials being managed at concentrations of less than five percent by weight.</p> <p><u>Transfer Warehouse Reclassification.</u> A Class II operation shall be reclassified as a Class I operation if the following conditions are met: A. The operation is a transfer warehouse; and B. Containers of hazardous materials are not opened at the site under any circumstance; and C. Products containing Class II hazardous materials are managed in containers with individual capacities of no more than 400 gallons.</p> <p><u>Consumer Quantity Declassification.</u> A Class II operation shall no longer be a classified operation if both of the following conditions are met: A. The operation is focused on research, education, distribution, or consumer-oriented activities, including but not limited to laboratories, hospitals, schools, cargo handlers, distributors, warehouses, or retailers; and B. Products containing Class I or Class II hazardous materials are managed in closed containers or sealed bags with individual capacities of no more than 10 gallons for a liquid material and no more than 80 pounds for a dry or solid material.</p> <p><u>Personal and Commercial Vehicle Fuel Tank Declassification.</u> The greater standards of Sections 17.100.090 paragraph B and 17.100.100 shall not be applied to personal and commercial vehicles designed to hold quantities of fuel that would otherwise cause them to be classified under this section.</p>
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(2) Stipulated Actions and Timelines: Class I and II operations shall implement the Greater Standards for Hazardous Material Operations defined in Section 17.100.100, according to the following stipulations:

- (a) New Operations: New Class I and Class II operations shall implement the Greater Standards on or prior to the date of issuance of the certificate of occupancy or as otherwise specified in accordance with the provisions of this chapter.

- (b) Existing Operations: Existing Class I and Class II operations shall implement the Greater Standards within 180 days of the effective date of this chapter.
- (c) Change of Class or Tenant: The City shall be notified as soon as possible and no later than 30 days after:
 - i. A change in classification of an operation as defined as Table 90 A.
 - ii. Occupation of an existing Class I or II operation by a new tenant or change in ownership.

17.100.100 Greater Standards for Hazardous Materials Operations

(1) Best Management Practices (BMPs): All Class I and II operations shall implement the provisions of this section on or prior to the date of issuance of the certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of the change in classification.

- (a) Design and Construction: Facilities shall be designed, constructed, maintained, and operated to minimize the possibility of an unplanned release of hazardous materials to soil or surface water or groundwater.
- (b) Container/Tank Management: A container or tank holding a hazardous material shall always be closed, except to add or remove materials. Hazardous materials shall also be managed so they do not damage the structural integrity of the operation or devices containing the material.
- (c) Container/Tank Condition: All containers and tanks shall be maintained in such a manner as to assure effective operation and prevent the release of hazardous materials.
- (d) Container/Tank Identification: The owner/operator shall label all containers and tanks containing hazardous materials to identify the major risk(s) associated with the contents. This labeling shall conform to applicable sections of the Uniform Fire Code, Occupational Safety and Health standards and/or the State of Washington's Dangerous Waste Regulations.
- (e) Ancillary Equipment: Any leaking pipe, pump, or other ancillary equipment shall be repaired or replaced promptly. Ancillary equipment associated with hazardous materials shall be supported and protected against physical damage and excessive stress.
- (f) Compatibility: The owner/operator shall use a container or tank made of, or lined with, materials which are compatible with the hazardous materials to be stored and any dilution or mixing process associated with its storage.
- (g) Containment: Container and tank storage areas shall have a secondary containment system capable of collecting and holding spills and leaks. This containment shall:
 - i. Be constructed of an impervious surface with sealed joints.

- ii. Joints between concrete slabs and slab/foundation interfaces should be eliminated or minimized in the operation;
 - iii. Provide pollution control measures to protect surface water and groundwater, including run-off collection and collection of discharges from active areas;
 - iv. Be designed to provide secondary containment of 110 percent of the container's or tank's capacity; or in areas with multiple tanks, 110 percent of the largest tank or 10 percent of the aggregate tank volumes, whichever is larger. Secondary containment shall be provided in all areas where hazardous materials are loaded/unloaded, transferred, accumulated, or stored;
 - v. Be compatible with the materials being handled; and
 - vi. Be routinely inspected as defined in Section 17.100.100 paragraph (3).
- (h) Loading Areas: Loading and unloading areas shall be designed, constructed, operated, and maintained to:
- i. Contain spills and leaks that might occur during loading/unloading;
 - ii. Prevent releases of hazardous materials to surface or ground water;
 - iii. Contain wash waters (if any) resulting from the cleaning of contaminated transport vehicles and load/unload equipment; and
 - iv. Allow for removal as soon as possible of any collected hazardous materials resulting from spills, leaks, and equipment cleaning.
- (i) Closure: At closure of an operation, all remaining structures, containers, tanks, liners, and soil containing or contaminated with hazardous materials at concentrations above state and federal regulatory thresholds shall be decontaminated and properly disposed of or managed.

(2) Spill and Emergency Response Plan (SERP):

- (a) All Class I and II operations shall develop and implement a Spill and Emergency Response Plan (SERP) on or prior to the date of issuance of the certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of the change in classification from unclassified to either Class I or Class II. Other operations may also be required to develop and implement a SERP if the City determines this action will help prevent releases of hazardous materials to surface or ground water.
- (b) The SERP shall be maintained on site, and shall be made available to the City upon request.
- (c) The SERP shall be updated at least every five years or as needed to reflect significant changes in operation or practices.

(d) At a minimum, the SERP shall include the following information:

i. Spill Prevention.

- A. Drawings including the layout of the operation, a floor plan, direction of drainage, entrance and exit routes, and areas where hazardous materials are received, stored, transported, handled, or used in operations.
- B. Listings of all hazardous materials on site including types, volumes, locations, and container types and sizes.
- C. The location and purpose of spill prevention related equipment, including equipment which serves to detect releases of potential drinking water contaminants.

ii. Emergency Response.

- A. Chain of command and procedures for spill response.
- B. Phone list of response agencies including federal, state, and city emergency contact numbers and environmental cleanup companies.
- C. Procedures for treating and disposing of spilled hazardous materials.

iii. Certification.

- A. The SERP shall include a certification signed by an authorized representative of the operation stating: "I certify that the information provided in this document is to the best of my knowledge true and complete, and the spill prevention equipment and emergency response measures described herein are as stated." The signed certificate shall include the authorized representative's name (printed), title, and contact information.

(3) Operational Inspections:

- (a) All Class I and II operations shall implement the provisions of this section on or prior to issuance of the certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of change in classification from unclassified to either Class I or Class II. Other operations may also be required to implement these provisions if the City determines this action will help prevent releases of hazardous materials to surface or ground water.
- (b) Schedule: The owner/operator shall develop a written schedule for inspecting all monitoring equipment, safety or emergency equipment, security devices, and any other equipment that helps prevent, detect, or respond to water resource-related hazards.
- (c) Regular Inspections: The owner/operator shall perform site inspections to identify malfunctions and deterioration of equipment or containers, operator errors, discharges,

or any other condition that may cause or lead to the release of hazardous materials to drinking water. The owner/operator shall conduct these inspections often enough to identify problems in time to correct them before they impact surface water or groundwater. Inspections shall be completed in all areas where hazardous materials are managed and a written record of those inspections made at least annually.

- (d) Water Resource-Related Hazard Mitigation: The owner/operator shall remedy any problems revealed by the inspection. Where a water resource-related hazard is imminent or has already occurred, remedial action shall be taken immediately.

(4) Training Program:

- (a) All Class I and II operations shall implement the provisions of this section on or prior to issuance of certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of change in classification from unclassified to either Class I or Class II. Other facilities also may be required to implement these provisions if the City determines this action will help prevent releases of hazardous materials to surface water or groundwater.
- (b) Operations shall develop a training program or amend an existing training program to inform employees at least once each year of any possible risks to surface water or groundwater associated with on-site operations. The owner/operator shall ensure that all employees know and understand:
 - i. The location of hazardous materials managed at the operation and the associated potential risks to surface water and groundwater;
 - ii. The location of material safety data sheets (MSDS) at the operation;
 - iii. How employees can detect the presence or release of hazardous materials;
 - iv. How employees can protect themselves through work practices, emergency procedures, and use of personal protective equipment;
 - v. How to locate and use the operation's SERP; and
 - vi. How to prevent the pollution or contamination of surface and groundwater.

(5) Closure Plan:

- (a) Each new Class II operation shall prepare and submit to the City a Closure Plan within six months of the date of issuance of the certificate of occupancy. Each existing Class II operation shall prepare and submit such a plan within six months of the effective date of this chapter. Class II operations shall ensure their facilities are closed in a manner that prevents the release of hazardous materials during closure, protects surface water and groundwater, and prevents post-closure escape of hazardous materials.
- (b) Plan Requirements: The Closure Plan shall detail the means by which the operation will remove and properly dispose of hazardous materials, and perform an investigation to

confirm the presence or absence of hazardous materials in the soil and ground water, if potential contamination is indicated. Specifically, the Closure Plan shall include the following:

- i. A listing of the types and quantities of hazardous materials reasonably expected to be present on-site during the operating life of the operation.
- ii. A description of the plan for removal and disposal of hazardous materials.
- iii. A description of the plan to decontaminate containment systems and ancillary equipment.
- iv. An estimate of the cost to implement the Closure Plan, using the assumption that a third party will conduct removal and disposal activities.
- v. A certification signed by an authorized representative of the business/industry submitting the Closure Plan stating, "I certify that the information provided in this document is to the best of my knowledge accurate and the closure measures described herein will be implemented as stated." The signed certificate shall include the authorized representative's name (printed), title, and contact information.

(c) Report Update. The owner/operator of an operation shall update the Closure Plan every five years to re-certify the information and estimates. The Closure Plan shall also be updated if operating procedures change in such a way that the volume/mass of hazardous material is increased by 25 percent or more.

(6) Engineering and Operating Report: When the City identifies a need for additional information regarding an operation's practices, the City may require the operation to submit an engineering and operating report for the City's review. The report shall provide the following information:

- (a) The type of industry or business including the kind and quantity of finished products.
- (b) A process flow diagram illustrating the process flow of water and materials in a normal operating day. This will include details on the operation's plumbing and piping and where specific chemicals are added to processes.
- (c) A discussion of any discharges to the Stormwater Drainage System.
- (d) A discussion of any discharges through land applications, including seepage lagoons, irrigation, and subsurface disposal. This discussion should include the depth to ground water and anticipated overall effects and risk assessment of the operations on the quality of surface water and groundwater.
- (e) Provisions for any plans for future expansion or intensification.
- (f) A certification signed and dated by an authorized representative of the operation stating:

"I certify that the information provided in this document is to the best of my knowledge true and complete." The signed certificate shall include the authorized representative's name (printed), title, and contact information.

(7) Records & Reports:

- (a) Operations shall maintain records of required inspection, training, cleaning, and maintenance events. Where operations are otherwise required by the City or another agency to maintain such records, those records shall satisfy this requirement. All operations shall maintain these records on site for at least three years and shall make them available to the City upon request.
- (b) Plans, reports, or other documentation concerning the management of hazardous materials shall also be made available to the City upon request.
- (c) Information provided to the City will be available to the public. Information may be claimed as confidential by the operation as outlined at Section 17.100.150. If no claim is made at the time of submission, the City will make the information available to the public when requested.

(8) Protections for Stormwater: All Class I and II operations shall implement the applicable BMPs of the Stormwater Manual prior to the date of issuance of the certificate of occupancy.

17.100.110 Restrictions

(1) General Prohibitions:

- (a) Due to the use of materials, chemicals, and compounds that may be harmful to human health and to prevent the potential for contamination of the City's municipal water supply, the practice of hydraulic fracturing is prohibited from use at all locations within or beneath the WHPA and corporate city limits.

(2) Prohibitions Within the WHPA: Regardless of operating status or location, the following uses and activities shall be prohibited within the WHPA:

- (a) Hard Chrome Plating Operations
- (b) Outdoor Wood Preservation Operations
- (c) Chemical Lagoons and Pits
- (d) Sewage Disposal Cesspools
- (e) Hazardous Material Disposal Sites
- (f) Radioactive Waste Disposal Sites
- (g) Municipal Waste Disposal Sites

(h) Any other activity that has the potential to reduce the aquifer recharge, flow, or water quality, or otherwise threaten the use of the municipal water supply, as determined by the Director.

(3) Development Limitation:

(a) New Operations. The following new operations are not permitted within the WHPA:

i. New bulk petroleum fuel operations except when:

A. All provisions of this chapter applicable to minimizing or eliminating contamination risk to the water supply are met to the City's satisfaction; and

B. The owner or operator provides an Engineering and Operating Report described in section 17.100.100 paragraph 6 to the City's satisfaction.

C. The Director approves an Adjustment in accordance with section 17.100.170.

ii. New Class II operations as defined in Table 125 A, except new Class II operations may occupy an existing structure or facility appropriate for the use when:

A. All provisions of this chapter applicable to minimizing or eliminating contamination risk to the water supply are met to the City's satisfaction; and

B. The owner or operator provides an Engineering and Operating Report described in section 17.100.100 paragraph 6 to the City's satisfaction; and

C. The Director approves an Adjustment in accordance with section 17.100.170.

(b) Existing Operations.

i. Existing bulk petroleum fuel operations are nonconforming uses. However, such existing bulk fuel operations within the WHPA may become conforming by:

A. Filing such a request with the City; and

B. Taking the necessary action(s) to meet all provisions of this chapter applicable to minimizing or eliminating contamination risk to the water supply to the City's satisfaction; and

C. The owner or operator provides an Engineering and Operating Report described in section 17.100.100 paragraph 6 to the City's satisfaction; and

D. The Director approves an Adjustment in accordance with section 17.100.170.

- ii. Existing Class II operations are nonconforming uses. However, an existing Class II operation may become conforming by:
 - A. Filing such a request with the City; and
 - B. Taking the necessary action(s) to meet all provisions of this chapter applicable to minimizing or eliminating contamination risk to the water supply to the City's satisfaction; and
 - C. The owner or operator provides an Engineering and Operating Report described in section 17.100.100 paragraph 6 to the City's satisfaction; and
 - D. The Director approves an Adjustment in accordance with section 17.100.170.

(4) Septic Systems:

- (a) New septic systems and replacement of existing septic systems shall not be permitted within the WHPA. An owner/operator may seek Adjustment from this prohibition by filing with the City a request accompanied by an analysis prepared by a qualified professional addressing the potential for groundwater contamination at the site. This analysis may include a soils and groundwater evaluation if deemed necessary by the City. Such analysis and Adjustment are subject to City approval.
- (b) Projects and operations relying upon installation of a septic system in the WHPA are prohibited unless all of the following findings are approved by the City:
 - i. Connection to an existing sewer line is impossible or impracticable; and
 - ii. The property cannot be reasonably developed without use of a septic system; and
 - iii. The septic system design poses no significant risk of groundwater contamination.

(5) Heating Oil Tanks.

- (a) Installation of an underground heating oil tank within the WHPA is prohibited unless the following findings are made:
 - i. Connection to another source of fuel or energy is impracticable; and
 - ii. The proposed underground fuel tank poses no significant risk of groundwater contamination.

(6) Direct Infiltration Facilities:

- (a) New direct infiltration facilities and replacement of existing direct infiltration facilities shall not be allowed for Class I and Class II operations within the WHPA. An operation may seek relief from this prohibition by filing with the City a request for Adjustment accompanied by an analysis prepared by a qualified professional addressing the

potential for groundwater contamination at the site. This analysis may include a soils and groundwater evaluation if deemed necessary by the City. Such analysis and Adjustment are subject to City approval.

17.100.120 Administrative Programs

(1) Educational and Technical Assistance Program.

- (a) The City will work in conjunction with other agencies to implement an Education and Technical Assistance Program to assist property owners, business and industry owners and managers, residents, and other interested parties in understanding the importance of protecting the City's drinking water and in employing best management practices in pursuit of that goal.
- (b) The program directed toward business and industry will include but not be limited to technical assistance visits, informational fact sheets, self-audits, or workshops.
- (c) Additional education and assistance programs aimed at residences, public institutions, and low risk businesses shall include:
 - i. Education on the proper use of pesticides, herbicides, fungicides, and fertilizers;
 - ii. Discussions of the impacts of unauthorized discharges to drywells, catch basins, storm basins, and sanitary sewer;
 - iii. Activities to explain and promote the proper management and disposal of used oil and other contaminants; and
 - iv. The importance of properly abandoning wells in accordance with state law.

(2) Compliance Inspections:

- (a) City personnel may inspect any operation within the City limits known to manage (or may potentially manage) hazardous materials or is reasonably believed to be a potential source of an illicit discharge into the WHPA.
- (b) Inspections may be initiated as the result of a complaint or referral, or as defined by a routine schedule for compliance, or self-initiated by the City. Inspections will be used to determine if there is any risk to the water supply and to determine if an operation is in compliance with this chapter.
- (c) Inspections may involve a review of process equipment, structures, and operating practices; records or plan review; interviews with operators; photo documentation; and sampling. As such, operators shall allow representatives of the City, upon presentation of credentials, to:
 - i. Enter the premises where hazardous materials are being managed, or where records may be kept as required by this chapter. The owner/operator shall make necessary arrangements to allow access without delay. Unreasonable delay may constitute a violation of this chapter;

- ii. Have access to and copy, at reasonable times, any records that must be kept as required by this chapter;
- iii. Inspect at reasonable times any facilities, equipment (e.g., safety, monitoring, operating, or other equipment), practices, or operations regulated or required under the provisions of this chapter;
- iv. Sample and monitor at reasonable times, any substances or parameters at any location for the purposes of assuring compliance or as otherwise authorized by the provisions of this chapter. This requirement may involve the City's installation or erection of equipment to conduct sampling, inspection, compliance monitoring, or metering operations. As such, at the written or verbal request of the City, operators shall remove any temporary or permanent obstruction to safe and easy access to an operation to be inspected and/or sampled. The operator shall not replace such an obstruction without the City's consent.

17.100.130 Enforcement

(1) It shall be unlawful to violate the provisions of this chapter. Enforcement of this chapter shall be governed by Chapter 1.30 LMC or any other means available by local, state and/or federal law.

(2) Civil Infraction. Any person who undertakes any activity prohibited by this chapter shall be guilty of a Class I civil infraction and may be assessed a penalty pursuant to LMC 1.30.040(1)(a) and (2). Each violation of this chapter or approval or order issued pursuant to this chapter shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees and expenses in connection with enforcement actions may be recovered as damages against the violator.

(3) Criminal Penalties. In addition to other remedies, the director may forward to the office of city attorney a detailed factual background of the alleged violation with a recommendation that a gross misdemeanor charge be filed against the person responsible for any willful violation of any provision of this chapter. The court may order, in addition to any fine or jail time, that a person found to have committed a violation of this chapter shall make restitution to any person damaged by the violation.

(4) Penalty Recovered. Penalties recovered for violations shall be paid to the water utility except for reimbursement of costs and expenses incurred by other departments of the city.

(5) In addition to civil and criminal enforcement of this chapter, the City may utilize the following authority:

- (a) The City Council of the City of Longview finds that an operation not in compliance with the requirements of this chapter constitutes a public nuisance under RCW 7.48, Nuisances.
- (b) The City may use field notes, observations, photo documentation, sample logs, analytical results, or other information to define risk and to establish that an operation is in violation of this chapter.

- (c) The City may require the implementation of operational or structural best management practices, as defined through the provisions of this chapter. The City may also require the operator to sample and analyze any discharge, surface and storm water, ground water, and/or sediment in accordance with sampling and analytical procedures or requirements determined by the City. If the operator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the City.
- (d) The City may impose additional requirements whenever documented specific circumstances (applicable to the operation) threaten the municipal water supply.
- (e) Notwithstanding any other provisions of this chapter, whenever it appears to the City that conditions regulated by this chapter require immediate action to protect the public health and/or safety, the City is authorized to enter such property for the purpose of inspecting, investigating and mitigating such emergency conditions.

(6) Enforcement by Director. It shall be the responsibility of the director to enforce the provisions of this chapter and any order or approval issued pursuant to this chapter. The director is authorized to issue notices of civil infraction for violations thereof. The issuance of a notice of civil infraction shall not preclude recourse to any other remedies permitted by law.

17.100.140 Liability for damages.

(1) City Liability. This chapter shall not be construed to hold the city of Longview, or any officer or employee thereof, responsible for any damages to persons or property by reason of the certification, inspection or non-inspection of any building, equipment or property as herein authorized.

(2) Violator Liability. The violator shall be liable for all damages to persons, property, and mitigation or remediation costs to the city to mitigate the impacts of any contamination of the municipal water supply due to violations of this chapter, including but not limited to the costs of additional treatment processes and chemicals, or development of a replacement water source for the municipal water supply.

17.100.150 Trade Secrets and Confidential Records

(1) Records Availability.

- (a) All surveys, reports, plans, diagrams, permits, and other documents, information, and data submitted to the City pursuant to this chapter, or information and data obtained by the City through sampling, monitoring, and enforcement activities shall generally be available for public inspection and copying.
- (b) Such information shall not be available for public inspection and copying if protected from public disclosure by the provisions of RCW chapter 42.56 as amended or other state and federal laws governing the dissemination of public records and information to the public, including but not limited to patent, trademark, and trade secret laws and regulations.
- (c) In no case shall an employee or agent of the City be liable to a business, industry, or person for the public disclosure of any surveys, reports, plans, diagrams, permits, and

other documents, information, and data submitted to the City pursuant to this chapter, or information and data obtained by the City through sampling, monitoring, and enforcement activities; unless such information or data has been clearly marked confidential by the business, industry, or person, or the business, industry, or person has requested confidentiality consistent with this chapter.

(2) Exemption from Disclosure Request.

(a) Any business, industry, or person may request that specific and particular information or data in the possession of the City be exempted from public inspection and copying. The request shall be in writing and addressed to the City and the business, industry, or person shall bear the burden of establishing that the specific and particular information or data sought to be exempted is protected from public disclosure under state law. The City Attorney's office shall determine whether and which portions of such information are protected from public disclosure within 21 days of receipt of a request for confidentiality. The City shall not release for public inspection and copying that information and data for which a business, industry, or person has requested confidentiality until such time as the City has made a determination of whether the information is protected from public disclosure, unless the City determines in good faith that the request for confidentiality is frivolous or without merit.

(b) The City may withhold records only if it finds:

- i. The record contains information that reflects valuable research data obtained by the City within five years of the date of the request and that disclosure would produce private gain and public loss. For purposes of this finding, "research data" means a body of facts and information collected for a specific purpose and derived from close, careful study, or from scholarly or scientific investigation or inquiring; or
- ii. The record contains trade secret information because it includes a formula, pattern, compilation, program, device, method, technique, or process that:
 - A. Derives independent economic value, actual or potential, from not being generally known;
 - B. The information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and
 - C. The information is not readily ascertainable from another source.

(c) As an alternative to the procedures specified in Section 17.100.150 (2)(b), the City Attorney's office may decline to make a determination of whether the record is exempt from public disclosure because it contains trade secret information. Where the City Attorney's office declines to make such a determination, the City shall provide the holder of the trade secret a reasonable amount of time, but in no case more than 21 days, to obtain an order from the superior court preventing disclosure of the record.

(d) A business, industry, or person submitting information or data to the City for which the business, industry, or person intends to claim whole or partial confidentiality shall mark

those specific pages and sections of information or data asserted to be confidential with a conspicuous and legible marking indicating "TRADE SECRET" and/or "CONFIDENTIAL". The business, industry, or person shall then submit a request for trade secret protection to the City for the marked records within seven days of submitting such marked information or data.

(3) Availability of Confidential Information: Surveys, reports, plans, diagrams, permits, and other documents, information, and data submitted to the City pursuant to this chapter, or information and data obtained by the City through sampling, monitoring, and enforcement activities, which the City or a court of competent jurisdiction has determined are trade secrets and exempted from public inspection and copying, shall be available upon written request to local, state, and federal governmental agencies for uses related to this chapter, the NPDES program, state water quality monitoring and enforcement, and other enforcement proceedings involving the business, industry, or person.

17.100.160 Alternative Practices

(1) Where appropriate, the City may accept other local, state, or federal approvals, permits, or other authorization as satisfying certain provisions defined through this chapter. The City retains the sole authority to review plans, permits, and operating conditions to determine compliance.

(2) The City will accept an alternative practice, system, plan, or structure only if the owner/operator can demonstrate to the satisfaction of the City that the alternative will produce the same or a greater level of water supply protection.

17.100.170 Adjustments and Variances

(1) Authority. The Public Works Director may grant an adjustment or variance from the requirements of this chapter. In so granting, the Public Works Director may prescribe conditions that are deemed necessary or desirable for the public interest.

(2) Adjustments. An Adjustment is a technical variation in the application of a Minimum Requirement to a particular project. The City may grant Adjustments to this chapter only, under this section. No other Adjustments are authorized under this section. Adjustment approvals shall follow the following process:

- (a) Adjustments to the Minimum Requirements may be granted by the City provided a written finding of fact is prepared showing compliance with the specified criteria.
- (b) A request for an Adjustment shall be administratively processed in accordance with procedures specified in the General Requirements. The Public Works Director may grant an Adjustment upon demonstration by the applicant of compliance with the approval criteria contained in subsection (c) below. The Public Works Director shall maintain a record of such decisions and associated findings.
- (c) Adjustments to this chapter may be granted only, under the following circumstances:
 - i. Compliance with approval criteria must be documented with written findings of fact.
 - ii. The Adjustment provides substantially equivalent environmental protection.

iii. Based on sound engineering practices, the objectives of safety, function, environmental protection, and facility maintenance are met.

iv. The Adjustment will not result in non-compliance with other Minimum Requirements.

(3) Variances. The Public Works Director may grant a variance to the requirements of this chapter; provided, that a written finding of fact is prepared that establishes the following:

(a) The variance will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity, or to the quality of the groundwater supply; and

(b) The variance is the least possible exception that could be granted to comply with the intent of the minimum requirements.

17.100.180 Appeals

(1) Appeals of enforcement of this chapter shall be filed in accordance with the administrative appeal process described in Longview Municipal Code Chapter 1.33 and governed by final order of the hearings examiner. An appeal to the decision of the hearings examiner must be filed to Cowlitz County Superior Court within 30 calendar days from the date the Hearings Examiner's decision was mailed to the person to whom the decision is directed, or is thereafter barred.

(2) Appeals under Section 17.100.110 relating to WHPA shall be consolidated with any open record hearing or appeal related to any underlying application, where such open record hearing or appeal is required, and shall be processed according to the procedures already established for that hearing. Where there is no underlying new development or redevelopment application requiring an open record hearing or appeal, appeals under Section 17.100.110 relating to WHPA shall be processed according to the procedures set forth in herein and in Longview Municipal Code Chapter 1.33.

17.100.190 Halogenated Solvent Table

Solvent	Synonym(s)	CAS No.
Benzyl chloride	Chloromethylbenzene	100-44-7
Bis (2-chloroethyl) ether	Bis(-chloroethyl)ether	111-44-4
Bis(2-chloroisopropyl) ether	Bis(-chloroisopropyl)ether	108-60-1
Bromobenzene	Phenyl bromide	108-86-1
Bromochloromethane	Chlorobromomethane	74-97-5
Bromodichloromethane	Dichlorobromomethane	75-27-4
Bromoethane	Ethyl bromide	74-96-4
Bromoform	Tribromomethane	75-25-2
Carbon Tetrachloride	Tetrachloromethane	56-23-5
Chlorobenzene	Benzene chloride	108-90-7
2-Chloroethyl vinyl ether	(2-Chlorethoxy)ethane	110-75-8
Chloroform	Trichloromethane	67-66-3
1-Chloro-1-nitropropane	Chloronitropropane	600-25-9
2-Chlorophenol	o-Chlorophenol	95-57-8
4-Chlorophenyl phenyl ether	p-Chlorodiphenyl ether	7005-72-3

Solvent	Synonym(s)	CAS No.
Chloropicrin	Trichloronitromethane	76-06-2
m-Chlorotoluene		108-41-8
o-Chlorotoluene	2-Chloro-1-methylbenzene	95-45-8
p-Chlorotoluene		106-43-4
Dibromochloromethane	Chlorodibromomethane	124-48-1
1,2-Dibromo-3-chloropropane	DPCP	96-12-8
Dibromodifluoromethane	Freon 12-B2	75-61-6
1,2-Dichlorobenzene	o-Dichlorobenzene	95-50-1
1,3-Dichlorobenzene	m-Dichlorobenzene	541-73-1
1,1-Dichloroethane	1,1-DCA	75-34-3
1,2-Dichloroethane	Ethylene dichloride, 1,2-DCA	107-06-2
1,1-Dichloroethene	Vinylidene chloride 1,1-DCE	75-35-4
Trans-1,2-Dichloroethylene	Trans-1,2-DCE	456-60-5
1,2-Dichloropropane	Propylene dichloride	78-87-5
Cis-1,3-Dichloropropene	Cis-1,3-Dichloropropylene	10061-01-5
Trans-1,3-Dichloropropene	Trans-1,3-Dichloropropylene	10061-02-0
Ethylene dibromide	1,2-Dibromoethane, EDB	106-93-4
Hexachlorobutadiene	HCBD	87-68-3
Hexachlorocyclopentadiene	HCCPD	77-47-4
Methylene chloride	Dichloromethane	75-09-2
Pentachloroethane	Ethane pentachloride	76-01-7
1,1,2,2-Tetrabromoethane	Acetylene tetrabromide	79-27-6
1,1,2,2-Tetrachloroethane	Acetylene tetrachloride	79-34-5
Tetrachloroethylene	Perchloroethylene, PCE	127-18-4
1,2,4-Trichlorobenzene	1,2,4-TCB	120-82-1
1,1,1-Trichloroethane	Methyl chloroform, 1,1,-TCA	71-55-6
1,1,2-Trichloroethane	1,1,2-TCA	79-00-5
Trichloroethylene	TCE	79-01-6
1,1,2-Trichlorofluoromethane	Freon 11	75-69-4
1,2,3,-Trichloropropane	Allyl trichloride	96-18-4
Trichlorotrifluoroethane	Freon 113	76-13-1

17.100.200 Severability

Should any section, clause or provision of this chapter or any code adopted hereby be declared by a court to be invalid, the same shall not affect the validity of the remainder, either in whole or in part.

Section 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance and the same shall remain in full force and effect. The City of Longview hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed and/or modified by this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 4. The City of Longview City Clerk is hereby ordered and directed to cause this ordinance to be published.

Section 5. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6. Repeal. Ordinance No. 3127 is hereby repealed.

Section 7. Savings Clause. Ordinance No. 3127, which is repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance.

Section 8. Effective. This Ordinance shall be in full force and effect from and after thirty (30) days from the date of its passage and publication as provided by law.

Passed by the City Council this 28 day of June, 2012.

Approved by the Mayor this 28 day of June, 2012.


MAYOR

ATTEST:


City Clerk

Approved as to form:


City Attorney

Published: July 5, 2012

