

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, WASHINGTON

Ordinance No. TLS 09-06-37B

Adoption of an IDDE)
Illicit Discharge Detection)
Elimination Code)

STORMWATER

WHEREAS, RCW Title 36 authorizes the Douglas County Board of Commissioners to create and amend the County Code; and

WHEREAS, the Douglas County (the "County") is regulated under the Washington State Department of Ecology's Eastern Washington Phase II Municipal Stormwater Permit (the "Permit"); and

WHEREAS, the County will be adopting code policies and procedures as needed to comply with the Permit; and

WHEREAS, the Permit requires that an Illicit Discharge Detection and Elimination regulations must be developed and adopted to prohibit non-stormwater discharges into the municipal separate storm sewer system (MS4) and authorize enforcement actions, including on private property, and

WHEREAS, the proposed Illicit Discharge Detection and Elimination chapter becomes an addition to the Douglas County Code intended to meet Condition S5.B.3 of the Permit with the goal of improving and maintaining water quality in compliance with the Clean Water Act; and

WHEREAS, illicit discharges and connections to the County stormwater system and facilities may adversely affect stormwater quality, generate stormwater runoff, and otherwise necessitate stormwater regulation and management and burden the stormwater systems; and

WHEREAS, the County, in partnership with Chelan County and the Cities of Wenatchee and East Wenatchee, developed regulations to provide local consistency with minimal permit compliance, and

WHEREAS, stakeholders have been invited to participate in the ordinance development, and

WHEREAS, the Board of Commissioners have conducted a duly advertised public hearing to consider proposed amendments; and

WHEREAS, With respect to the State Environmental Policy Act of 1971 a determination of non-significance, issued July 14, 2009, with a 14 day comment period, with the comment period ending July 30, 2009, has been entered into the record,

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED, that the Board of County Commissioners hereby adopts the above Findings of Fact and adopts an amendment to the Douglas County Code by adding a new chapter for Illicit Discharge Detection and Elimination as set forth in the attached Exhibit A and incorporated fully herein by this reference.

This Ordinance shall become effective August 16, 2009.


Dated this 4th day of August, 2009 in Waterville, Washington.

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, WASHINGTON

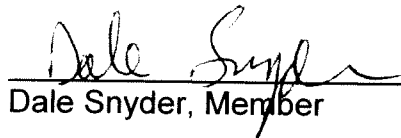




Mary Hunt, Chair

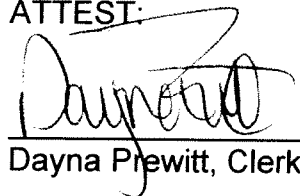


Ken Stanton, Vice Chair



Dale Snyder, Member

ATTEST:



Dayna Prewitt, Clerk of the Board

**CHAPTER XX.XX
STORMWATER ILLICIT DISCHARGE DETECTION AND ELIMINATION**

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XX.XX.010 Purpose

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of Douglas County through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods to regulate the County's storm sewer system, including municipal separate storm sewer system (MS4) and Underground Injection Control (UIC) facilities; controlling the introduction of pollutants, in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit. The objectives of this chapter are:

- 1) To prevent and control the contribution of pollutants.
- 2) To prohibit illicit connections and discharges.
- 3) To establish legal authority to carry out inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

XX.XX.020 Definitions

For the purposes of this chapter, the following shall mean:

1. "Best Management Practices (BMPs)" shall mean schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
2. "Clean Water Act" shall mean the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

3. "Construction Activity" shall mean activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more and projects less than one acre that have the potential to discharge runoff to the County's storm drain system. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
4. "County" shall mean Douglas County, Washington, a political subdivision of the State of Washington, acting by and through the Board of County Commissioners, unless such authority shall be delegated to other persons.
5. "Good Housekeeping Practices" shall mean simple common sense, Best Management Practices which tend to focus more on the human side versus the technical side. Such activities include but are not limited to waste segregation, preventative maintenance, training and awareness, tidiness and safety.
6. "Hazardous Materials" shall mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when not properly treated, stored, transported, disposed of, or otherwise managed.
7. "Illicit Discharge" shall mean any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in of this chapter.
8. "Illicit Connections" shall mean:
 - a. Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the County; or
 - b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the County.
9. "Industrial Activity" shall mean activities subject to NPDES Industrial Stormwater Permits as defined in 40 CFR, Section 122.26 (b)(14).
10. "Maximum Extent Practicable (MEP)" is a term specified, but not yet defined by EPA, but is intended to be flexible to allow the development of site-specific conditions based upon the best professional judgment of the regulatory authority. MEP means that less effective treatment may not be substituted when it is practicable to provide more effective treatment.
11. "Municipal Separate Storm Sewer System (MS4)" shall mean the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm

drains) owned and operated by the County and designed or used for collecting or conveying stormwater.

12. "National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit" shall mean a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States or State, whether the permit is applicable to a person or group, or on a general area-wide basis.
13. "Non-Stormwater Discharge" shall mean any discharge to the storm drain system that is not composed entirely of stormwater.
14. "Owner, occupier or operator" shall mean any individual, association, organization, partnership, firm, corporation or other entity public or private and acting as with the owner or as the owner's agent.
15. "Person" shall mean any individual, association, organization, partnership, firm, corporation or other entity public or private and acting as either the owner or as the owner's agent.
16. "Pollutant" shall mean anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
17. "Premises" shall mean any building, structure, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
18. "Storm Drainage System or storm water drainage system" shall mean publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, underground injection control facilities and other drainage structures.
19. "Stormwater" shall mean runoff during and following precipitation and snowmelt events, including surface runoff, drainage and interflow.
20. "Stormwater Management Plan" shall mean a document which describes the Best Management Practices and activities to be implemented to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or waters of the State to the Maximum Extent Practicable.

21. "Underground Injection Control" or "UIC" or "UIC well" means a manmade sub-surface fluid distribution system designed to discharge fluids into the ground and consists of an assemblage of perforated pipes, drain tiles or other similar mechanisms, or a dug hole that is deeper than the largest surface dimension. A public UIC is one owned, operated and maintained by the county and includes the collection system of catch basins, pipes, ditches, or other public infrastructure that collects and conveys stormwater to the UIC.
22. "Waters of the State" includes those waters as defined as "waters of the United States" in 40 CFR 122.2 within the geographic boundaries of Washington State and "waters of the State" as defined in Chapter 90.48 RCW which includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the State of Washington.
23. "Watercourse" shall mean any portion of a channel, bed, bank, or bottom below the ordinary high waterline of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, stormwater run-off devices, or other artificial watercourses, except where they exist in a natural watercourse which has been altered by humans. a stream or established drainage for stormwater.

XX.XX.030 Applicability

This chapter shall apply to any discharge entering the stormwater drainage system, within the County's jurisdiction.

XX.XX.040 Responsibility for Administration

Administration, implementation, interpretation and enforcement of this chapter shall be the responsibility of the County Engineer or the County Engineer's designated representative. The County Engineer is granted broad discretion in the administration of this chapter. The County Engineer may adopt, and revise as necessary, such instructions, policies and forms as are necessary to carry out the provisions of this title. Any powers granted or duties imposed upon the County may be delegated by the County Engineer to persons or entities acting in the beneficial interest of or in the employ of the County.

XX.XX.050 Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this chapter are minimum standards and are not intended to ensure compliance by any person or to ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

XX.XX.060 Discharge Prohibitions

Any non-stormwater discharge to the storm drain system is prohibited except as described in this chapter.

A. Prohibition of Illegal Discharges

No person shall dispose of, drain or otherwise discharge, cause or allow others under the person's control to dispose of, drain or otherwise discharge any pollutants or waters containing any pollutants. Prohibited discharges including without limitation the following:

- a) Trash or debris;
- b) Construction materials, including but not limited to, cement and concrete;
- c) Petroleum products including but not limited to, oil, gasoline, grease, fuel oil, heating oil,
- d) Antifreeze and other automotive products;
- e) Metals in excess of naturally occurring amounts, in either particulate or dissolved form;
- f) Flammable or explosive materials;
- g) Chemicals not normally found in uncontaminated water;
- h) Acids, alkalis, or bases;
- i) Painting products;
- j) Degreasers and/or solvents;
- k) Drain cleaners;
- l) Commercial and household cleaning products;
- m) Pesticides, herbicides, or fertilizers;
- n) Steam cleaning wastes;
- o) Pressure washing wastes;
- p) Soaps, detergents, or ammonia;
- q) Chlorinated spa or swimming pool water;
- r) Domestic or sanitary sewage;
- s) Discharge carry pollutants from roof downspouts system;
- t) Animal carcasses;
- u) Food wastes
- v) Yard wastes;
- w) Silt, sediment, or gravel
- x) Domestic animal wastes;
- y) Recreational vehicle wastes;
- z) Any hazardous material or waste not listed above;
- aa) Wastewater or process wastewater (including filtered or purified wastewaters);

B. Conditional Discharges

(1) The following discharges are exempt from discharge prohibitions established by this chapter:

- a) Diverted stream flows;
- b) Rising ground waters;
- c) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- d) Uncontaminated pumped ground water;
- e) Foundation drains;
- f) Air conditioning condensation;
- g) Irrigation water from agricultural sources that is commingled with urban stormwater;
- h) Springs;
- i) Water from crawl space pumps;
- j) Footing drains;
- k) Flows from riparian habitats and wetlands; and
- l) Emergency firefighting activities.

(2) Discharge prohibitions shall not apply to any non-stormwater discharge permitted under a NPDES permit issued to the discharger and administered under the authority of the Washington State Department of Ecology, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system by the County.

(3) The following non-stormwater discharges are prohibited, 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 dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments;
- b) Discharges from lawn watering and other irrigation runoff shall be kept to a minimum and shall not cause damage to public streets or sidewalks;
- c) Swimming pool discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments. Swimming pool cleaning wastewater and filter backwash are prohibited from being discharged;
- d) Street and sidewalk wash water, water used to control dust, and routine external building wash down shall not contain soaps or detergents and shall be kept to a minimum. Practices shall be implemented prior to washing to reduce pollutants including but not limited to sweeping, picking up litter and controlling velocity of discharge.

e) Other non-stormwater discharges shall be in compliance with the requirements of a stormwater pollution prevention plan which addresses control of such discharges.

f) Dye testing is an allowable discharge, but requires a verbal notification to the County forty-eight (48) hours prior to the time of the test.

(4) Notwithstanding subsections (1), (2) and (3), non-stormwater discharges otherwise allowed are prohibited if such discharges constitute a significant source of pollutants.

C. Prohibition of Illicit Connections

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the stormwater system, or allows such a connection to continue.

(4) Improper connections in violation of this chapter must be disconnected and redirected to an approved (on-site or off-site) wastewater management system.

(5) Any drain or conveyance that has not been documented in plans, maps or equivalent submittals shall be located by the owner or occupier upon receipt of written notice of violation by the County. Such notice shall specify a reasonable time period within which the location of the drain or conveyance is to be completed, the drain or conveyance shall be identified as storm sewer or other type of conveyance, and the outfall location or point of connection to the storm sewer system or other discharge point shall be identified. Results of these investigations are to be documented and provided to the County.

(6) Waste Disposal: No person shall dispose of, deposit, leave, maintain, or keep in or upon any public or private property, the stormwater drainage system, or waters of the State, any refuse, rubbish, garbage, litter or other discarded or abandoned objects, articles or accumulations that may cause or contribute to pollution of the stormwater system or waters of the State. Wastes deposited in proper waste receptacles for the purpose of collection are exempt from this prohibition.

XX.XX.070 Watercourse Protection

Every person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other obstacles that pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or occupier shall not maintain privately owned structures within or adjacent to a watercourse that present a present or future hazard to the use, function, or physical integrity of the watercourse.

XX.XX.080 Right of Entry

A. Inspection and Sampling

The County shall be permitted to enter and inspect premises subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter.

(1) The County shall have access to all parts of the premises for the purposes of inspection, sampling and examination of discharges to the stormwater system, and the performance of any additional duties as defined by State and Federal law.

(2) The County has the right to set up such devices as are necessary to conduct monitoring and/or sampling of the premises' stormwater discharge.

(3) The County has the right to require an owner or occupier of premises to install such sampling and monitoring equipment, as the County deems necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or occupier at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the premises shall be promptly removed by the owner or occupier upon the written or oral request of the County and shall not be replaced. The costs of clearing such access shall be paid by the owner or occupier.

B. Search Warrants

If the County has been refused access to any part of the premises from which stormwater is discharged, and the County is able to demonstrate probable cause to believe that there is a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the County shall obtain a search warrant from the Superior Court authorizing entry for the purpose of implementing the requirements of this chapter.

C. Emergency Access

In the event the violation constitutes an immediate danger to public health or public safety, the County is authorized to enter upon private property, without giving prior notice, to take any and all measures necessary to abate the violation. The County shall be entitled to recover all costs of abatement from the owner or occupier.

XX.XX.090 Requirement to Prevent, Control and Reduce Stormwater Pollutants

The owner or occupier of any activity, operation or facility that may cause or contribute to pollution or contamination of stormwater or the storm drainage system shall provide, at the owner's or occupier's expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for property that is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

XX.XX.100 Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illicit discharges or pollutants discharging into stormwater, the storm drain system, or waters of the State, the person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of a release of hazardous materials, the responsible person shall immediately notify emergency response agencies and the County of the occurrence. In the event of a release of non-hazardous materials, the responsible person shall immediately notify the County.

XX.XX.110 Investigation

The County shall investigate reports of illicit discharges. The County's first priority for investigation and resolution are health and safety. Investigation of a violation of this chapter may be initiated by the County upon observation or report of any suspected violation. The investigation shall determine if an illicit connection or illicit discharge exists.

XX.XX.120 Violations, Enforcement and Penalties

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person who has violated or continues to violate the requirements of this chapter may be subject to the enforcement actions outlined in this chapter. The issuance of a notice of violation shall not excuse the violation or permit it to continue.

A. Notice of Violation and Order

The County Engineer shall issue a notice of violation and order if it is reasonably believed that a violation of this chapter has been committed. The notice of violation and order shall include the date, time and location of the violation, the name and address of the property owner, the name and address of the person believed to have committed the violation, a description of the violation, and an order describing the actions required to comply with this chapter, together with a date when such actions must be completed. The notice of violation and order shall be served on the owner or occupier of the property and the person believed to have committed the violation by certified mailed, return receipt requested, with an additional copy served by regular mail. A copy shall also be posted on the property.

B. Enforcement

- (1) The County may pursue reasonable attempts to secure voluntary compliance or corrections failing which, a notice of violation shall be issued.
- (2) Civil Infraction: Any person who fails to comply with a notice of violation and order commits a civil infraction subject to a maximum civil penalty of \$250. Each day of non-compliance shall constitute a separate offense.
- (3) Criminal Penalty: Any person who willfully fails to comply with two or more notices of violation and orders with a twelve (12) month period shall commit a misdemeanor criminal offense having a penalty of not more than ninety (90) days in jail and/or a fine of \$1,000.
- (4) Civil Relief: Any person who fails to comply with a notice of violation and order shall be subject to a civil action for injunctive relief, abatement of the violation, and/or a civil penalty of \$50 per day for each day on non-compliance.
- (5) In lieu of or in conjunction with enforcement proceedings, penalties and remedies authorized by this chapter, the County may impose alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, or other alternative actions deem appropriate.

C. Appeals:

- 1) An appeal of the notice of violation and order may be made to the Hearing Examiner by filing a notice of appeal within fourteen days after issuance of the notice of violation and order, and payment of the applicable appeal fees. The request must contain a copy of the written notice, and the name, address and telephone number of the person requesting the hearing. The request must also include a brief description of the reason the person believes there is no violation. This request will be mailed to the County who will set the hearing date.
- 2) Failure of any person to file a timely appeal or failure of any person, who has filed an appeal to attend the scheduled hearing, shall constitute a waiver of his or her right to an appeal hearing.
- 3) Filing of an appeal shall stay the enforcement of any notice of civil violation, order to abate, collection of fine, penalties or assessments during the pendency of such appeal except as otherwise provided.

D. Suspension of Access

1. Emergency Cease and Desist Orders

When the County finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the County may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- a) Immediately comply with all code requirements; and
- b) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the County may take such steps as deemed necessary to prevent or minimize harm to the storm water system or waters of the State, and/or endangerment to persons or to the environment. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

2. Suspension due to Illicit Discharges in Emergency Situations

The County may, without prior notice, suspend discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm water system or waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the County may take such steps as deemed necessary to prevent or minimize damage or to minimize danger to persons.

3. Suspension due to the Detection of Illicit Discharge

Any person discharging in violation of this chapter may have their access terminated if such termination would abate or reduce an illicit discharge. A person commits an offense if the person reinstates access to premises terminated pursuant to this Section, without the prior approval of the County.

XX.XX.130 Fees

Violators are subject to Illicit Discharge Detection and Elimination Investigative Fees and as shall be established by resolution of the Board of Commissioners.

XX.XX.140 Costs of Abatement – Special Assessment

A person violating this chapter shall pay all abatement expenses incurred by the County, including attorney's fees and court costs. Where the violation of this chapter occurs as a result of activity on real property, such abatement expenses shall also constitute a lien upon the real property real property as a special assessment that shall be due and payable in the same manner as real property taxes.

XX.XX.150 Remedies Cumulative and not Exclusive

All remedies provided by this chapter are in addition to any other remedy provided by law, and all remedies are cumulative.

XX.XX.160 Other Regulations

This chapter is not intended to modify or repeal any other rule, regulation or provision of law. The requirements of this chapter are in addition to the requirements of any other chapter, rule, regulation or other provision of law. Where a conflict arises, whichever provision is more restrictive or imposes greater protection of health, welfare, public safety or the environment shall control.

XX.XX.170 Severability

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application thereof shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.