Proposed No. BOH13-02.1

Sponsors

1 A RULE AND REGULATION relating to hazardous
materials management; establishing a hazardous materials
management title within the Code of the King County Board
of Health by amending R&R 66, Section 1 (part), as
amended, and BOH 2.08.080, R&R 66, Section 1 (part), as
amended, and BOH 2.08.085, R&R 45 (part) and BOH
11.01.020, R&R 45 (part) and BOH 11.01.030, R&R 45
(part) and BOH 11.01.040, R&R 45 (part) and BOH
11.01.050, R&R 45 (part) and BOH 11.01.060, R&R 45
(part) and BOH 11.10.020, R&R 45 (part) and BOH
11.10.030, R&R 45 (part) and BOH 11.30.010, R&R 45
(part) and BOH 11.30.020, R&R 45 (part) and BOH
11.40.010, R&R 45 (part) and BOH 11.40.020, adding a new
chapter to BOH Title 11, adding new sections to BOH
chapter 11.01, recodifying BOH 2.08.010, BOH 2.08.075,
BOH 2.08.080, BOH 2.08.085, BOH 2.08.090, BOH
11.10.010, BOH 11.10.020, BOH 11.10.030, BOH
11.20.010, BOH 11.20.020, BOH 11.20.030, BOH
11.30.010, 11.30.020, 11.40.010 and 11.40.020 and repealing
R&R 66, Section 1 (part), and BOH 2.08.015, R&R 66,
Section 1 (part), as amended, and BOH 2.08.020, R&R 66,
Section 1 (part), as amended, and BOH 2.08.025, R&R 66,
Section 1 (part), as amended, and BOH 2.08.030, R&R 66,
Section 1 (part), and BOH 2.08.035, R&R 66, Section 1 (part), and BOH 2.08.040, R&R 66, Section 1 (part), and
BOH 2.08.045, R&R 66, Section 1 (part), and BOH 2.08.050,
R&R 66, Section 1 (part), and BOH 2.08.055, R&R 66,
Section 1 (part), and BOH 2.08.060, R&R 66, Section 1 (part), and
BOH 2.08.065, R&R 66, Section 1 (part), and
BOH 2.08.070, R&R 45 (part) and BOH 11.01.010, R&R 45 (part) and BOH 11.05.010, R&R 45 (part) and BOH
11.05.020, R&R 45 (part) and BOH 11.05.030, R&R 45 (part) and BOH 11.05.040, R&R 45 (part) and BOH
11.05.050, R&R 45 (part) and BOH 11.05.060, R&R 45 (part) and BOH
11.05.070, R&R 45 (part) and BOH 11.05.090, R&R 45 (part) and BOH 11.05.100, R&R 45 (part) and BOH
11.05.110, R&R 45 (part) and BOH 11.05.120, R&R 45 (part) and BOH
11.05.130, R&R 45 (part) and BOH 11.05.150 and R&R 45 (part) and BOH
11.05.160; enacted pursuant to RCW
70.05.060, including the latest amendments or revisions thereto.

PREAMBLE:

The existing Board of Health regulations relating to the management of properties contaminated by hazardous chemicals were established in 1989 and codified in BOH Title 11, consisting of six chapters. The existing Board of Health regulations relating to local hazardous waste management coordination were established in 1991 and codified in BOH chapter 2.08, consisting of a single chapter. The board determines that existing and future Board of Health legislation relating to hazardous materials management should be codified in a single title of the Board of Health Code to help improve organization of the code by subject matter, and that Title 11 is the most logical and appropriate title for this purpose. To facilitate the codification of regulations on hazardous materials management in BOH Title 11, the board determines that each of the sections of chapter 2.08 on local hazardous waste management coordination and each of the sections of Title 11 on the management of properties contaminated by hazardous chemicals should be recodified as separate chapters in Title 11.

BE IT ADOPTED BY THE KING COUNTY BOARD OF HEALTH:

SECTION 1. There is hereby established a new chapter in BOH Title 11. The chapter shall contain Section 3 of this rule, BOH 2.08.010, as recodified by this rule,
BOH 2.08.075, as recodified by this rule, BOH 2.08.080, as recodified by this rule, BOH
2.08.085, as recodified by this rule and BOH 2.08.090, as recodified by this rule.

SECTION 2. BOH 2.08.010, BOH 2.08.075 and BOH 2.08.090 are each hereby
recodified as new sections in the chapter established in section 1 of this rule.

NEW SECTION. SECTION 3. There is hereby added to the chapter established
in section 1 of this rule a new section to read as follows:

Definitions. The definitions in this section apply throughout this chapter unless
the context clearly requires otherwise.

A. "Certified hauler" means a person engaged in the business of solid waste
handling having a certificate granted by the Washington state Utilities and Transportation
Commission for that purpose.

B. "Committee" means the local hazardous waste management program's
management coordination committee established in BOH 2.08.080, as recodified by this
rule.

C. "Department" means the Seattle/King County Department of Public Health.

D. "Landfill" means a disposal facility or part of a facility at which solid waste is
placed in or on land and which is not a land treatment facility.

E. "Moderate-risk waste" shall have the same meaning as in RCW 70.105.010.

F. "Passenger licensed vehicle" means any motor vehicle licensed by the state of
Washington or any other state or governmental entity as a passenger vehicle.

G. "Self hauler" means a vehicle that is neither a passenger licensed vehicle nor a
vehicle used by a certified hauler in the certified hauler's solid waste handling operations.
H. "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

I. "Sewage" means any liquid or liquid-borne waste from the ordinary living processes, liquid or liquid-borne waste that contains animal or vegetable matter in suspension or solution or liquid or liquid-borne waste that contains chemical in suspension or solution, and that may be lawfully discharged into a public sanitary sewer.

J. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including, but not limited to, garbage, rubbish, ashes, industrial wastes, infectious waste, swill, demolition and construction wastes, abandoned vehicles or parts thereof, discarded commodities or contaminated excavated solid or fills material. "Solid waste" includes all liquid, solid and semisolid materials that are not the primary products of public or private, industrial, commercial, mining and agricultural operations, except that, for the purposes of this section, "solid waste" does not include source-separated recyclable materials.

K. "Suburban city" means an incorporated city or town whose boundaries include territory within King County and who has entered into a solid waste interlocal agreement with King County in accordance with K.C.C. 10.08.130.

L. "Transfer station" means a staffed, fixed, supplemental collection and transportation facility used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a permanent disposal site.
SECTION 4. BOH 2.08.080, as amended by this rule, is hereby recodified as a
new section in the chapter established in section 1 of this rule.

SECTION 5. R&R 66, Section 1 (part), as amended, and BOH 2.08.080 are each
hereby amended to read as follows:

Committee ((E))established - ((M))membership. The ((L))local ((H))hazardous
((W))waste ((M))management ((P))program's ((M))management ((E))coordination
((E))committee is hereby established. The ((E))committee shall be composed of five
members:

A. The director of the King County ((D))department of ((N))natural
((R))resources ((-)) and parks ((S))solid Waste Division or ((his/her)) the director's
designee;

B. The director of ((C))city of Seattle Public Utilities or ((his/her)) the director's
designee;

C. A representative appointed by the ((Suburban)) Sound Cities Association;

D. The director of the King County ((D))department of ((N))natural
((R))resources ((-)) and parks ((W))water and ((L))and ((R))resources ((D))division or
((his/her)) the director's designee; and

E. The director of the Seattle-King County Department of Public Health or
((his/her)) the director's designee.

SECTION 6. BOH 2.08.085, as amended by this rule, is hereby recodified as a
new section in the chapter established in section 1 of this rule.

SECTION 7. R&R 66, Section 1 (part), as amended, and BOH 2.08.085 are each
hereby amended to read as follows:
A.1. The committee shall be responsible for accepting and recommending a management plan and budget for:

a. the reduction of moderate risk waste generation, its entry into the solid waste stream, entry into the liquid waste (sewage) stream, into storm drainage or surface waters and evaporation into the air; and

b. the protection and enhancement of the public health and environmental quality in King County by the reduction of the threat posed by the production, use, storage and disposal of hazardous materials.

2. The management coordination committee ((will)) shall develop an annual plan and budget and reach agreement on it through consensus of the entire committee. Lacking a consensus, a majority and a minority report will be forwarded to the King County Board of Health.

B. The committee shall recommend contracts with the city of Seattle, suburban cities, sewer districts((s)) or other governments or entities located entirely or partially within King County, and King County, to implement portions of the management plan, in consideration of sums collected under BOH 2.08.090, as recodified by this rule.

SECTION 8. BOH chapter 11.01 should be renamed "Contaminated Properties."

SECTION 9. R&R 45 (part) and BOH 11.01.020 are each hereby amended to read as follows:

**Purpose and policy declared.**

A. It is expressly the purpose of this ((title)) chapter to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise
establish or designate any particular class or group of persons who will or should be
especially protected or benefited by ((the terms of)) this ((title)) chapter.

B. It is the ((specific)) intent of this ((title)) chapter to place the obligation of
complying with its requirements upon the owner of a dwelling, building, vehicle or
premises within its scope, and no provision of nor term used in this ((title)) chapter is
intended to impose any duty whatsoever upon King County or any of its officers or
employees, for whom the implementation or enforcement of this ((title)) chapter shall be
discretionary and not mandatory.

C. Nothing ((contained)) in this ((title)) chapter is intended to be ((nor)) or shall
be construed to create or form the basis for any liability on the part of King County, or its
officers, employees or agents, for any injury or damage resulting from the failure of the
owner of a dwelling, building, vehicle or premises to comply with this ((title)) chapter, or
by reason or in consequence of any act or omission in connection with the
implementation or enforcement of this ((title)) chapter on the part of King County by its
officers, employees or agents.

SECTION 10. R&R 45 (part) and BOH 11.01.030 are each hereby amended to
read as follows:

Scope. ((The provisions of t))This ((title)) chapter provides for the abatement of
public health hazards created by the storage, use or handling of hazardous chemicals in
dwellings, buildings, vehicles or premises except as otherwise provided in this ((title))
chapter.

SECTION 11. R&R 45 (part) and BOH 11.01.040 are each hereby amended to
read as follows:
Applicability. This ((title)) chapter shall apply to sites described in ((Section))

BOH 11.01.030. This ((title)) chapter shall not apply to industrial sites where the
manufacturing processes using hazardous chemicals are licensed or regulated by state or
federal agencies.

SECTION 12. R&R 45 (part) and BOH 11.01.050 are each hereby amended to
read as follows:

Administration. The health officer may develop guidelines to clarify sections of
this ((title)) chapter as needed and make these available for distribution. Development of
((these)) the guidelines shall allow for public comment.

SECTION 13. R&R 45 (part) and BOH 11.01.060 are each hereby amended to
read as follows.

Access. The health officer may, in the performance of ((his or her)) the health
officer's duties and to the full extent permitted by law, examine and survey all sites
described in BOH 11.01.030 ((of this title)) and associated property without hindrance.
The owner, ((his or her)) the owner's agent and the occupant shall give free access to the
health officer at all reasonable times when required to do so.

NEW SECTION. SECTION 14. There is hereby added to BOH chapter 11.01 a
new section to read as follows:

Definitions. The definitions in this section apply throughout this chapter unless
the context clearly requires otherwise.

A. "Approved" means in approved in writing by the health officer.

B. "Closure" means the physical securing of a dwelling, building, vehicle or
premises so as to bar or block passage or entry.
C. "Department" means the Seattle - King County Department of Public Health.

D. "Hazardous chemical" means any substance used in the manufacture of controlled substances as defined by chapter 69.50 RCW, hazardous substances as identified by chapter 70.105 RCW and federal regulations establishing same, and chapter 246-889 WAC, Pharmaceutical - Precursor Substance Control.

E. "Health hazard" means a condition or situation where, in the opinion of the health officer, disease and/or injury potential exists and if unabated may endanger the health of the public.

F. "Health officer" means the director of the department or the director's authorized representative.

G. "Owner of record" means that person or persons who has a lawful right of possession of a dwelling, building, vehicle or premises by reason of obtaining it by purchase, exchange, gift, lease, inheritance or legal action.

H. "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

I. "Precursor" means a raw material for a controlled substance which becomes part of the finished drug product.

J. "Premises" means a tract or parcel of land with or without habitable buildings.

K. "Public nuisance" means any unlawful act or omission to perform a duty, which act or omission that:

1. Annoys, injures or endangers the comfort, repose, health or safety of others, offends decency or unlawfully interferes with, obstructs or tends to obstruct, any lake or
navigable river, bay, stream, canal or basin or any public park, square, street or highway;

or

2. In any way renders other persons insecure in life or in the use of property.

L. "Reagent" means any substance used in a chemical reaction to detect, measure, examine or produce other substances.

M. "Solvent" means a liquid capable of dissolving another substance.

N. "State" means the state of Washington.

O. "Vehicle" means every device capable of being moved upon a public highway and in, upon or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

P. "Waived" means waived in writing by the health officer.

**SECTION 15.** BOH 11.10.010, 11.20.010, 11.20.020 and 11.20.030 are each hereby recodified as new sections in BOH chapter 11.01.

**SECTION 16.** BOH 11.10.020, as amended by this rule, is hereby recodified as a new section in BOH chapter 11.01.

**SECTION 17.** R&R 45 (part) and BOH 11.10.020 are each hereby amended to read as follows:

**Public nuisance declared.** For purposes of this ((title)) chapter, the board declares, finds and determines that the creation or maintenance of a health hazard is a public nuisance.

**SECTION 18.** BOH 11.10.030, as amended by this rule, is hereby recodified as a new section in BOH chapter 11.01.
SECTION 19. R&R 45 (part) and BOH 11.10.030 are each hereby amended to read as follows:

Public nuisance prohibited.

A. It is unlawful for any dwelling, building, vehicle or premises to be employed or used as a public nuisance. If it is found to be used or employed as such, it shall be subject to closure.

B. It is unlawful for any person to employ, use, maintain or allow the employment, use or maintenance of a dwelling, building, vehicle or premises as a public nuisance.

C. It is unlawful for any person to use or occupy any dwelling, building, vehicle or premises determined to be a public nuisance after service of notice has been made pursuant to this ((title)) chapter, unless this provision is waived in writing by the health officer.

D. Any occupant who fails to voluntarily cease to use or occupy a dwelling, building, vehicle or premises as required by subsection C. of this section may be assessed civil penalties in accordance with BOH ((E))chapter 1.08 ((of this code (Rules and Regulations 7))). Any occupant may also be removed but only ((pursuant to)) in accordance with a court order after notice and an opportunity to be heard by the court having jurisdiction of any action brought ((pursuant to)) under this ((title)) chapter.

SECTION 20. BOH 11.30.010, as amended by this rule, is hereby recodified as a new section in BOH chapter 11.01.

SECTION 21. R&R 45 (part) and BOH 11.30.010 are each hereby amended to read as follows:
268 General provisions.

269 A. The health officer is authorized to administer and enforce all provisions of this
270 ((title)) chapter. Nothing ((contained herein)) in this chapter is meant to limit ((his or
271 her)) the health officer's discretion in evaluating and directing compliance with this
272 ((title)) chapter.

273 B. This ((title)) chapter and any guidelines developed ((per Section)) in
274 accordance with BOH 11.01.050 ((of this title)) shall be enforced ((pursuant to this
275 code.)) in accordance with BOH ((C))chapter 1.08 ((King County Board of Health Rules
276 and Regulations No.-7)).

277 C. ((In the event that any)) If a dwelling, building, vehicle((s)) or premises is
278 found to be in violation of this ((title)) chapter, the health officer may enforce any
279 provision of this ((title)) chapter against the owner of record of ((said)) the dwelling,
280 building, vehicle((s)) or premises, whether or not the owner of record had actual
281 knowledge that ((said)) the dwelling, building, vehicle((s)) or premises was or had been
282 used to create or maintain a public nuisance through health hazard ((as defined in this
283 title)).

284 D. If any dwelling, building, vehicle((s)) or premises is employed, used or
285 occupied contrary to ((the provisions of)) this ((title)) chapter, the health officer shall give
286 ((due)) notice in accordance with subsection E. of this section to the owner of record
287 requiring ((him or her)) the owner, within a reasonable time, to comply with this ((title))
288 chapter. Upon failure to comply with this ((title)) chapter, the health officer may institute
289 appropriate legal action to compel the owner of record of the dwelling, building,
290 vehicle((s)) or premises to comply with this ((title)) chapter.
E. Every notice or order in relation to a dwelling, building, vehicle or premises shall be served upon the owner of record allowing a specified reasonable time to comply with the ((requirements in the)) notice or order. However, the posting of a copy of such a notice or order in a conspicuous place in or upon the dwelling, building, vehicle((s)) or premises, and mailing a copy thereof to ((such)) the owner of record at ((his or her)) the owner's last known address, ((shall)) constitutes service of any notice or order required by this ((title)) chapter, unless otherwise provided.

F. It is unlawful for any person, other than the health officer, to remove, destroy, deface, cover ((up)) or conceal any notice or order posted as herein provided, except by written permission of the health officer. Any person who unlawfully removes, destroys, defaces, covers((s)) or conceals any notice or order posted by the health officer, may be assessed civil penalties in accordance with BOH ((C))chapter 1.08 ((of this code (King County Board of Health Rules and Regulations 7))).

G. The health officer may extend the time within which to comply with the notice or order((s)) and, whenever ((he or she)) the health officer is satisfied that the health hazard from the dwelling, building, vehicle((s)) or premises has ceased to exist, or that the property is fit for human occupancy, may revoke the notice or order.

H. If the owner of record is a corporation, partnership, joint venture, trust, business or any other similar entity, then in that event, the director((s)) or directors, trustee((s), and/or)) or trustees or any member of a joint venture, business((s)) or similar entity shall be both jointly and severally liable for each and every proceeding ((which may)) that might arise by and through enforcement of ((any paragraph of)) this ((title)) chapter.
I. In the event the owner of record fails to abate the public nuisance as directed by the health officer under this chapter (of this title), the health officer may initiate legal proceedings to abate the nuisance. In (this) that event, the owner of record shall be liable for fees and costs incurred in abating the public nuisance including but not limited to actual (attorneys') attorneys' fees and costs.

SECTION 22. BOH 11.30.020, as amended by this rule, is hereby recodified as a new section in BOH chapter 11.01.

SECTION 23. R&R 45 (part) and BOH 11.30.020 are each hereby amended to read as follows:

A. In the event the health officer finds that a dwelling, building, vehicle(;;) or premises constitutes a public nuisance as defined by this (title) chapter, the health officer may order that it be closed.

B.1. The health officer or law enforcement agency are authorized to secure the dwelling, building, vehicle(;;) or premises against use or occupancy in the event that the owner fails to do so within the time specified in (Section 11.30.010(E) of this title) BOH 11.30.010, as recodified by this rule. In the event the health officer secures the property, all costs reasonably incurred by the health officer to effect a closure shall be recovered from the owner of record of the dwelling, building, vehicle(;;) or premises.

((4-)) 2. As used in this subsection, "costs" means those costs actually incurred by the health officer for the physical securing of the dwelling, building, vehicle or premises, including, but not limited to, actual attorneys' fees and costs and surveillance for continuing security by law enforcement officers.
SECTION 24. BOH 11.40.010, as amended by this rule, is hereby recodified as a new section in BOH chapter 11.01.

SECTION 25. R&R 45 (part) and BOH 11.40.010 are each hereby amended to read as follows:

Waivers. The health officer may, in ((his or her)) the health officer's discretion, waive parts of this ((title)) chapter upon a showing by an applicant that a waiver may be made in an individual case without placing the safety or health of the public in jeopardy.

SECTION 26. BOH 11.40.020, as amended by this rule, is hereby recodified as a new section in BOH chapter 11.01.

SECTION 27. R&R 45 (part) and BOH 11.40.020 are each hereby amended to read as follows:

Appeals. Appeals from any decision by the health officer made ((pursuant to)) under this ((title)) chapter shall be made in accordance with the procedures prescribed ((earlier)) in BOH ((G))chapter 1.08 ((of this code)).

SECTION 28. BOH Title 11 should be renamed, "Hazardous Materials Management."

SECTION 29. R&R 66, Section 1 (part), and BOH 2.08.015 are each hereby repealed.

SECTION 30. R&R 66, Section 1 (part), as amended, and BOH 2.08.020 are each hereby repealed.

SECTION 31. R&R 66, Section 1 (part), as amended, and BOH 2.08.025 are each hereby repealed.
SECTION 32. R&R 66, Section 1 (part), as amended, and BOH 2.08.030 are each hereby repealed.

SECTION 33. R&R 66, Section 1 (part), and BOH 2.08.035 are each hereby repealed.

SECTION 34. R&R 66, Section 1 (part), and BOH 2.08.040 are each hereby repealed.

SECTION 35. R&R 66, Section 1 (part), and BOH 2.08.045 are each hereby repealed.

SECTION 36. R&R 66, Section 1 (part), and BOH 2.08.050 are each hereby repealed.

SECTION 37. R&R 66, Section 1 (part), and BOH 2.08.055 are each hereby repealed.

SECTION 38. R&R 66, Section 1 (part), and BOH 2.08.060 are each hereby repealed.

SECTION 39. R&R 66, Section 1 (part), and BOH 2.08.065 are each hereby repealed.

SECTION 40. R&R 66, Section 1 (part), and BOH 2.08.070 are each hereby repealed.

SECTION 41. R&R 45 (part) and BOH 11.01.010 are each hereby repealed.

SECTION 42. R&R 45 (part) and BOH 11.05.010 are each hereby repealed.

SECTION 43. R&R 45 (part) and BOH 11.05.020 are each hereby repealed.

SECTION 44. R&R 45 (part) and BOH 11.05.030 are each hereby repealed.

SECTION 45. R&R 45 (part) and BOH 11.05.040 are each hereby repealed.
SECTION 46. R&R 45 (part) and BOH 11.05.050 are each hereby repealed.

SECTION 47. R&R 45 (part) and BOH 11.05.060 are each hereby repealed.

SECTION 48. R&R 45 (part) and BOH 11.05.070 are each hereby repealed.

SECTION 49. R&R 45 (part) and BOH 11.05.080 are each hereby repealed.

SECTION 50. R&R 45 (part) and BOH 11.05.090 are each hereby repealed.

SECTION 51. R&R 45 (part) and BOH 11.05.100 are each hereby repealed.

SECTION 52. R&R 45 (part) and BOH 11.05.110 are each hereby repealed.

SECTION 53. R&R 45 (part) and BOH 11.05.120 are each hereby repealed.

SECTION 54. R&R 45 (part) and BOH 11.05.130 are each hereby repealed.

SECTION 55. R&R 45 (part) and BOH 11.05.140 are each hereby repealed.

SECTION 56. R&R 45 (part) and BOH 11.05.150 are each hereby repealed.

SECTION 57. R&R 45 (part) and BOH 11.05.160 are each hereby repealed.

SECTION 58. Severability. If any provision of this rule or its application to any
person or circumstance is held invalid, the remainder of the rule or the application of the
provision to other persons or circumstances is not affected.

R&R BOH13-02 was introduced on and passed by the Board of Health on 6/20/2013,
by the following vote:

Yes: 10 - Ms. Frisinger, Mr. Conlin, Ms. Patterson, Ms. Lambert, Dr.
Baker, Dr. Danielson and Mr. McDermott
No: 0
Excused: 3 - Mr. Licata, Ms. Clark and Dr. Nicola

BOARD OF HEALTH
KING COUNTY, WASHINGTON

Joe McDermott, Chair

ATTEST:

Anne Noris, Clerk of the Board

Attachments: None