

RHYS A. STERLING, P.E., J.D.

Attorney at Law

P.O. Box 218
Hobart, Washington 98025-0218
E-mail: RhysHobart@aol.com

1495 N.W. Gilman Blvd.
Suite 4-G
Issaquah, Washington 98027
(425) 391-6650
Facsimile (425) 391-6689

January 4, 2006

IN-HAND DELIVERED TO WUTC

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: William Stuth and Aqua Test, Inc.
Petition for Declaratory Order, Docket No. A-050528
***STUTH AND AQUA TEST'S INITIAL BRIEF IN SUPPORT OF SUMMARY
DETERMINATION FOR DECLARATORY ORDER DESIGNATING A PUBLIC
SERVICE COMPANY***

Dear Ms. Washburn:

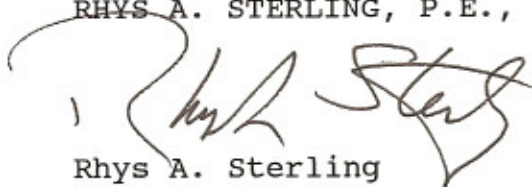
Pursuant to WAC 480-07-380(2) and in accordance with the Prehearing Conference Order (amended by the Order On Clarification), submitted herewith and filed today with the WUTC is Stuth and Aqua Test's Initial Brief in Support of Summary Determination for Declaratory Order Designating a Public Service Company. In addition to the original and five copies, also included is a CD on which is copied in *.pdf format the complete brief and all exhibits.

Pursuant to the Prehearing Conference Order, I also include a 3.5 inch floppy disk with the brief and suggested model rules (excluding all other exhibits) thereon converted under available software from my older version of WordPerfect to a MS Word *.doc format (note that the format does not precisely match that from WordPerfect, and there is no line numbering as that is a separate function and routine I developed using the WordPerfect software).

Please contact me if you have any questions regarding this matter. Thank you for your consideration and continued cooperation.

Very truly yours,

RHYS A. STERLING, P.E., J.D.



Rhys A. Sterling
Attorney at Law

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
January 4, 2006
Page 2

Enclosures

cc: Christopher G. Swanson, AAG (delivered in person)
Simon J. ffitich, Public Counsel, Office of Attorney General
Seattle, WA (delivered in person)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In The Matter of the Petition of	)	DOCKET NO. <u>A-050528</u>
)	
WILLIAM L. STUTH, and AQUA TEST, INC.,	)	STUTH AND AQUA TEST INITIAL BRIEF IN SUPPORT OF SUMMARY DETERMINATION FOR DECLARA-
	)	TORY ORDER DESIGNATING A
For Declaratory Order Designating a Public Service Company	)	PUBLIC SERVICE COMPANY
)	

I. RELIEF REQUESTED

Pursuant to WAC 480-07-380(2) and the Prehearing Conference Order (as amended by the Order On Clarification), Petitioners William Stuth and Aqua Test, Inc., hereby move for the summary determination that a person or corporation owning, operating and managing large on-site sewage systems (at a minimum)¹ dedicated and dev-

¹ The original Petition for Declaratory Order was focused solely on the ownership, operation and management of large on-site sewage systems (LOSS). Since then, however, local public health agencies and other interested companies have expressed their support that a WUTC-regulated public service company also be capable and equipped to provide utility service for the public served by all on-site sewage systems, not just LOSS; e.g., on-site sewage systems larger than 14,500 gpd; mechanical and lagoon systems under Washington Department of Ecology regulation; and even on-site sewage systems for individual use. There is also a move at the present time by the Puget Sound Action Team to designate certain areas of Puget Sound that will require increased management of on-site sew- (continued...)

1 oted to the use of the public served thereby for hire and on demand
2 is as a matter of fact a public service company subject to regula-
3 tion by the Washington Utilities and Transportation Commission.²

4 II. INTRODUCTION

5 Petitioners in this matter are William L. Stuth, individually,
6 and Aqua Test, Inc., a Washington corporation. Together they have
7 petitioned the WUTC to issue a Declaratory Order pursuant to its
8 authority under RCW 34.05.240 and WAC 480-07-930 finding and con-
9 cluding that a private, for-profit company which independently³
10 owns, operates and manages on a permanent basis large on-site sew-
11 age systems for the public served by such systems for hire and on
12 demand wherever located in the State of Washington is a public ser-

13 _____
14 ¹(...continued)
15 age systems to protect public health and the environment. Stuth
16 and Aqua Test support these positions and consider a WUTC-regulated
17 public service company as the ideal service provider for all such
18 systems and areas of the State.

19 ² Hereafter denominated a "**Wastewater Company**". A Wastewater
20 Company is dedicated to service the public need through its facili-
21 ties devoted to public use. See Exhibit "E". It must be noted that
22 although the original Petition for Declaratory Order was presented
23 in terms of the ownership, operation and management of LOSS, it is
24 implicit that a Wastewater Company that is a WUTC-regulated public
service company will also be capable and equipped to provide utility
services for all on-site sewage systems of whatever size and
kind wherever located in the State of Washington.

³ The person or corporation comprising the Wastewater Company
thus excludes any nonprofit homeowner associations or any other
form of enterprise that is member or subscriber controlled. If a
Wastewater Company is a corporate entity, its shareholders and
board will be independent from and not subject to the control of
the public served thereby.

1 vice company subject to regulation by the WUTC.⁴

2 **III. BACKGROUND STATEMENT**

3 For the past 19 years Stuth and Aqua Test have provided man-
4 agement and operation services related to large on-site sewage sys-
5 tems serving the public.⁵ To date, however, their services can be
6 offered only where there is guaranteed backup provided by a munici-
7 pality or sewer district in accordance with State Department of
8 Health rules.⁶ The DOH has identified a growing problem as fewer
9 of such bodies are willing and able to provide the required backup.

10 Our requirement for a municipal entity is controversial
11 and in many cases hasn't provided the assurance we hoped
12 for. Developers complain there is a lack of municipal
13 entities or special districts willing and able to direct-
14 ly manage such systems or to serve as a third party
15 trust. . . . We have received complaints from homeowner

14 ⁴ Attached hereto as **Exhibit "A"** is a copy of the original
15 Petition for Declaratory Order filed with the WUTC by Stuth and
16 Aqua Test.

16 ⁵ A large on-site sewage system (LOSS) is defined as "an in-
17 tegrated arrangement of components for a residence, building, ind-
18 ustrial establishment or other places not connected to a public se-
19 wer system which conveys, stores, treats, and/or provides subsurf-
20 ace soil treatment and disposal on the property where it originat-
21 es, or on adjacent or nearby property; and includes piping, treat-
22 ment devices, other accessories, and soil underlying the disposal
23 component of the initial and reserve areas; and has design flows,
24 at any common point, greater than three thousand five hundred gal-
lons per day" but less than 14,500 gallons per day (gpd). WAC 246-
272B-01001; WAC 246-272B-03001(5)(a). A LOSS generating the maxi-
mum 14,500 gpd at any common point represents a residential subdivi-
sion or portion thereof consisting of about 60 single-family
homes. WAC 246-272B-11501(2)(C)(i).

⁶ WAC 246-272B-08001(2)(a)(vi) (and former WAC 246-272-08001
(2)(a)(vi)).

1 associations required to pay ongoing fees to maintain the
2 trust relationship without receiving any service in re-
3 turn. Some special sewer districts have struggled to
4 provide adequate management services and in at least one
5 case the municipal entity failed to meet its obligations
6 upon failure of the private management entity.

7 *Exhibit "A"* at Exhibit 1, p. 1 (March 9, 2005 Letter to WUTC from
8 Richard Benson, P.E., DOH). Recognizing that solving this problem
9 is a "top priority", the DOH is actively seeking "a reasonable and
10 appropriate alternative to a municipal corporation to provide long-
11 term and secure management, operation, and maintenance of large on-
12 site sewage systems in the State of Washington."⁷ As a result of
13 its researching options, the DOH concluded that a WUTC-regulated
14 public service company would be an acceptable public entity that
15 could directly manage large on-site sewage systems without further
16 municipal backup.

17 As a utility serving the general public who depend on
18 a LOSS, a UTC regulated public service company could fill
19 this growing need and serve an essential public function
20 by protecting public health and safety [and the environ-
21 ment] across the State.

22 *Exhibit "A"* at Exhibit 1, p. 2.⁸

23 ⁷ *Exhibit "A"* at Exhibit 1, p. 2.

24 ⁸ And based on its familiarity and experience with Stuth and
Aqua Test, the DOH endorsed the Petition for Declaratory Order and
the determination by WUTC that a private company providing manage-
ment services to the general public is a public service company
subject to WUTC regulation. *Exhibit "A"* at Exhibit 1, p. 2. In
addition and subject to approval/consent of the Department of Eco-
logy, a WUTC-regulated public service company should also be quali-
fied to own, operate, and manage in the same manner as a LOSS,
(continued...)

1 In order to fill this need to serve the public interest as id-
2 entified by DOH, Stuth and Aqua Test must first have answered the
3 question as to whether a private company providing LOSS services to
4 the general public constitutes a public service company subject to
5 WUTC authority. WUTC has never before answered this specific query
6 and its affirmative answer is essential to providing this service.

7 IV. PROCEDURAL BACKGROUND

8 In order to have the WUTC make a formal determination of fact
9 pursuant to RCW 80.04.015⁹ that a private company offering LOSS ut-
10 ility services including ownership, operation and management to the
11 general public for hire is a public service company subject to WUTC
12 regulation, Stuth and Aqua Test formally petitioned the WUTC to en-
13 ter a declaratory order. *Exhibit "A"*.

14 Any interested person may petition the commission for
15 a declaratory order with respect to the applicability to
16 specified circumstances of a rule, order, or statute en-
17 forceable by the commission, as provided by RCW 34.05.
18 240.

17 WAC 480-07-930.

18 _____
19 ⁸(...continued)

19 those mechanical and other on-site systems greater than 14,500 gpd
20 under WDOE jurisdiction. And, with concurrence from local health
21 departments, the ownership, operation and management of smaller on-
22 site systems.

22 ⁹ "Whether or not any person or corporation is conducting
23 business subject to regulation under [Title 80 RCW], or has per-
24 formed or is performing any act requiring registration or approval
of the commission without securing such registration or approval,
shall be a question of fact to be determined by the commission."
RCW 80.04.015.

1 Initially the WUTC reacted to the Petition by summarily de-
2 clining to enter a declaratory order solely as a matter of law.

3 We believe that without legislation defining the serv-
4 ice as a regulated public service business, and without
5 a specific statute defining the Commission's regulatory
6 role and granting it the authority to act, the agency has
7 no authority to regulate the operation or management of
8 large on-site sewage systems.

9 **Exhibit "B"**.¹⁰ It is clear, however, that RCW 80.04.015 requires
10 that the determination as to whether any person or corporation is
11 a public service company subject to WUTC regulation be made as a
12 question of fact. Accordingly, Stuth and Aqua Test commenced an
13 action against WUTC under the Administrative Procedures Act seek-
14 ing judicial review of WUTC's initial decision declining to enter
15 a Declaratory Order.¹¹ An administrative law review trial was held
16 before the Honorable Judge Richard D. Hicks on September 2, 2005.
17 After a full hearing and as its decision, the Court "revers[ed] the
18 summary finding by the Commission and remand[ed] this matter back
19 to the Commission to hold the statutory mandated fact finding hear-
20 ing."¹² The final Order of the Court remanding this matter to WUTC

21 ¹⁰ Copy of the WUTC letter dated April 8, 2005 declining to
22 enter a declaratory order as petitioned for by Stuth and Aqua Test,
23 Docket No. A-050528.

24 ¹¹ Stuth and Aqua Test v. WUTC, Thurston County Superior Court
 No. 05-2-00782-3.

¹² Attached hereto as **Exhibit "C"** is the transcript of Judge
 Hicks' complete decision as rendered September 2, 2005. The quoted
 portion is found at Page 12.

1 was entered on September 16, 2005.

2 **V. ISSUE PRESENTED**

3 As set forth in the Prehearing Conference Order and as amended
4 by the Order On Clarification, the ultimate question for Commission
5 determination is whether the operator¹³ of a large on-site sewage
6 system is a public service company as defined in the public service
7 laws of the State of Washington, and thereby subject to Commission
8 regulation as a public service company. The answer to that question
9 is to be determined as a matter of fact (i.e., what activities the
10 petitioners engage in) with reference to the applicable law defin-
11 ing public service companies and the authority of the Commission.¹⁴

12 **VI. EVIDENCE RELIED UPON**

13 Petitioners rely on the following evidence in support of its
14 verified Petition for Declaratory Order and this verified Motion
15 for Summary Determination:

- 16 1. Verified Petition for Declaratory Order (*Exhibit "A"*),
17 including Exhibit 1 attached thereto; and this verified
18 Motion for Summary Determination and all exhibits att-
19 ched hereto.

20 ¹³ And as amended by the Order On Clarification, the term "op-
21 erator" is not used in its narrow sense to include only physical or
22 technical mechanics of operation. Consistent with the relevant do-
23 cuments and with the discussions at the prehearing conference, the
24 term is meant in its broader management sense to encompass activi-
ties that may be necessary to provide a service, such as manage-
ment, maintenance, and ownership. See Order On Clarification,
para. 5.

¹⁴ See Prehearing Conference Order, para. 7.

- 1 2. Additional letters and statements by individuals, profes-
2 sionals, and companies that are interested in and support
3 the Petition underscoring the need for and public inter-
 est served by the WUTC's designation of a public service
 company. See Exhibits "D" and "I".
- 4 3. Transcript of Judge Richard D. Hicks' full decision rend-
5 ered in Stuth and Aqua Test v. WUTC, Thurston County Sup-
 erior Court No. 05-2-00782-3 (Exhibit "C").
- 6 4. The Wastewater Company Model Rules Overview set forth in
7 Exhibit "E". See also Exhibits "F", "G", and "H".
- 8 5. The public record as filed with and compiled by the WUTC
 in this matter.

9 **VII. APPLICABLE LEGAL STANDARDS**

10 The statutory breadth of WUTC's jurisdiction is to "regulate
11 in the public interest, as provided by the public service laws, the
12 rates, services, facilities, and practices of all persons engaging
13 within this state in the business of supplying any utility service
14 or commodity to the public for compensation, and related activi-
15 ties; including, but not limited to, electrical companies, gas com-
16 panies, . . . and water companies." RCW 80.01.040(3) (emphasis ad-
17 ded).¹⁵ The term "public service company includes every gas compa-
18 ny, electrical company, telecommunications company, and water comp-
19 any." RCW 80.04.010 (emphasis added).

20
21

22 ¹⁵ A utility is defined to mean "every public service company
23 that has not been classified as competitive by the commission." WAC
24 480-80-030. Nowhere in WUTC regulation is a utility that provides
 ownership, operation, and management services to the public related
 to large on-site sewage systems classified as "competitive". Waste-
 water companies thus have a captive customer as to whom no alterna-
 tive exists for service.

1 The word "includes" is a term of enlargement, not of limita-
2 tion, and denotes a nonexclusive exemplary listing.

3 [T]he statute's use of the term "includes," denotes a
4 nonexclusive exemplary listing. See 2A Norman J. Singer,
5 Statutes and Statutory Construction § 47.07, at 231 (6th
6 ed. 2000 ("includes" is usually a term of enlargement,
7 not limitation).

8 State v. Hall, 112 Wn. App. 164, 169, 48 P.3d 350 (2002).¹⁶

9 The word 'includes' is usually a term of enlargement,
10 and not of limitation. . . . It therefore conveys the
11 conclusion that there are other items includable, though
12 not specifically enumerated by the statutes.

13 Argosy Limited v. Hennigan, 404 F.2d 14, 20 (5th Cir. 1968).¹⁷ A
14 broadened scope of companies subject to WUTC's jurisdiction fits
15 within the general expansive framework of the statute, as the term
16 "service is used in [Title 80 RCW] in its *broadest and most inclu-*

17 ¹⁶ See also Brown v. Scott Paper Worldwide Company, 143 Wn.2d
18 349, 359, 20 P.3d 921 (2001); Publishers Building Company v. Mill-
19 er, 25 Wn.2d 927, 939, 172 P.2d 489 (1946); Wheeler v. Department
20 of Licensing, 86 Wn. App. 83, 88, 936 P.2d 17 (1997). In contrast,
21 the Legislature uses the word "means" where it intends to create a
22 limitation. Queets Band of Indians v. State, 102 Wn.2d 1, 4, 682
23 P.2d 909 (1984).

24 ¹⁷ "When the term 'include' is used in a statute, it is gener-
ally improper to conclude that entities not specifically enumerated
are excluded. . . . The legislative intent that 'include' be read
as a term of enlargement rather than limitation is further under-
scored by coupling its use with the phrase 'but not limited to.'" Gholson v. United States, 532 A.2d 118, 119 (D.C.App. 1987). See
also Pennsylvania Human Relations Commission v. Alto-Reste Park
Cemetery Association, 306 A.2d 881, 885 (Pa. 1973).

1 *sive* sense." RCW 80.04.010 (emphasis added).¹⁸ And as to the speci-
2 fic manner that a determination is made whether or not any particu-
3 lar company comes under the WUTC's jurisdiction, no more straight-
4 forward and unambiguous mandate could be stated by the Legislature
5 than as expressly *provided by the public service laws* as follows:

6 Whether or not any person or corporation is conducting
7 business subject to regulation under [Title 80 RCW], or
8 has performed or is performing any act requiring regis-
9 tration or approval of the commission without securing
10 such registration or approval, *shall be a question of*
11 *fact to be determined by the commission.*

12 RCW 80.04.015 (emphasis added).¹⁹ Accordingly, the listing of cer-
13 tain identified companies in RCW 80.01.040(3) and in RCW 80.04.010
14 does not automatically exclude all other types of companies and
15 services simply because they are not expressly named therein.

16 The general test used by our courts to determine if a company
17 is subject to regulation by the WUTC, *and ingrained as part of our*
18 *"public service laws"*, is well-established and long-standing:

19 A corporation becomes a public service corporation,
20 subject to regulation by the department of public ser-
21 vice, only when, and to the extent that, its business is
22 dedicated or devoted to a public use. The test to be
23 applied is whether or not the *corporation holds itself*

24 ¹⁸ "In fact, it is generally improper to conclude that enti-
ties not specifically enumerated are excluded when the legislature
uses the word 'including'." Paxson v. Board of Education of School
District No. 87, Cook County, Illinois, 658 N.E.2d 1309, 1314-15
(Ill.App. 1995).

¹⁹ "As used in statutes, contracts, or the like, [the word
shall] is generally imperative or mandatory." Black's Law Diction-
ary p. 1233 (5th ed. 1979).

1 out, expressly or impliedly, to supply its service or
2 product for use either by the public as a class or by
3 that portion of it that can be served by the utility; or
whether, on the contrary, it merely offers to serve only
particular individuals of its own selection.

4 Inland Empire Rural Electrification Inc. v. Department of Public
5 Service, 199 Wash. 527, 537, 92 P. 2d 258 (1939) (emphasis added).

6 The question of the character of a corporation is one
7 of fact to be determined by the evidence disclosed by the
8 record. . . . What it does is the important thing, not
9 what it, or the state, says that it is.

10 Inland Empire, 199 Wash. at 538.²⁰

11 Thus, whether a private company providing ownership, manage-
12 ment, operation, and maintenance services on an independent, for
13 profit, contractual, and permanent basis to any and all members of
14 the general public in the State of Washington serviced by large on-
15 site sewage systems, constitutes a "public service company" subject
16 to WUTC regulation under Title 80 RCW is a question of fact to be
17 determined by the Commission on a case-by-case basis properly in a

18 ²⁰ The Supreme Court in West Valley Land Company, Inc. v. Nob
19 Hill Water Association, 107 Wn.2d 359, 366, 729 P.2d 42 (1986), no-
20 ted that distinguishing factors include whether the company is an
21 independent corporation engaged in business for profit to itself at
22 the expense of a consuming public which has no voice in the manage-
23 ment of its affairs and no interest in the financial returns. See
24 also State ex rel. Addy v. Department of Public Works, 158 Wash.
462, 465, 291 Pac. 346 (1930). See also United and Informed Citi-
zen Advocates Network v. Washington Utilities and Transportation
Commission, 106 Wn. App. 605, 611-12, 24 P.3d 471 (2001), review
denied, 145 Wn.2d 1021 (2002) (the WUTC has clear authority to de-
termine whether any person or corporation is subject to regulation
under RCW 80.04.015 as a question of fact).

1 Declaratory Order proceeding.²¹ See WAC 480-07-930.²²

2 **VIII. REARGUMENT AND CONSIDERATION BY THE ALJ OF THE ISSUE OF**
3 **WUTC JURISDICTION AS A QUESTION OF LAW IS IMPROPER AS SUCH**
4 **HAS PREVIOUSLY BEEN DECIDED AGAINST THE WUTC BY A SUPERIOR**
5 **COURT JUDGE IN THE RELATED JUDICIAL PROCEEDING**

6 WUTC staff in its Statement of Fact and Law express the desire
7 to once more bring up its question as to whether the WUTC has jur-
8 isdiction over Wastewater Companies as a matter of law.

9 Since the public service laws do not provide the Com-
10 mission authority to regulate managers of LOSS, the Com-
11 mission does not have jurisdiction over such companies.

12 Commission Staff's Administrative Statement Of Fact And Law, pp. 2-
13 3.²³

14 WUTC staff continues to point to the Washington Supreme Court
15 decision in Cole v. Washington Utilities and Transportation Commis-
16 sion, 79 Wn.2d 302, 485 P.2d 71 (1971) as what it contends to be
17 the dispositive decision which purportedly sets definite limits on

18 ²¹ See Exhibit "C" at pp. 12-13.

19 ²² As service providers in the business sought to be regula-
20 ted, Stuth and Aqua Test have the requisite standing to petition
21 for a Declaratory Order. It should be noted that it is not uncommon
22 for private entities to petition the WUTC for a declaratory order
23 regarding jurisdictional questions. See, e.g., 1999 Petition for
24 Declaratory Order submitted by TECWA Power, Inc., Docket Number UE-
991993 (TECWA Power requested the WUTC to enter an order declaring
that a separate company it was in the process of acquiring which in
turn would own certain electric facilities would not be subject to
regulation by WUTC as a public service company; the WUTC did so in
a matter of only 3 months from the submittal of the Petition).

²³ This is, in essence, the assertion that "if the law doesn't
say that you can, then you can't".

1 the bounds of its jurisdiction.²⁴ Staff also contends that the de-
2 cision of the Court of Appeals in Washington Independent Telephone
3 Association v. Telecommunications Ratepayers Association for Cost-
4 Based and Equitable Rates, 75 Wn. App. 356, 880 P.2d 50 (1994) re-
5 inforces its assertion of lack of jurisdiction.²⁵ For more than
6 a mere succinct response that the jurisdictional question has al-
7 ready been fully argued to and decided against WUTC by a court of
8 competent jurisdiction, WUTC staff's "lack of jurisdiction as a
9 matter of law" argument is without merit.

11 ²⁴ WUTC Staff Statement of Fact and Law, at p. 3. Cole is,
12 however, inapposite as that case has nothing whatsoever in common
13 with the facts and issues presented in the case now before the WUTC
14 ALJ. The context in which the Supreme Court considered the clause
15 "as provided by the public service laws" under RCW 80.01.040(3) was
16 with respect to whether the WUTC had "authority to consider the ef-
17 fect of a regulated utility upon a nonregulated business" in order
18 to provide grounds for such nonregulated business to intervene in
19 complaint proceedings before it. Cole, 79 Wn.2d at 306. Rather
20 than setting out a cast-in-concrete jurisdictional test, all the
21 Cole Court stated was that the Oil Heat Institute "fail[ed] to
22 point out any section of title 80 **which suggests that** nonregulated
23 fuel oil dealers are within the jurisdictional concern of the comm-
24 ission." Id. (Emphasis added.) WUTC staff now tries to apply the
Institute's failure to suggest a jurisdictional nexus in its case
as a hard and fast exclusionary rule applicable to all cases, con-
trary to the full language of RCW 80.01.040(3) and those mandates
for fact finding as set forth in RCW 80.04.015. In any event, un-
like the Institute's failure in Cole, Stuth and Aqua Test point to
very specific provisions in Title 80 RCW and caselaw that do much
more than merely "suggest" that the business of owning, operating,
and managing large on-site sewage systems is a public service comp-
any subject to WUTC's jurisdiction and regulation, but mandate such
as a factual finding and determination WUTC has the statutory duty
to make upon full consideration of the record.

²⁵ WUTC Staff Statement of Fact and Law, pp. 4-5.

1 The law is very clear that an administrative agency has no po-
2 wer to ignore the mandate of a reviewing court.

3 Judicial decisions on appeal from administrative deci-
4 sions or orders determining questions of law are final
5 and conclusive on the administrative body, and the admin-
6 istrative body is bound to honor such judicial decisions,
7 and when its continuing jurisdiction conflicts with a
8 prior judicial determination, it may act only in a chang-
9 ed situation. . . . An administrative agency is without
10 power to do anything which is contrary to either the let-
11 ter or spirit of the mandate construed in light of the
12 opinion of the . . . court.

13 73A C.J.S. Public Administrative Law and Procedure § 466 (2004).²⁶
14 This is, in essence, the *law of the case* doctrine; to wit, "once a
15 court decides an issue, the same issue may not be relitigated in
16 subsequent proceedings in the same case."²⁷ In Stuth and Aqua Test
17 v. WUTC, the WUTC presented the identical issue and argument (lack
18 of jurisdiction as a matter of law) to the Court;²⁸ it was soundly

19 ²⁶ See Exhibit "C". Administrative agencies are duty bound to
20 follow and apply the law as found by a court of competent jurisdic-
21 tion where such ruling was not further appealed. Allegheny General
22 Hospital v. NLRB, 608 F.2d 965, 970 (3rd Cir. 1979). In re Wella A.
23 G., 858 F.2d 725, 728 (Fed. Cir. 1988) (agency has duty to comply
24 with the mandate of the reviewing court); Butler Lime and Cement
25 Co. v. Occupational Safety and Health Review Commission, 658 F.2d
26 544 (7th Cir. 1981) (the rule that an agency is limited on remand
27 by the instructions of the reviewing court is settled beyond ques-
28 tion); Chicago & North Western Transportation Company v. United
29 States, 574 F.2d 926, 930 (7th Cir. 1978) (on remand agency is
30 bound to apply the legal principles laid down by the court); Elli-
31 ott v. Weinberger, 564 F.2d 1219, 1226 (9th Cir. 1977) (agency's
32 duty is to follow the court's decision).

33 ²⁷ Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah,
34 114 F.3d 1513, 1520 (10th Cir. 1997).

35 ²⁸ Exhibit "C", at pp. 8-10.

STUTH AND AQUA TEST'S INITIAL
BRIEF FOR SUMMARY DETERMINATION
-- PAGE 14 OF 33

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

1 rejected by Judge Hicks;²⁹ and no appeal was taken by WUTC.³⁰

2 In any event and in stark contrast to both Cole and WITA, here
3 Stuth and Aqua Test expressly point to RCW 80.04.015, WAC 480-07-
4 930, and caselaw as comprising those specific "public service laws"
5 that grant WUTC the jurisdiction to enter a declaratory order and
6 make a determination as a question of fact whether a private compa-
7 ny providing LOSS ownership, operation and management services to
8 the public for hire constitutes a public service company subject to
9 regulation by the WUTC.³¹ See Exhibit "C", at pp. 13-14. Clearly,

10 _____
11 ²⁹ "[T]his is the kind of company that may qualify as a public
12 service company such that it should not be summarily dismissed as
13 a matter of law that no such qualification could ever be possible.
14 . . . So I don't see that it is a requirement that Title 80 men-
15 tioned sewage systems. To me that's contrary to what both the leg-
16 islature and the Supreme Court have decided on prior occasions."
17 Exhibit "C", at pp. 12 and 14.

18 ³⁰ Thompson v. State Department of Licensing, 138 Wn.2d 783,
19 799-800, 982 P.2d 601 (1999) (issue preclusion applies where no
20 further judicial review is sought by agency regardless of correct-
21 ness of decision).

22 ³¹ Stuth and Aqua Test also point out that under these public
23 service laws the essential determination that must be made is "what
24 it does is the important thing, not what it, or the state, says
that it is." West Valley Land Company, 107 Wn.2d at 366. Stuth and
Aqua Test further point out that the enumeration of public service
companies in Title 80 is exemplary only and does not constitute an
exclusive listing. If in fact Title 80 embodied an all-inclusive
list establishing the bounds to WUTC's jurisdictional reach, there
would be no reason for the Legislature to include the mandate that
"whether or not any person or corporation is conducting business
subject to regulation [under Title 80] . . . shall be a question of
fact to be determined by the commission." RCW 80.04.015. Moreover,
such a construction would render the Legislature's words "includes"
and "including, but not limited to" in RCW 80.04.010 and RCW 80.01.
(continued...)

1 Stuth and Aqua Test have here expressly and specifically pointed to
2 those parts of our public service laws which affirmatively demons-
3 trate that the WUTC has jurisdiction to (1) enter a declaratory or-
4 der as to which they have petitioned, and (2) determine that a per-
5 son or corporation dedicated to service the public need with its
6 facilities devoted to public use by providing LOSS ownership, op-
7 eration, and management services to the public for hire wherever
8 located, continuously and on demand in this State is in fact sub-
9 ject to regulation by WUTC as a public service company.

10 I'll say again that we live in a dynamic, growing so-
11 ciety and culture and that this is not so much "filling
12 the gap," . . . rather, this is addressing a new bud on
13 a growing tree. There were times when toilets were out-
14 houses. . . . There was a time when telephone wires had
15 to be strung, and for a while all they'd take is Morse
16 code, and then all of a sudden they could be voice by
17 wire. Now wireless communication through cell phones is
18 overtaking the world. There are many, many, many exam-
19 ples I could give about how the world changes and is dy-
20 namic. And I think that's exactly why the legislature
21 has this all-inclusive language, because they were wise
22 enough to see they couldn't foresee every possible ser-
23 vice that may come to be a public service. And the Su-
24 preme Court was wise enough to give the test in the In-
land Empire case that says it isn't what you call your-
self, it's what, in fact, you do that must be determined
as to whether or not you qualify and should be regulated
by the government.

20 *Exhibit "C"*, at pp. 13-14. *This issue has been laid to rest --*

21 _____
22 ³¹(...continued)

23 040(3) surplusage and a complete nullity; something that is not
24 ascribed to legislative enactments. "Statutes are to be construed,
wherever possible, so that no clause, sentence or word shall be su-
perfluous, void, or insignificant." United Parcel Service, Inc. v.
Department of Revenue, 102 Wn.2d 355, 361-62, 687 P.2d 186 (1984).

STUTH AND AQUA TEST'S INITIAL
BRIEF FOR SUMMARY DETERMINATION
-- PAGE 16 OF 33

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

1 *period!*³²

2 IX. THE LID ON PANDORA'S BOX IS KEPT SECURED BY
3 MAKING A FACTUAL CASE-BY-CASE DETERMINATION AS TO
4 WHETHER ANY PARTICULAR PERSON OR CORPORATION IS A
5 PUBLIC SERVICE COMPANY SUBJECT TO WUTC REGULATION

6 It is indeed well-settled under the public service laws of
7 this State that whether any person or corporation is a public ser-
8 vice company must be determined on a case-by-case basis as a ques-
9 tion of fact. As a matter of law, making such a determination in
10 this case does not thereby open Pandora's Box extending WUTC's au-
11 thority to regulate all general businesses that provide services or
12 sell commodities to the public. The concern as to over-extending
13 regulatory authority has long been answered in the negative under
14 the public service laws of this State. Consider the following ex-
15 cellent discussion from over 70 years ago regarding this issue:

16 What is a public utility, over which the state may ex-
17 ercise its regulatory control without regard to the pri-
18 vate interests which may be affected thereby? In its
19 broadest sense everything upon which man bestows labor
20 for purposes other than those for the benefit of his im-
21 mediate family, is impressed with a public use. No occu-
22 pation escapes it, no merchant can avoid it, no profess-
23 ional man can deny it. As an illustrative type one may
24 instance the butcher. He deals with the public, he in-

20 ³² The Chief ALJ has it correct that the issue as to whether
21 a Wastewater Company is a public service company subject to WUTC
22 regulation is a question of fact based on the evidence considered
23 in light of the body of principles embodied in Washington public
24 service laws. Prehearing Conference Order, at p. 2 para. 7. "The
classification statute, RCW 80.04.015, clearly focuses on whether
a person or a corporation conducts business subject to regulation
under Title 80 RCW. It is the conduct that makes the corporation
subject to regulation." Citizen Advocates, 106 Wn. App. at 611.

1 vites and is urgent that the public should deal with him.
2 The character of his business is such that under the police
3 power of the state it may well be subject to regulation,
4 and in many places and instances so regulated. The
5 preservation of cleanliness, the inspection of meats to
6 see that they are wholesome, all such matters are within
7 the due and reasonable regulatory powers of the state or
8 nation. But these regulatory powers are not called into
9 exercise because the butcher has devoted his property to
10 public service so as to make it a public utility. He
11 still has the unquestioned right to fix his prices; he
12 still has the unquestioned right to say that he will or
13 will not contract with any member of the public. What
14 differentiates all such activities from a true public utility
15 is this, and this only: That the devotion to public
16 use must be of such character that the public generally,
17 or that part of it which has been served and which has
18 accepted service, has the right to demand that that service
19 shall be conducted, so long as it is continued, with
20 reasonable efficiency under reasonable charges. Public
21 use, then, means the use by the public and by every individual
22 member of it, as a legal right.

23 Clark v. Olson, 177 Wash. 237, 246, 31 P.2d 534 (1934). See also
24 Inland Empire Rural Elect., 199 Wash. at 537-38.

Here, the case-specific determination that must be made as a
question of fact is whether:

(a) a person or corporation organized as a private, for-profit
business enterprise under applicable laws;

(b) whose service is dedicated to the ownership, management
and operation of large on-site sewage systems (at a minimum);

(c) for hire pursuant to a contract with the general public or
customers served by and wholly dependent upon such devoted facilities
for essential wastewater utility services on a continuous basis
24 hours a day, 7 days a week and 365 days a year;

1 (d) on demand for such service wherever situated in the State
2 of Washington for both existing LOSS and new LOSS;

3 (e) pursuant to and in accordance with State and local health
4 department and environmental requirements regarding design, const-
5 ruction, and performance standards; and

6 (f) is separate and independent from its public customers ser-
7 ved thereby, and as to which its customers are not members, share-
8 or stock-holders and derive no income from the services provided,
9 and exercise no influence in the private business enterprise as
10 either officers or board members;

11 is a public service company subject to regulatory control by WUTC
12 as to approval of reasonable tariffs and other business aspects re-
13 garding its enterprise? *This is but a very focused query that even*
14 *where answered affirmatively, Pandora's Box remains intact.*

15 **X. THE CASE FOR DESIGNATION AS A**
16 **PUBLIC SERVICE COMPANY**

17 Under the public service laws of the State of Washington, the
18 determination as to whether any person or corporation is a public
19 service company subject to regulation by the WUTC is a question of
20 fact based on what such company does. Factors to be considered in-
21 clude:

22 1. Whether or not the corporation holds itself out, express-
23 ly or impliedly, to supply its service or product for use either by
24 the public as a class or by that portion of it that can be served

1 by the utility pursuant to private contract entitling the users to
2 continuous service; or whether, on the contrary, it merely offers
3 to serve only particular individuals of its own selection such as
4 its members or stockholders. Inland Empire Rural Electrification,
5 199 Wash. at 537; State ex rel. Addy, 158 Wash. at 464-65.

6 2. Whether the company is an independent corporation engaged
7 in business for profit to itself at the expense of a consuming pub-
8 lic which has no voice in the management of its affairs and no int-
9 erest in the financial returns. West Valley Land Company, 107 Wn.2d
10 at 366.

11 3. Whether the company's devotion to public use is of such
12 character that the public generally, or that part of it which has
13 been served and which has accepted service, has the right to demand
14 that such service shall be conducted, so long as it is continued,
15 with reasonable efficiency under reasonable charges. Clark, 177
16 Wash. at 246.

17 4. Whether the public interest will be served by regulation
18 of the company as a public utility as demonstrated by need for the
19 service and fairness in the delivery of the service. RCW 80.01.040
20 (3).

21 It is against these factors that the Proposed Business Model
22 for a company owning, operating and managing large on-site sewage
23 systems must be evaluated. As presented by Petitioners to the WUTC
24 for its factual determination as meeting all the foregoing tests,

1 the *Proposed Business Model* consists of the following attributes:

2 (A) A person or corporation organized as a private, for-profit
3 business enterprise under applicable laws;

4 (B) Whose service is dedicated to the ownership, management,
5 and operation of large on-site sewage systems (at a minimum);

6 (C) For hire pursuant to a contract with the general public or
7 customers served by and wholly dependent upon such devoted faciliti-
8 es for essential wastewater utility services on a continuous basis
9 24 hours a day, 7 days a week and 365 days a year;

10 (D) On demand for such service wherever situated in the State
11 of Washington for both existing LOSS and new LOSS;

12 (E) Pursuant to and in accordance with State and local health
13 department and environmental requirements relating to design, cons-
14 truction, and performance; and

15 (F) Is separate and independent from its public customers ser-
16 ved thereby, and as to which its customers are not members, share-
17 or stock-holders and derive no income from the services provided,
18 and exercise no influence in the private business enterprise as
19 either officers or board members.

20 That the public interest will be served by such a company reg-
21 ulated by WUTC as a public utility is not only beyond peradventure,
22 such public interest is firmly established as fact.

23 As a utility serving the general public who depend on
24 a LOSS, a UTC regulated public service company could fill
this growing need [for operation and management services]

1 and serve an essential public function by protecting public health and safety [and environment] across the State.

2 *Exhibit "A"* at Exhibit 1, p. 2. And as further found and concluded
3 by Judge Hicks:

4 [Petitioners'] services [presently] can only be offered
5 where there is a guaranteed backup provided by a city or
6 a sewer district in accordance with Department of Health
7 rules. The State Department of Health has identified this
8 as a growing problem since cities and special districts
9 are unable to accommodate the rapidly growing needs for
10 required backup. The State Department of Health has concluded that a WUTC-regulated public service company would
11 in their opinion, be an acceptable public entity to undertake this State Department of Health requirement. . .
12 . [T]he petitioner is correct; that not only because of what's taking place in Tennessee but that they're being
13 urged by the Department of Health to provide a service that is ordinarily provided to the public by a municipality or special government district . . . that this is the
14 kind of company that may qualify as a public service company.

15 *Exhibit "C"* at p. 12.

16 The foregoing concerns, need and necessity for such service to
17 be provided by a WUTC-regulated public service company is echoed in
18 the additional letters and statements of support included in *Exhibit "D"*. Included therein are the following comments regarding the
19 public interest served by WUTC designation and regulation:

20 It is our belief that allowing private companies to
21 serve as public utilities would be good for public welfare as well. Specifically, as with Remington Heights,
22 plats where these systems are located may have Homeowners Associations in place that require the owners to pay for
23 services relating to the operation and maintenance of the LOSS systems. By allowing private companies to serve as
24 public utilities and be regulated as such, this would provide protection to homeowners by normalizing a rate structure that the public utility must adhere to.

1 Barclays North, Inc., Letter at p. 2.

2 In my professional opinion, Aqua Test's application for
3 authorization as a WUTC-regulated public service company
4 is an excellent alternative to a municipal corporation or
5 management district for the proper management of LOSS
6 systems. In this case the management entity would be a
private company regulated as a public utility and moni-
7 tored by the WUTC, which in my mind would make the entire
endeavor more responsive to ratepayers while serving to
8 protect the public health and the environment.

7 Stewart M. Oakley, Ph.D., Letter at p. 2.

8 Regulation by the WUTC of a private utility company has
9 many benefits to the public, some of which are:

10 1. Standardized regulations in how a company is struc-
11 tured, operated, and managed with respect to its capabil-
ities in identifying and tracking both physical and fin-
12 ancial performance issues/features.

13 2. Minimizes the risks of un-regulated, un-disciplin-
14 ed, inadequately staffed companies/competition taking ad-
vantage of the general lack of public knowledge with re-
gards to wastewater facilities and operations.

14 Terry Bounds, P.E., Letter at p. 1.

15 The approach of having a service provider being desig-
16 nated as a public utility and thus operating under the
17 public utility rules is forward thinking. It protects
18 the public from being overcharged and provides for a
19 stable and reliable entity that should be there for many
20 years to serve the public. Also the public has a sense
21 of security because they are dealing with a public util-
ity. The public utility concept is ideal for subdivisions
as it allows the developer or the home owners association
to contract with a known entity and be assured that they
are protected under the law and by the rules set forth
for public utilities.

22 James C. Converse, Ph.D., P.E., Letter at p. 1. See also A. Rob-
23 ert Rubin, Professor Emeritus N.C. State, Letter at pp. 2-3.

24 The recurring and established theme in the foregoing is the

1 public interest is served by allowing for a WUTC-regulated public
2 service company as described herein to provide ownership, operation
3 and management services to the public dependent upon large on-site
4 sewage systems through a controlled program providing for fiscally
5 responsible and stable companies affording continuous, dependable
6 delivery of an essential utility service for fair and reasonable
7 rates.

8 **XI. FACILITIES OWNERSHIP IS AN INTEGRAL AND ESSENTIAL**
9 **ATTRIBUTE OF A REGULATED WASTEWATER COMPANY**

10 The Proposed Business Model includes as an integral and essen-
11 tial attribute of any regulated Wastewater Company the ownership of
12 the physical facilities comprising a LOSS.³³ With ownership of the
13 physical facilities comes the capability to design and construct
14 new LOSS for developing and existing communities, especially in the
15 critical Puget Sound marine recovery areas.³⁴ The US EPA emphasizes

16 ³³ "The key element to a sustainable management structure is
17 the ability to enforce design and operational requirements on cus-
18 tomers/clients of the facility." **Exhibit "D"**, Letter from A. Rob-
19 ert Rubin, Professor Emeritus, N.C. State University. This key lies
in the fundamental attribute a Wastewater Company must possess of
facility ownership.

20 ³⁴ It should also be noted here that the Puget Sound Action
21 Team has expressed a desire and support for WUTC "regulation of
22 firms whose purpose is LOSS maintenance as public service compan-
23 ies" for a variety of reasons, including the fact that "WUTC regu-
24 lation will ensure that companies engaged in this business provide
fair rates, accountable business practices, and timely service . .
. to meet high standards and ensure protection of the environment."
PSAT Position Paper titled "WUTC Regulation of Large Onsite Sewage
Systems," Terry Hull (October 25, 2005). See Exhibit "I". This pa-
(continued...)

1 the ownership of on-site/clustered wastewater treatment systems³⁵
2 as an essential attribute of Responsible Management Entities (RME).

3 The designated management entity owns, operates, and
4 manages the decentralized wastewater treatment systems in
5 a manner analogous to central sewerage. Under this app-
6 roach, the RME maintains control of planning and manage-
7 ment, as well as operation and maintenance [to] provide
8 a . . . higher level of control of system performance
9 [and] reduce the likelihood of disputes [with] the prop-
10 erty owner. The RME can also more readily replace exist-
11 ing systems with higher-performance units or clustered
12 systems when necessary.

13 *Voluntary National Guidelines for Management of Onsite and Cluster-*
14 *ed (Decentralized) Wastewater Treatment Systems, p. 20 - "Model 5"*
15 *(US EPA 832-B-03-001, March 2003).*³⁶

16 ³⁴(...continued)

17 per is in the possession of and was produced by WUTC staff in resp-
18 onse to Stuth and Aqua Test's informal discovery request and formal
19 request for public records. Also produced by WUTC staff was a copy
20 of the NRRI Briefing Paper titled "State Commission Regulation of
21 Wastewater," dated October 2005. As characterized by WUTC's Chris
22 Rose, "this paper . . . points out the rationale for developing a
23 team approach by environmental and regulatory agencies . . . and
24 the utility regulators bring the 'economic regulation' expertise
into the picture to help put the companies on a more sound manage-
ment and financial footing". (Rose to David Danner Memo dated Oct-
ober 26, 2005).

³⁵ On-site and clustered wastewater treatment systems serve
approximately 25 percent of U.S. households (about 25 million) and
approximately 33 percent of new development. U.S. Department of
Commerce, U.S. Census Bureau, American Housing Survey for the Uni-
ted States - 1995 (issued September 1997).

³⁶ A "Responsible Management Entity" upon which Model 5 is
based is defined as "a legal entity responsible for providing var-
ious management services with the requisite managerial, financial
and technical capacity to ensure the long-term, cost-effective ma-
nagement of decentralized onsite or clustered wastewater treatment
(continued...)

STUTH AND AQUA TEST'S INITIAL
BRIEF FOR SUMMARY DETERMINATION
-- PAGE 25 OF 33

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

1 XII. THE TENNESSEE EXPERIENCE

2 The State of Tennessee has since 1994 regulated private Waste-
3 water Companies as public utilities under a statutory scheme very
4 similar to RCW Title 80.

5 Public utility means every individual, copartnership,
6 association, corporation, or joint stock company . . .
7 that own, operate, manage or control, within the state,
8 any interurban electric railway, traction company, all
9 other common carriers, express, gas, electric light,
10 heat, power, water, telephone, telegraph, telecommunica-
11 tions services, or any other like system, plant or equip-
12 ment, affected by and dedicated to the public use . . .

13 Tennessee Code § 65-4-101(6) (emphasis added). Tennessee's test
14 for inclusion is "or any other like system, . . ."; whereas Wash-
15 ington enlarges the scope of covered activities by using "includ-
16 ing, but not limited to" -- a distinction without a difference.³⁷

17 The Tennessee Regulatory Authority granted On-Site Systems, Inc. a

18 ³⁶(...continued)

19 facilities in accordance with applicable regulations and perform-
20 ance criteria." EPA Voluntary National Guidelines, at p. 29. A
21 "Clustered System" is defined somewhat similar to a LOSS except
22 that it covers two or more dwellings under common ownership. *Id.*
23 at p. 27. RME ownership is the "preferred management program for
24 clustered systems serving multiple properties under different own-
ership (i.e., subdivisions)." *Id.* at p. 16. Our Proposed Business
Model satisfies the criteria of EPA's Model 5 for RME (i.e., a WUTC
-regulated public service company) ownership of the LOSS.

³⁷ Contrary to WUTC staff contentions, the Tennessee public
utility statute is very comparable to that of Title 80 RCW. WUTC
Staff Statement of Fact and Law, at pp. 8-9. Similar to Washing-
ton's body of public service laws, under the Tennessee public uti-
lity laws it is held that "whether a business operation may be
classed as that of a public utility is controlled by the facts of
a particular case." *Johnson City v. Milligan Utility District*, 276
S.W.2d 748, 753 (Tn.App. 1954) [cert. denied, 1955].

1 Certificate of Convenience and Necessity on April 6, 1994 (Docket
2 No. 93-09040) and has regulated that company as a public utility
3 ever since (now Tennessee Wastewater Systems, Inc.) including app-
4 roval of business-related requirements and tariffs.³⁸ The TRA is
5 currently proposing administrative rules that cover in detail its
6 regulation of Wastewater Companies as public utilities. TRA Rule
7 Chapter 1220-4-12.³⁹

8 WUTC is invited in this Declaratory Order proceeding to take
9 official notice (RCW 34.05.452(5); WAC 480-07-495(2)) of the State
10 of Tennessee's regulatory program and Petitioners' Wastewater Comp-
11 any Model Rules Overview as a proffer of fact and law demonstrating
12 both the feasibility and practicality of regulating private Waste-
13 water Companies as public utilities. RCW 80.01.040(4). As duly and
14 correctly noted by Judge Hicks as part of the Court's decision:

15 I'll say again that we live in a dynamic, growing so-
16 ciety and culture and that this is not so much "filling
17 the gap," which I think counsel for the WUTC is correct
18 in saying the agency shouldn't be doing; rather, this is
19 addressing a new bud on a growing tree. . . [T]he Utili-
ties and Transportation Commission, despite whatever meager
funding they have to do these kinds of things, need
to hold a fact finding hearing, and if they do determine
that this is the kind of thing that can be a public ser-

21 ³⁸ Attached hereto as **Exhibit "F"** is a copy of available public
22 records obtained from the TRA and from its website relating to
and regarding the initial and subsequent designation of private
Wastewater Companies as regulated public utilities.

23 ³⁹ Attached hereto as **Exhibit "G"** is a copy of the underlying
24 Tennessee Code and the current red-lined version of the TRA's prop-
osed Wastewater Regulations.

STUTH AND AQUA TEST'S INITIAL
BRIEF FOR SUMMARY DETERMINATION
-- PAGE 27 OF 33

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

1 vice company the way it's been determined in Tennessee,
2 they will have to promulgate rules and regulations. But
3 there is guidance from the legislature through either the
4 Department of Health and the Department of Ecology, the
5 same way there is now with water systems. So I don't see
6 that it is a requirement that Title 80 mentioned sewage
7 systems. To me that's contrary to what both the legis-
8 lature and the Supreme Court have decided on prior occa-
9 sions.

6 *Exhibit "C"* at pp. 13-14. The Tennessee experience should be tap-
7 ped by WUTC and molded to fit Washington's specific needs.

8 **XIII. WUTC REGULATION OF WASTEWATER COMPANIES NEITHER**
9 **CONFLICTS WITH NOR DUPLICATES THE REGULATION OF LOSS BY DOH**

10 WUTC opines that WUTC regulation of the business enterprise
11 owning, operating and managing LOSS somehow conflicts with or dup-
12 licates the regulatory authority of DOH.⁴⁰ It is clear, however,
13 that the DOH and WUTC have very well-defined and distinctly diff-
14 erent regulatory roles to play when the subject is LOSS. Whereas,
15 DOH has authority regarding the criteria and standards related to
16 design, construction and performance of the LOSS itself;⁴¹ WUTC has
17 the focus of its authority on controlling the business practices of
18 the person or corporation owning, operating and managing a LOSS as
19 a public utility service.

20 ⁴⁰ Or simply that the Legislature has delegated the world of
21 LOSS and everything in and related to it to DOH. WUTC Staff State-
22 ment of Fact and Law, at pp. 7-8.

23 ⁴¹ "This chapter regulates the location, design, installation,
24 operation, maintenance, and monitoring of large on-site sewage sys-
tems to (a) achieve long-term sewage treatment and effluent dispos-
al; and (b) limit the discharge of contaminants to waters of the
state." WAC 246-272B-00101(2).

1 The utilities and transportation commission shall:

2 (3) Regulate in the public interest, as provided by the
3 public service laws, the rates, services, facilities, and
4 practices of all persons engaging within this state in
5 the business of supplying any utility service or commodity
6 to the public for compensation, and related activities
7

8 RCW 80.01.040. See also Ch. 480-80 WAC (utilities' general rules).

9 As for the ultimate implementation of the regulatory world as
10 such relates to Wastewater Companies there will be no conflicts or
11 overlapping of the distinct statutory authorities granted the vari-
12 ous state and/or local agencies. Each agency may draw upon the ex-
13 pertise of and powers vested in the other to effect the full force
14 of its own regulatory program. For example, where DOH regulations
15 require that a "public entity" serve as the primary management ent-
16 ity for LOSS,⁴² it may rely on a WUTC-regulated public service com-
17 pany to provide required LOSS management services to all the public
18 served thereby on demand, continuously, and for reasonable rates.⁴³
19 And where WUTC regulations are facility-specific as to standards
20 such must meet, it may rely on DOH adopted rules and regulations
21 specifically related to LOSS design, construction and performan-
22 ce.⁴⁴ Certainly, Judge Hicks saw no conflict -- only a direct

23 ⁴² WAC 246-272B-08001(2) (a) (vi) (A) (I).

24 ⁴³ Exhibit "A" at Exhibit 1, p. 2.

⁴⁴ There is no conflict of authority at the present time with
DOH setting the standards and criteria for design, construction and
(continued...)

1 benefit to WUTC from this symbiotic relationship:

2 [T]he [WUTC], despite whatever meager funding they have
3 to do these kinds of things . . . will have to promulgate
4 rules and regulations. But there is guidance from the
5 legislature through either the Department of Health and
6 the Department of Ecology, the same way there is now with
7 water systems.

8 *Exhibit "C"*, at p. 14.⁴⁵

9 In sum, there is no conflict as to the respective authorities
10 and regulatory domains of WUTC and DOH. It is the public interest
11 that will be served by WUTC regulating Wastewater Companies, and it
12 will be the environment and public health that will be protected by
13 requiring Wastewater Companies to be the responsible public entity
14 meeting all DOH standards and criteria for LOSS.

15 XIV. CONCLUSIONS

16 The WUTC is not venturing into a total void, black hole, or
17 bottomless abyss in making a determination that, as a question of
18 fact, the Proposed Business Model by Petitioners Stuth and Aqua

19 ⁴⁴(...continued)
20 performance of LOSS, and those municipal entities or special public
21 districts providing LOSS management services.

22 ⁴⁵ It is commonplace for WUTC to adopt other agency regula-
23 tions and standards by reference in its "999" rule series; e.g.,
24 WAC 480-110-999 (Water Companies), WAC 480-120-999 (Telephone Com-
panies), WAC 480-100-999 (Electric Companies), WAC 480-93-999 (Gas
Companies), WAC 480-70-999 (Solid Waste and Refuse Collection Comp-
anies), WAC 480-14-999 (Carriers). See also WAC 480-110-365(3)
(Maintenance), -365(4) (Quality of Water), -365(5) (Protection of
Water Supply), -365(6) (Operation and Maintenance) for particular
reference to DOH rules. It may also be prudent for WUTC to consider
what Tennessee is proposing as its Wastewater Regulations regarding
"Adequacy of Facilities". See Exhibit "G", TRA Draft Rules at p. 3.

1 Test qualifies and must be regulated by WUTC as a public service
2 company.⁴⁶ In addition to a wealth of existing public utility reg-
3 ulations covering water, gas and electric companies, the WUTC can
4 avail itself of what sister State agencies have done and are doing
5 with respect to the regulation of Wastewater Companies as a public
6 utility. See NRRI Briefing Paper and TRA Rules. Finally, Petition-
7 ers are offering suggestions for WUTC's consideration that are in-
8 cluded as a Model Rules Overview. *Exhibit "E"*.⁴⁷

9 WUTC's designation of the Petitioners' Proposed Business Model
10 as a public service company is consistent with and satisfies all
11 the factors that must be considered under the public service laws

12
13 ⁴⁶ The process for determining authority to regulate a parti-
14 cular business enterprise as a utility or contract carrier without
15 specific inclusion of such business by name in statute is certainly
16 not foreign to the WUTC. For example, the case of State v. Diamond
17 Tank Transport, Inc., 2 Wn.2d 13, 97 P.2d 145 (1939), affirmed the
18 regulation of garbage and refuse haulers by the WUTC's predecessor
19 agency pursuant to its broad statutory mandate as constituting con-
20 tract carriers of "property for compensation". It appears that WUTC
21 practice of regulating garbage and refuse haulers extends back to
22 at least 1937. See 1961-62 AGO No. 67, at p. 4. Specific statutory
23 designation of the class as a "garbage and refuse collection compa-
24 ny" was not given by the Legislature until 1961. Ch. 295, Laws of
1961. Moreover, not everything regarding WUTC regulation of an ind-
25 ustry must be spelled out in black and white in the statutes. State
26 ex rel. Don Williams Export, Inc. v. Timm, 78 Wn.2d 520, 525, 477
27 P.2d 15 (1970) ("While the Motor Carrier Act is silent on the spe-
28 cific standards to be applied by the commission in transfer of per-
29 mit proceedings, the commission has applied a public need, public
30 interest test which is well within its delegated authority.").

31 ⁴⁷ Northwest Cascade, Inc. has offered suggestions relating
32 to various requirements relevant to WUTC-regulated Wastewater Com-
33 panies. (Under "Private Utility Formation Criteria".)

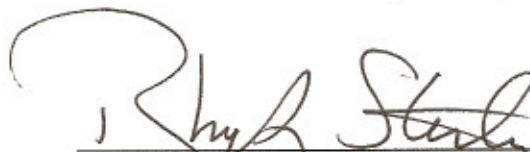
1 of this State, and moreover not only is such designation in the
2 public interest but is in fact in the best interest of the public
3 of this State dependent on large on-site sewage systems providing
4 a daily, essential public utility.⁴⁸

5 Based on the foregoing, Petitioners Stuth and Aqua Test resp-
6 ectfully ask the WUTC to grant its Petition and enter a Declaratory
7 Order finding and concluding that the *Proposed Business Model*, see
8 *supra*, at p. 21, qualifies and must be regulated as a public serv-
9 ice company (suggested to be denominated as a "Wastewater Company")
10 under Title 80 RCW.⁴⁹

11 DATED this 28th day of December, 2005.

12 Respectfully submitted,

13 RHYS A. STERLING, P.E., J.D.

14 
15
16 Rhys A. Sterling, WSBA #13846
17 Attorney for Petitioners

18 ⁴⁸ Attached hereto as **Exhibit "H"** is a copy of the currently
19 inventoried large on-site sewage systems as kept and reported by
20 the Department of Health. That Wastewater Companies owning, opera-
21 ting, and managing such systems efficiently, effectively, continu-
22 ously, and reasonably priced will provide the public in this State
with a useful service that "is of public consequence and need" is
beyond peradventure, and is an established fact under the evidence
in this matter. 73B C.J.S. Public Utilities § 1 (2004).

23 ⁴⁹ As a final note, absolutely no negative comments from the
24 public or others to the Stuth and Aqua Test proposal were submitted
to WUTC in response to its call for input sent to an extensive and
comprehensive mailing list.

STUTH AND AQUA TEST'S INITIAL
BRIEF FOR SUMMARY DETERMINATION
-- PAGE 32 OF 33

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

CERTIFICATION DECLARATION

I certify and declare under penalty of perjury under the laws of the State of Washington that I have read the foregoing Initial Brief; that I am a Petitioner in this matter individually and also as a principal owner and President of Aqua Test, Inc.; and that the stated facts included in and supporting the foregoing, including the Proposed Business Model as envisioned, are all consistent with our original Petition for Declaratory Order and are true and accurate to the best of my own personal knowledge, information, and belief.

12/28/05
DATE

William L. Stuth
WILLIAM L. STUTH (WRITTEN)

Kent Wash.
PLACE OF SIGNATURE

William L. Stuth
WILLIAM L. STUTH (PRINTED)

CERTIFICATION OF SERVICE

I certify under penalty of perjury
under the laws of the State of Washington
that on the 4th day of January
2006, I ^{personally served} ~~mailed~~ a copy of this document
to all parties.

DATED at Barroque, Washington

Cheryl Stent

* * * * *

EXHIBIT "A"

* * * * *

RHYS A. STERLING, P.E., J.D.
Attorney at Law

P.O. Box 218
Hobart, Washington 98025-0218
E-mail: RhysHobart@aol.com

1495 N.W. Gilman Blvd.
Suite 4-G
Issaquah, Washington 98027
(425) 391-6650
Facsimile (425) 391-6689

March 15, 2005

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: William Stuth and Aqua Test, Inc.
Petition for Declaratory Order

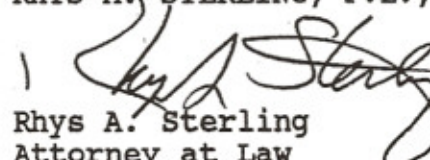
Honorable Commissioners:

On behalf of William Stuth and Aqua Test, Inc., and pursuant to RCW 34.05.240 and WAC 480-07-930, formally submitted hereby to the Washington Utilities and Transportation Commission is the enclosed PETITION OF WILLIAM STUTH AND AQUA TEST, INC., FOR DECLARATORY ORDER TO DESIGNATE PUBLIC SERVICE COMPANY for your consideration and favorable action.

Please contact me at any time if you have any questions regarding this Petition for Declaratory Order.

Very truly yours,

RHYS A. STERLING, P.E., J.D.


Rhys A. Sterling
Attorney at Law

Enclosure

cc: William Stuth
Aqua Test, Inc.

RECEIVED
RECORDS MANAGEMENT
05 MAR 16 AM 8:11
STATE OF WASH
UTIL. AND TRANSP.
COMMISSION

RECEIVED
RECORDS MANAGEMENT

05 MAR 16 AM 8:11

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In The Matter of the Petition of	)	Docket No. _____
WILLIAM L. STUTH, individually; and)	
AQUA TEST, INC., a Washington corpor-	)	PETITION OF WILLIAM STUTH
ation,	)	AND AQUA TEST, INC., FOR
for Declaratory Order designating	)	DECLARATORY ORDER TO DESIG-
a Public Service Company	)	NATE PUBLIC SERVICE COMPANY
_____)		

I. IDENTITY OF PETITIONERS

1.1 Petitioners in this request for Declaratory Order to designate a public service company are William L. Stuth, individually, and Aqua Test, Inc., a Washington corporation.

1.2 Petitioner William L. Stuth resides at 31424 W. Lake Morton Drive SE, Kent, WA 98042. Mr. Stuth is the principal owner and President of Petitioner Aqua Test, Inc.

1.3 Petitioner Aqua Test, Inc. is a Washington corporation having its principal place of business at 28620 Maple Valley Highway SE, Maple Valley, WA 98038. Aqua Test, Inc. either directly or indirectly intends to provide the utility services to the public as a public service company regulated by WUTC.

PETITION FOR DECLARATORY
ORDER
-- PAGE 1 OF 10

ORIGINAL

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

1 1.4 Petitioners' attorney in this matter is Rhys A. Sterling,
2 Attorney at Law, P.O. Box 218, Hobart, Washington 98025. Mr. Ster-
3 ling's business telephone number is 425-391-6650; the fax number is
4 425-391-6689; and e-mail address is RhysHobart@aol.com.

5 II. BACKGROUND FACTS CONSTITUTING BASIS OF PETITION

6 2.1 Stuth and Aqua Test for 19 years have provided large on-
7 site sewage system operation and management services to the public
8 pursuant to the provisions of WAC 246-272B-08001(2)(a)(vi) (and
9 former WAC 246-272-08001(2)(a)(vi)).

10 2.2 A large on-site sewage system (LOSS) is defined as "an
11 integrated arrangement of components for a residence, building, in-
12 dustrial establishment or other places not connected to a public
13 sewer system which conveys, stores, treats, and/or provides subsur-
14 face soil treatment and disposal on the property where it originat-
15 es, or on adjacent or nearby property; and includes piping, treat-
16 ment devices, other accessories, and soil underlying the disposal
17 component of the initial and reserve areas; and has design flows,
18 at any common point, greater than three thousand five hundred gal-
19 lons per day" but less than 14,500 gallons per day (gpd). WAC 246-
20 272B-01001; WAC 246-272B-03001(5)(a).

21 2.3 A LOSS generating the maximum 14,500 gpd at any common
22 point represents a residential subdivision or portion thereof con-
23 sisting of about 60 single-family homes. WAC 246-272B-11501(2)(C)
24 (i).

1 2.4 It is commonplace for residential developments to have a
2 LOSS composed of several subsystems each designed so as not to ex-
3 ceed the maximum flow at any common point, but which in fact exceed
4 a total of 14,500 gpd of wastewater actually treated and disposed.

5 2.5 Pursuant to State Department of Health (DOH) regulation,
6 a LOSS can be operated and maintained by a private company but only
7 where "a public entity serves as the primary management entity, or
8 as the third party trust for a private management entity." WAC 246
9 -272B-08001(2)(vi)(A)(1).

10 2.6 There has for some time been increasing the gap between
11 the number of municipal and special district entities willing and
12 able to provide back-up management services and an ever growing
13 number of existing and planned residential developments served by
14 a LOSS in unincorporated areas.

15 2.7 Stuth and Aqua Test know of several residential develop-
16 ments where hundreds of homeowners are on a LOSS as to which the
17 current special districts providing back-up management services
18 have expressed intentions to discontinue such required service and
19 no other existing municipal or special district is willing or able
20 to provide the service required by law.

21 2.7 Recognizing the imminent public and environmental health,
22 safety, and welfare issues (as well as the substantial public and
23 private resources at stake that could suffer from lack of required
24 operation and maintenance) stemming from the absence of sufficient

PETITION FOR DECLARATORY
ORDER

-- PAGE 3 OF 10

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhvsHobart@aol.com

1 and willing municipal and special district organizations providing
2 back-up management services, the State Department of Health supp-
3 orts the designation as "public entity" for all purposes of Chapter
4 246-272B WAC a "public service company" regulated by the Washington
5 Utilities and Transportation Commission pursuant to Title 80 RCW.
6 Attached hereto as *Exhibit 1* is a copy of a letter from Richard M.
7 Benson, P.E., LOSS Program Lead for DOH.

8 2.8 Stuth and Aqua Test desire and intend to offer and pro-
9 vide utility services to the public in the State of Washington as
10 a public entity in the form of a WUTC regulated public service com-
11 pany for all purposes of management including but not limited to
12 the ownership, operation, maintenance, repair, and replacement of
13 large on-site sewage systems pursuant to the requirements of Chap-
14 ter 246-272B WAC. Under this form of primary management, there is
15 no additional municipal or special district back-up.

16 2.9 The utility services intended to be provided by Stuth and
17 Aqua Test, or separate privately and closely held company, will be
18 performed as a "for profit" business held out for contractual use
19 by the general public or portions thereof utilizing a LOSS wherever
20 located in the State of Washington.

21 2.10 The public served by Stuth and Aqua Test, or a related
22 but separate private and closely held company, will have no owner-
23 ship interests or rights of control in such company, the utility
24 services from which will be provided on a permanent basis.

PETITION FOR DECLARATORY
ORDER

-- PAGE 4 OF 10

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhvsHobart@aol.com

1 2.11 The service area for each LOSS would be generally de-
2 fined to coincide with the boundaries of any related plat or dev-
3 elopment plan approved by an appropriate government agency. The
4 LOSS may consist of components located outside of the plat or ap-
5 proved development boundaries, but would nonetheless be included
6 within the service area covered by a LOSS management plan.

7 2.12 Possible ownership interests in the LOSS include indiv-
8 idual sewage systems that are connected to a LOSS together with the
9 LOSS components, real property and easement rights for access, tes-
10 ting, repair and necessary replacement of system components.

11 2.13 LOSS management must include the ability to charge and
12 collect reasonable fees and assessments for routine operation and
13 maintenance, as well as capital funds for repair and replacement of
14 LOSS components on a customary and emergency basis. As a regulated
15 public service company, such tariffs will be subject to the review
16 and approval of the WUTC.

17 2.14 Management services will include monitoring and testing
18 services provided at company-owned and operated facilities for fees
19 included within the approved tariff.

20 2.15 Management services will include LOSS component review
21 and approval with the overall intention to provide uniform compon-
22 ent parts that should yield more efficient and cost-effective ser-
23 vice to the public. The manner in which such uniformity is intend-
24 ed to be achieved will be included in the approved tariff.

PETITION FOR DECLARATORY
ORDER

-- PAGE 5 OF 10

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: Rhys@Hobart2001.com

1 3.4 The term "service is used in [Title 80 RCW] in its broad-
2 *est and most inclusive* sense." RCW 80.04.010 (emphasis added).

3 3.5 The general test used to determine if a corporation is to
4 be regulated by the WUTC is stated in Inland Empire Rural Electri-
5 fication Inc. v. Department of Public Service, 199 Wash. 527, 92 P.
6 2d 258 (1939) as follows:

7 A corporation becomes a public service corporation,
8 subject to regulation by the department of public serv-
9 ice, only when, and to the extent that, its business is
10 dedicated or devoted to a public use. The test to be
11 applied is whether or not the *corporation holds itself*
12 *out, expressly or impliedly, to supply its service or*
13 *product for use either by the public as a class or by*
14 *that portion of it that can be served by the utility; or*
15 *whether, on the contrary, it merely offers to serve only*
16 *particular individuals of its own selection.*

17 Inland Empire, 199 Wash. at 537 (emphasis added).

18 3.6 "The question of the character of a corporation is one of
19 fact to be determined by the evidence disclosed by the record. . .
20 . What it does is the important thing" Inland Empire, 199
21 Wash. at 538. See, e.g., West Valley Land Company, Inc. v. Nob Hill
22 Water Association, 107 Wn.2d 359, 366, 729 P.2d 42 (1986) (where
23 our Supreme Court noted that distinguishing factors include whether
24 the company is an independent corporation engaged in business for
profit to itself at the expense of a consuming public which has no
voice in the management of its affairs and no interest in the fin-
ancial returns). See also State ex rel. Addy v. Department of Pub-
lic Works, 158 Wash. 462, 465, 291 Pac. 346 (1930).

1 3.7 Whether a company comprised of Stuth and Aqua Test, Inc.,
2 or a separate company formed thereby, providing ownership, manage-
3 ment, operation, and maintenance services on an independent, for
4 profit, contractual, and permanent basis to any and all members of
5 the general public in the State of Washington serviced by large on-
6 site sewage systems, constitutes a "public service company" subject
7 to WUTC regulation under Title 80 RCW is a question of fact to be
8 determined by the Commission in a Declaratory Order proceeding.

9 Any interested person may petition the commission for
10 a declaratory order with respect to the applicability to
11 specified circumstances of a rule, order, or statute en-
forceable by the commission, as provided by RCW 34.05.
240.

12 WAC 480-07-930.

13 3.8 Because whether a company providing the services to the
14 public identified by Stuth and Aqua Test legally constitutes a pub-
15 lic service company is a question of fact, there exists uncertainty
16 that must be resolved only by specific determination of the Commis-
17 sion. This question has not been answered previously and, based on
18 the need and support expressed by the State DOH, the Commission's
19 determination that such company is to be regulated as a public ser-
20 vice company is essential in order to be recognized under law as a
21 public entity for purposes of LOSS management. The uncertainty that
22 exists directly and adversely affects the Petitioners and their ab-
23 ility to serve the public, and the public interest will be served
24 by the Commission making such determination. RCW 34.05.240(1).

PETITION FOR DECLARATORY
ORDER

-- PAGE 8 OF 10

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)391-6650
Facsimile (425)391-6689
E-mail: RhysHobart@aol.com

1 IV. REQUESTED RELIEF

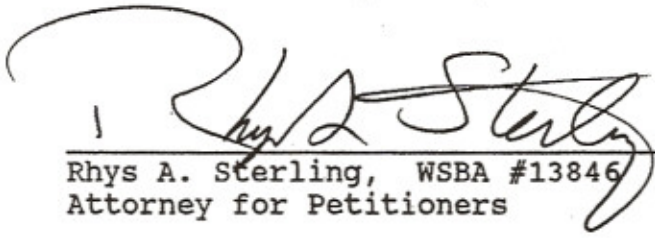
2 4.1 Petitioners respectfully ask the WUTC to promptly issue
3 an Order declaring that a privately owned for-profit company pro-
4 viding services to the public including and not limited to the man-
5 agement, ownership, operation, and maintenance of large on-site se-
6 wage systems and any components thereof all as defined by WAC 246-
7 272B-01001, as now or hereafter amended, and that intends thereby
8 to be deemed a public entity for all purposes under Chapter 246-
9 272B WAC, is a public service company subject to regulation and
10 tariff approval by the WUTC. WAC 480-07-930(5)(a).

11 4.2 The Declaratory Order should include a directive that any
12 private company desiring to provide such LOSS management services
13 to the public shall apply to the WUTC for tariff and operating plan
14 approval.

15
16 DATED this 7th day of February, 2005.

17 Respectfully submitted,

18 RHYS A. STERLING, P.E., J.D.

19
20 
21 Rhys A. Sterling, WSBA #13846
22 Attorney for Petitioners
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATION DECLARATION

I certify and declare under penalty of perjury under the laws of the State of Washington that I have read the foregoing Petition for Declaratory Order, that I am a principal owner and President of Aqua Test, Inc., and that the stated facts supporting this Petition are true and accurate to the best of my personal knowledge, information, and belief.

2/7/05
DATE

William L. Stuth
WILLIAM L. STUTH (WRITTEN)

Maple Valley Wash
PLACE OF SIGNATURE

William L. Stuth
WILLIAM L. STUTH (PRINTED)

EXHIBIT 1



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY
1500 West Fourth Avenue • Suite 403 • Spokane, Washington 99204-1656

March 9, 2005

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, Washington 98504-7250

**RE: DOH Support for Stuth / Aqua Test, Inc.
Petition to UTC for Authorization as Public Service Company**

Honorable Commissioners:

I am writing to express my support for an application to the UTC for authorization as a Public Service Corporation on behalf of Mr. William Stuth and Aqua Test, Inc.

I am the Program Lead for the Washington State Department of Health (DOH) Large Onsite Sewage System (LOSS) program. Washington Administrative Code defines "LOSS" as a sewage system with subsurface treatment and disposal (usually on the same site where sewage is generated) with design flows between 3500 and 14,500 GPD. Our program reviews/approves LOSS engineering projects and administers an operating permit program to assure systems are properly sited, designed, constructed and managed.

Assuring that all LOSS are properly managed is critical to protecting public health and the environment and is one of the central goals of our program. We find that assuring proper management is particularly problematic for projects serving residential subdivisions where lots are individually owned. Accordingly our LOSS rules (WAC 246-272B) require for these types of projects that a "public entity" (generally interpreted to mean a municipal corporation) must provide direct management of the LOSS or at least serve in a "standby" capacity (act as a third party guarantor for a private management entity such as a homeowner association).

Our requirement for a municipal entity is controversial and in many cases hasn't provided the assurance we hoped for. Developers complain there is a lack of municipal entities or special districts willing and able to directly manage such systems or to serve as a third party trust. Reasons cited include lack of expertise or staff resources, impractical service distance, concern about collecting delinquent service accounts, perceived potential liability, etc. We have received complaints from homeowner associations required to pay ongoing fees to maintain the trust relationship without receiving any service in return. Some special sewer districts have struggled to provide adequate management services and in at least one case the municipal entity failed to meet its obligations upon failure of the private management entity.



UTC Commissioners

3/9/05

Page 2 of 2

We are currently revising our rules and working with a LOSS Rule Development Committee ("LRDC"). The LRDC voted as its top priority to develop alternatives to the "public entity" requirement. As a necessity under these circumstances, DOH is looking for a reasonable and appropriate alternative to a municipal corporation to provide long-term and secure management, operation, and maintenance of large onsite sewage systems in the State of Washington.

Researching options we feel that a UTC-regulated Public Service Company could provide a much needed alternative for the purposes of assuring direct management, operation, and maintenance of large onsite sewage systems in the State of Washington. As a utility serving the general public who depend on a LOSS, a UTC regulated public service company could fill this growing need and serve an essential public function by protecting public health and safety across the State.

Finally, we have a great deal of experience dealing with Mr. William Stuth and Aqua Test, Inc. Aqua Test currently provides maintenance services for hundreds of onsite sewage systems statewide including a number of LOSS on our database. We've found Aqua Test to be ethical, knowledgeable and competent and they have a proven track record of properly managing systems and providing safe and reliable service to customers.

For the foregoing reasons this office and department supports the Petition for Declaratory Order submitted to the UTC by William Stuth and Aqua Test, Inc. We feel a UTC-regulated Public Service Corporation can provide competent and professional LOSS management services to the public and a much needed and essential safeguard for protecting public health and safety, and the environment in the State of Washington.

Thank you for your consideration and favorable action on the subject Petition. Feel free to contact me anytime at (509) 456-6177 or via email if you have any questions.

Sincerely,



Richard M. Benson, P.E.
Large On-site Program
richard.benson@doh.wa.gov

cc: William Stuth / Aqua Test Inc.
Rhys A. Sterling, PE, JD

* * * * *

EXHIBIT "B"

* * * * *

APR 8 2005



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

April 8, 2005

Mr. Rhys A. Sterling, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, WA 98025-0218

Re: William Stuth and Aqua Test, Inc.
Petition for Declaratory Order, Docket No. A-050528

Dear Mr. Sterling,

The Commission acknowledges receipt of your petition, filed on March 16, 2005, for a declaratory order asserting jurisdiction over Aqua Test, Inc., as a public service company.

Pursuant to RCW 34.05.240(5)(d) and WAC 480-07-930(5)(b), however, the Commission notifies you that it will not enter a declaratory order in response to your request.

You state that your client, William Stuth and Aqua Test, Inc., provide operation and management services to large on-site sewage systems (LOSS), pursuant to Department of Health (DOH) regulation WAC 246-272B-08001(2)(a)(vi) and its predecessor. You urge that the Commission declare that it has jurisdiction to regulate LOSS operators and managers, in order to qualify as "public entities" within the terms of DOH regulations, and offer support in the form of a letter from the pertinent DOH program manager.

You cite RCW 80.01.040(3) for the proposition that persons "supplying any utility service" are subject to regulation as public service companies. You also cite to cases, including *Inland Empire Rural Electrification Inc. v. Department of Public Service*, 199 Wash. 527, 92 P.2d 258 (1939), to support your view that a corporation holding itself out to provide its service to the public is a public service company. You argue that under RCW 80.04.015, whether or not a

Mr. Rhys A. Sterling

April 8, 2005

Page 2

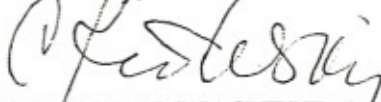
company is a public service company is a question of fact to be determined by the Commission, and you urge that the Commission should conduct a declaratory order proceeding to determine whether your clients' LOSS management service constitutes a public service company.

The Commission declines to begin a declaratory order proceeding because it believes, as a matter of law, that it has no jurisdiction over companies providing such services. The Commission's enabling statute, chapter 80.01 RCW, is broad in its language to enable the Commission to pursue whatever programs the legislature may authorize it to conduct with specific grants of authority in the remaining relevant chapters of titles 80 and 81. Without the authority to conduct a program, however, the Commission lacks the jurisdiction to regulate the services your clients conduct.

As the State Supreme Court held in *Cole v. Washington Utilities and Comm'n*, 79 Wn.2d 302, 306, 485 P. 2d 71 (1971), "although RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause[:] 'as provided by the public service laws . . .'" The Court further required a showing that some section of Title 80 RCW rendered the business in question "within the jurisdictional concern of the commission" before allowing the Commission to exercise jurisdiction over the business. The *Inland Empire* decision that you cite refers to the conduct of a regulated public service, the provision of electricity, which is defined in RCW 80.04.010 and for which regulatory jurisdiction is granted in Chapter 80.28 RCW. We believe that without legislation defining the service as a regulated public service business, and without a specific statute defining the Commission's regulatory role and granting it the authority to act, the agency has no authority to regulate the operation or management of large on-site sewage systems.

Thank you for your inquiry.

Sincerely,


for CAROLE J. WASHBURN
Executive Secretary

* * * * *

EXHIBIT "C"

* * * * *

APPEARANCES

FOR THE PETITIONER:

RHYS A. STERLING
ATTORNEY AT LAW
PO BOX 218
HOBART, WASHINGTON 98025-0218
(425) 391-6650
EMAIL: RhysHobart@aol.com

FOR THE RESPONDENT:

CHRISTOPHER G. SWANSON
ASSISTANT ATTORNEY GENERAL
PO BOX 40128
OLYMPIA, WA 98504-0128
(360) 664-1220
EMAIL: chriss3@atg.wa.gov

1 the Department of Health, which, it appears to this court,
2 supports this application of the petitioner being
3 designated a "public entity." The record before me
4 includes a letter from the Department of Health
5 representative to the WUTC of March 9, 2005, supporting
6 the petitioner being authorized as a public service
7 corporation, signed by Richard Benson from the Department
8 of Health and stating that there is a public need here.

9 Petitioner wants to be designated a "public entity."
10 Petitioner cites RCW 80.01.040(3) and argues their being
11 such an entity is a question of fact pursuant to
12 RCW 80.04.015; that the general test is found in *Inland*
13 *Rural Empire Electrification v. Department of Public*
14 *Service*, 199 Wash 527, 537 (1939), and other cases.

15 On April 8, 2005, the WUTC notified petitioner that
16 it will not enter such a declaratory order or order that a
17 fact finding hearing be held since they hold that they
18 have no jurisdiction over such companies without a
19 specific legislative declaration citing *Cole v. WUTC*, 79
20 *Wn.2d* 302, 306 (1971) and they distinguish the *Inland*
21 *Empire* case by saying that under Title 80, electricity is
22 specifically mentioned as being subject to regulation,
23 whereas there is no mention in Title 80 of regulation of
24 sewer systems.

25 On April 21, 2005, petitioner filed a petition in

1 this court couching it either as an appeal under the APA,
2 or, in the alternative, an application for a writ of
3 certiorari.

4 On May 11, 2005, WUTC filed a response claiming that
5 this is indeed an APA appeal but not a proper action for a
6 writ of certiorari, and further claims as an affirmative
7 defense that whether to convert a declaratory order into
8 an adjudicative proceeding is within the sole discretion
9 of the WUTC.

10 The parties filed cross-motions for summary judgment,
11 although if this is an APA appeal, there are separate and
12 distinct local rules that apply so that a summary judgment
13 wouldn't be appropriate; nevertheless, the issues are
14 joined for determination today.

15 Here's what I understand the parties are arguing:
16 The petitioner argues that they provide management and
17 operation services to large on-site sewage systems serving
18 the public, and this service is needed where there is an
19 inability to be reasonably connected to a public sewer
20 system; however, their services can only be offered where
21 there is a guaranteed backup provided by a city or a sewer
22 district in accordance with Department of Health rules.
23 The State Department of Health has identified this as a
24 growing problem since cities and special districts are
25 unable to accommodate the rapidly growing need for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

required backup.

The State Department of Health has concluded that a WUTC-regulated public service company would, in their opinion, be an acceptable public entity to undertake this State Department of Health requirement. Petitioners then, in part at the urging of the State Department of Health, have asked the WUTC to make a formal determination that, pursuant to RCW 80.04.015, that they are indeed such a company as set out in WAC 480-07-930 procedure. But WUTC has declined a fact finding hearing as a "matter of law."

Petitioners argue first that statutory construction is a question of law and reviewed *de novo* and no deference is due an agency when the matter under review is general law and therefore not within the agency's area of special expertise but deals rather with their scope of authority.

Second, that RCW 80.01.040(3) has broad, inclusive language such as "including, but not limited to," and lists such things as water companies. Normally, they say, this kind of language means that there are other items that are not specifically listed but that are also included, and this is underscored, they say, by it being followed or by following this inclusive language with the additional phrase "but not limited."

Even more, they point out, that at the same time RCW 80.04.010 defines the term "service" in its broadest and

1 most inclusive sense. They say the legislature has
2 expressly stated in RCW 80.04.015 that whether any
3 business is subject to this kind of regulation "shall" be
4 a question of fact to be determined by the WUTC.

5 Third, they argued, a long-standing Supreme Court
6 case, *Inland Empire*, mentioned above, at page 537, has set
7 out the test to be whether the corporation holds itself
8 out expressly or impliedly to supply its service to the
9 public as a class or whether to only particular
10 individuals of the corporation selection, and that this
11 determination is a question of fact.

12 Fourth, they argue that *Cole v. WUTC*, 79 Wn.2d 302
13 (1971) doesn't reach our issue and only dealt with WUTC's
14 inability to regulate companies not subject to their
15 jurisdiction when such companies were in competition with
16 companies that were subject to their jurisdiction.

17 Fifth, that the enumeration of public service
18 companies in Title 80 is exemplary, not exclusive, and
19 includes language such as "whether or not any person or
20 corporation is conducting business subject to regulation."

21 Sixth, they say that WUTC's shortcut bypassing the
22 fact finding hearing may itself evidence a prejudgment of
23 the question at issue, which would be evidence that it
24 was, in fact, arbitrary.

25 Finally, seventh, they point out that other states

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

with similar laws, in particular Tennessee, do regulate these kind of sewage systems as a public utility.

Now, the Washington Utilities and Transportation Commission, which I've been referring to as WUTC, responds that review is governed by RCW 34.05.570(c) and (d). First, WUTC's counsel argues it that their own rhetoric of "could not possibly fall under the commission's regulation" is simply rhetoric describing an opinion regarding the *ratio decidendi* of prior Supreme Court opinions and not a factual finding.

Second, they argue, although RCW 80.01.040(3) gives broad authority by saying "including but not limited to," WUTC is still limited to those activities provided for in the "public service laws."

Third, they argue that this issue was settled in *Cole*, mentioned above, at pages 305 to 306, where there was no power to regulate competition involving nonregulated companies who were not public service companies, arguing that an agency's authority must be strictly construed.

Fourth, they point out in *Telephone Association v. Ratepayers Association*, 75 Wn. App. 356 (1994), that the court affirmed *Cole*. There the court stated at page 368 that no section of Title 80 permitted the WUTC to set up a fund which all local exchange companies must contribute to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

but from which not all could draw.

Fifth, they argue petitioner's interpretation might extend to any business commodity such as gas, although I'll add myself that water is just as much a commodity as is gas.

Sixth, they say agency authority must arise from specific legislative directive, and if WUTC decided to regulate large on-site sewer systems, they would have to promulgate rules with no legislative guidance as to the extent of their authority and may even duplicate regulation by other state agencies.

Seventh, they argue the WUTC may not institute a special proceeding until it has formed a preliminary belief that it has jurisdiction, they say, RCW 80.04.015 provides, "whenever the Commission believes," and they emphasize the word "believes." There is no authority cited for this position that personal belief alone rather than findings of fact and legal principles can be, on its own, a determinative factor, although I will say in oral argument in answer to the Court's questions, counsel for the Commission pointed out that all agencies at some point have to operate on the belief or perception of what they see in front of them.

Eighth, they say that RCW 80.04.015 and RCW 34.05.240 grant the WUTC discretion to choose to act or not so that

1 even if the WUTC "believed" it had jurisdiction, it still
2 "may or may not" choose to exercise it. They say it can
3 choose not to act if it believes the issues raised by
4 petitioners is not controversial under RCW 34.05.240(1)(a)
5 and (b). But I would only add here that the fact that the
6 Department of Health, another large state agency, is
7 supporting the petitioners in their application, it seems
8 to me on its face makes this controversial when two state
9 agencies are taking opposite positions on the same subject
10 matter.

11 Ninth, they argue that neither Title 34 nor Title 80
12 require the WUTC to conduct a proceeding in response to a
13 petition to determine its jurisdiction. And they say
14 *WEA v. PDC*, 150 Wn.2d 612, 622 (2003) holds an agency's
15 expression of an "opinion" in the form of guidelines as
16 opposed to rules or declaratory order is not an agency
17 action for court review.

18 Finally, tenth, the WUTC argues that there are no
19 liberty or property interest at issue, and therefore there
20 can be no violation of due process similar to the
21 situation in *WITA v. WUTC*, 149 Wn.2d 17, 24-26 (2003),
22 where no property interest was said to exist in a
23 determination that another provider could enter the area
24 where current providers were said to have an exclusive
25 service area.

1 Finally, the petitioner's reply to this response is,
2 first, WUTC's assertion that they have no authority to
3 regulate large on-site sewer systems misses the point that
4 regulation is currently under the Department of Health but
5 that the Department of Health supports this petition;
6 rather, WUTC is being asked to determine is this a public
7 service company or not, that can qualify, if it is, for
8 public safety backup the same way a municipality can or a
9 special district can now.

10 Second, they argue, *Cole* didn't settle WUTC's
11 jurisdiction in a way being asserted by the Commission
12 since Chapter 80.04 RCW's interpretation of its broad
13 scope is a question of fact and has to be determined on a
14 case-by-case basis, with the test explained in *Inland*
15 *Empire* at page 537.

16 Third, they say, as well explained in *Clark v. Olson*,
17 177 Wash. 237, 246 (1934), any business may be
18 characterized as a "public service" but whether it is
19 subject to regulation as such depends on the *Inland Empire*
20 test just stated.

21 Fourth, they say the WUTC cannot avoid its mandatory
22 duties under the guise of merely exercising discretion to
23 form a "belief" or "choosing whether to act," and that
24 jurisdiction is a *de novo* question for this or a higher
25 court.

1 And finally, fifth, even if discretion is involved,
2 they say, it must not be exercised contrary to a statutory
3 mandate, citing RCW 34.05.570(4)(b).

4 Now that concludes my notes, which is merely a
5 restatement of the written briefs and oral argument. And
6 I spent considerable time reflecting on this, and I am
7 convinced rightly or wrongly, I suppose, that the
8 petitioner is correct; that not only because of what's
9 taking place in Tennessee but that they're being urged by
10 the Department of Health to provide a service that is
11 ordinarily provided to the public by a municipality or
12 special government district; that this is the kind of
13 company that may qualify as a public service company such
14 that it should not be summarily dismissed as a matter of
15 law that no such qualification could ever be possible.
16 One could even argue this is an extension of the
17 regulation of water, though I don't think this case is
18 determined on that basis.

19 So I would reverse the summary finding by the
20 Commission and remand this matter back to the Commission
21 to hold the statutory mandated fact finding hearing.

22 I have no opinion as to how that fact finding hearing
23 should resolve itself. That would have to be determined
24 by the Commission based on the facts it finds and the law
25 it applies. But I do rule that the petitioners in this

1 case have set out a prima facie case that requires the
2 Commission to hold a fact finding hearing and make a
3 determination as to whether or not this kind of company
4 can be a public utility.

5 I'll say again that we live in a dynamic, growing
6 society and culture and that this is not so much "filling
7 the gap," which I think counsel for the WUTC is correct in
8 saying the agency shouldn't be doing; rather, this is
9 addressing a new bud on a growing tree.

10 There were times when toilets were outhouses. In
11 fact, I'm old enough to remember, or certain members of my
12 family used an outhouse and didn't have indoor plumbing.
13 But the world is changing. There was a time when
14 telephone wires had to be strung, and for a while all
15 they'd take is Morse code, and then all of a sudden they
16 could be voice by wire. Now wireless communication
17 through cell phones is overtaking the world. There are
18 many, many, many examples I could give about how the world
19 changes and is dynamic.

20 And I think that's exactly why the legislature has
21 this all-inclusive language, because they were wise enough
22 to see they couldn't foresee every possible service that
23 may come to be a public service. And the Supreme Court
24 was wise enough to give the test in the *Inland Empire* case
25 that says it isn't what you call yourself, it's what, in

1 fact, you do that must be determined as to whether or not
2 you qualify and should be regulated by the government.

3 I think the Department of Health sees this. That's
4 why they're urging action. I think this petitioner is
5 willing to step up to the plate, and there may be others,
6 if they're successful in this arena. And I think the
7 utilities and Transportation Commission, despite whatever
8 meager funding they have to do these kinds of things, need
9 to hold a fact finding hearing, and if they do determine
10 that this is the kind of thing that can be a public
11 service company the way it's been determined in Tennessee,
12 they will have to promulgate rules and regulations. But
13 there is guidance from the legislature through either the
14 Department of Health and the Department of Ecology, the
15 same way there is now with water systems. So I don't see
16 that it is a requirement that Title 80 mentioned sewage
17 systems. To me that's contrary to what both the
18 legislature and the Supreme Court have decided on prior
19 occasions.

20 So if counsel can agree on an order of remand, I will
21 negotiate it or sign it. If you need time, you can
22 present it, if you both sign off on it, ex parte,
23 otherwise you can note it for presentation.

24 MR. STERLING: Thank you, Your Honor.

25 THE COURT: I also want to thank both counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

not only for the quality of their work but for their professionalism in which they were courteous to each other, courteous to the Court and the staff, and I appreciate that. Thank you.

(THE PROCEEDINGS CONCLUDED.)

* * * * *

EXHIBIT "D"

* * * * *



STATE OF WASHINGTON

DEPARTMENT OF HEALTH

OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY

1500 West Fourth Avenue • Suite 403 • Spokane, Washington 99204-1656

March 9, 2005

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, Washington 98504-7250

**RE: DOH Support for Stuth / Aqua Test, Inc.
Petition to UTC for Authorization as Public Service Company**

Honorable Commissioners:

I am writing to express my support for an application to the UTC for authorization as a Public Service Corporation on behalf of Mr. William Stuth and Aqua Test, Inc.

I am the Program Lead for the Washington State Department of Health (DOH) Large Onsite Sewage System (LOSS) program. Washington Administrative Code defines "LOSS" as a sewage system with subsurface treatment and disposal (usually on the same site where sewage is generated) with design flows between 3500 and 14,500 GPD. Our program reviews/approves LOSS engineering projects and administers an operating permit program to assure systems are properly sited, designed, constructed and managed.

Assuring that all LOSS are properly managed is critical to protecting public health and the environment and is one of the central goals of our program. We find that assuring proper management is particularly problematic for projects serving residential subdivisions where lots are individually owned. Accordingly our LOSS rules (WAC 246-272B) require for these types of projects that a "public entity" (generally interpreted to mean a municipal corporation) must provide direct management of the LOSS or at least serve in a "standby" capacity (act as a third party guarantor for a private management entity such as a homeowner association).

Our requirement for a municipal entity is controversial and in many cases hasn't provided the assurance we hoped for. Developers complain there is a lack of municipal entities or special districts willing and able to directly manage such systems or to serve as a third party trust. Reasons cited include lack of expertise or staff resources, impractical service distance, concern about collecting delinquent service accounts, perceived potential liability, etc. We have received complaints from homeowner associations required to pay ongoing fees to maintain the trust relationship without receiving any service in return. Some special sewer districts have struggled to provide adequate management services and in at least one case the municipal entity failed to meet its obligations upon failure of the private management entity.



UTC Commissioners
3/9/05
Page 2 of 2

We are currently revising our rules and working with a LOSS Rule Development Committee ("LRDC"). The LRDC voted as its top priority to develop alternatives to the "public entity" requirement. As a necessity under these circumstances, DOH is looking for a reasonable and appropriate alternative to a municipal corporation to provide long-term and secure management, operation, and maintenance of large onsite sewage systems in the State of Washington.

Researching options we feel that a UTC-regulated Public Service Company could provide a much needed alternative for the purposes of assuring direct management, operation, and maintenance of large onsite sewage systems in the State of Washington. As a utility serving the general public who depend on a LOSS, a UTC regulated public service company could fill this growing need and serve an essential public function by protecting public health and safety across the State.

Finally, we have a great deal of experience dealing with Mr. William Stuth and Aqua Test, Inc. Aqua Test currently provides maintenance services for hundreds of onsite sewage systems statewide including a number of LOSS on our database. We've found Aqua Test to be ethical, knowledgeable and competent and they have a proven track record of properly managing systems and providing safe and reliable service to customers.

For the foregoing reasons this office and department supports the Petition for Declaratory Order submitted to the UTC by William Stuth and Aqua Test, Inc. We feel a UTC-regulated Public Service Corporation can provide competent and professional LOSS management services to the public and a much needed and essential safeguard for protecting public health and safety, and the environment in the State of Washington.

Thank you for your consideration and favorable action on the subject Petition. Feel free to contact me anytime at (509) 456-6177 or via email if you have any questions.

Sincerely,



Richard M. Benson, P.E.
Large On-site Program
richard.benson@doh.wa.gov

cc: William Stuth / Aqua Test Inc.
Rhys A. Sterling, PE, JD

BARCLAYS  NORTH INC.™
A Developer of Distinction

September 30, 2005

Mr. Rhys A. Sterling
PO Box 218
Hobart, WA 98025

Re: UTC Support for Aqua Test, Inc.

Dear Rhys:

On behalf of Barclays North, Inc, I am writing to support the request of Aqua Test, Inc. to be recognized as a public utility by the Washington Utilities and Transportation Commission (WUTC).

For over 17 years, Barclays North, Inc has been developing residential and commercial real estate throughout the Puget Sound region and select markets in the United States. To date, our company has built 664 homes, developed over 3,000 residential lots, and over 500,000 sq. ft of commercial space. Our company is focused on developing quality projects that establish a strong sense of community and lasting value.

Barclays North, Inc recently developed a 104-lot plat named L106-1 Remington Heights LLC in Monroe, Washington. The previous name of this plat was Ramar Estates/Monroe Golf Course and the previous owner was Mona Lisa Estate Partners. After exhausting attempts with the city to extend sewer services to the Ramar Estates/Monroe Golf Course, the previous owner made the decision to pursue the installation of a large on-site sewage system (LOSS).

In Washington State, LOSS systems are required to be operated and maintained either directly by or under the guaranteed backup of a public entity. On March 7, 1996, the previous owner reached an agreement with the "Holmes Harbor Water District" to act as the backup entity for a period of ten years. Having secured a backup entity for the LOSS, an agreement providing for the operation of an "on-site wastewater system" was signed August 12, 1996 between the Washington State Department of Health (WSDOH) and Mona Lisa Estate Partners.

Shortly after acquiring this project February 2004, our company pursued the actual design and construction of the LOSS. The Washington State Department of Health gave final approval/acceptance of the LOSS on April 6, 2005 and the LOSS was constructed. However, we were notified February 24, 2005 that the Holmes Harbor Water District no longer desired to serve as the backup entity for the Remington Heights plat. Our company is currently searching for a public entity to serve as backup for this plat.

While searching for a public entity to serve as backup, our company has faced some challenges. We have found it difficult to educate jurisdictions about the LOSS process and the systems in general because many jurisdictions have never dealt with them before. We have faced difficulties getting these jurisdictions to sit down and hold any discussion at all. The process is very time and information intensive and it has been our experience that many

C:\Documents and Settings\ldg\Local Settings\Temporary Internet Files\OLK4\UTCsupportLetterAquatetest.doc

jurisdictions are not interested in hearing anything beyond "sewer/sewage". Allowing a private company, such as Aqua Test-who understands the design, construction, operation, and maintenance of these systems, to serve as a WUTC regulated public service company simply makes sense.

Companies are often left "shopping" for a jurisdiction to serve as a backup provider. Many times these jurisdictions have no specialty in the sewer/sewage utility area, let alone the design, operation, construction, or maintenance of an actual LOSS system. While contacting jurisdictions that presently serve as backup utilities, it has been our experience that, though it is allowed, many are unwilling to reach outside their jurisdictional boundaries to act as backup provider for an LOSS system. Essentially, this means projects that are located in jurisdictions unwilling to take the "risk" of an LOSS system never even get off the ground.

Should a catastrophic event occur at the site of an LOSS, it would serve the public interest well to have a private company, trained in the design, construction, operation and maintenance of these systems, respond to restore and ensure continuity and functionality of the system. It is our understanding that a public service company regulated by WUTC would be allowed to serve LOSS's located all across Washington State. This would allow a private company, such as Aqua Test, to offer service on demand wherever services are required. This benefit to public safety and health cannot be understated. Projects where LOSS's are located would no longer be limited to waiting for a municipality, which may or may not be trained in the operation of the LOSS system, to respond to incidents that occur.

It is our belief that allowing private companies to serve as public utilities would be good for public welfare as well. Specifically, as with Remington Heights, plats where these systems are located may have Homeowners Associations in place that require the owners to pay for services relating to the operation and maintenance of the LOSS systems. By allowing private companies to serve as public utilities and be regulated as such, this would provide protection to homeowners by normalizing a rate structure that the public utility must adhere to.

Lastly with respect to growth management, having an experienced, knowledgeable, and willing LOSS public utility in place provides a mechanism to facilitate the efficient use of scarce developable property outside the UGA's. This will provide a thoughtful balance that serves both the goals of the Growth Management Act and the community as a whole.

In closing, I would like to note our strong support for the request of Aqua Test, Inc. to become recognized as a public utility by WUTC. This is something that the LOSS market severely needs and we look forward to WUTC approval being granted to Aqua Test, Inc.

Sincerely,

BARCLAYS NORTH, INC.



Tony R. Kastens
President

TRK/bca



October 4, 2005

Rhys A. Sterling, P.E., J.D.
P.O. Box 218
Hobart, WA 98025

RE: Support for Aqua Test, Inc. for Authorization as a Public Service Corporation from Washington Utilities and Transportation Commission



Dear Mr. Sterling:

I wish to express my professional support for the application of Aqua Test, Inc. to the WUTC for authorization as a public service corporation.

As a professor of environmental engineering here at CSU, Chico, I have worked extensively in the area of onsite wastewater treatment in teaching, research and consulting over the last 20 years. I have specifically focused on onsite nitrogen removal processes, and I developed a teaching module for onsite nitrogen removal for the Consortium of Institutes for Decentralized Wastewater Treatment; this teaching module is now used at numerous universities and onsite training centers throughout the country.

My work with onsite nitrogen removal technologies has clearly demonstrated that nitrogen removal for individual family dwellings is unlikely to be successful because of the costs of monitoring, and operation and maintenance. In contrast, large onsite sewage systems (LOSS) hold much promise for nitrogen removal because of economies of scale that allow monitoring, operation and maintenance costs to be distributed among a number of dwelling units, thus lowering the cost per dwelling unit. In addition, wastewater flows and characteristics from multiple dwelling units do not fluctuate as widely as from individual family dwellings, making nitrogen removal much easier from a technical standpoint.

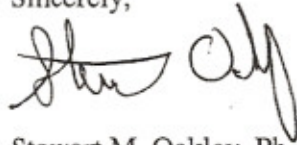
Proper management of LOSS systems, however, is crucial to their success, and is especially crucial when concerned with nitrogen removal. Management of LOSS systems through a municipal corporation or management district has not met with much success in various states because of numerous problems, many of which are political in nature.

In my professional opinion, Aqua Test's application for authorization as a WUTC-regulated public service company is an excellent alternative to a municipal corporation or management district for the proper management of LOSS systems. In this case the management entity would be a private company regulated as a public utility and monitored by the WUTC, which in my mind would make the entire endeavor more responsive to ratepayers while serving to protect the public health and the environment.

Finally, I have worked with Aqua Test for over 10 years on various projects, and one of my former students is the general manager. I find Aqua Test to be one of the more professional companies working in onsite wastewater treatment nationwide. I would give Aqua Test, Inc. the highest of recommendations as to its ability to properly manage LOSS systems and to provide reliable service to customers while ensuring protection of public health and the environment.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stewart M. Oakley". The signature is fluid and cursive, with the first name being more prominent.

Stewart M. Oakley, Ph.D.
Professor

cc: William Stuth
Aqua Test, Inc.

October 5, 2005



814 AIRWAY AVENUE
SUTHERLIN, OREGON
97479

TOLL FREE:
(800) 348-9843

TELEPHONE:
(541) 459-4449

FACSIMILE:
(541) 459-2894

Rhys A. Sterling
PO Box 218
Hobart, WA 98025

Subject: Public Utility Support Letter for Aqua Test

Dear Mr. Sterling:

My name is Terry Bounds and I am the executive VP, principle, and one of the founders of Orenco Systems, Inc. My company has been in the Large Onsite Systems industry for over 24 years. We have pioneered many products, own numerous patents, and operate LOSS systems of our own. If you wish, you may access our website at www.orenco.com for further history and details about Orenco.

For over 20 of those 24 years Orenco has worked closely with the principle of Aqua Test (Bill Stuth Sr.). Their reputation for managing LOSS systems in the state of Washington is unmatched in quality and performance longevity. The need for LOSS systems continues to increase at a rapid rate, as Clean Water Act funding is diminished, and, as the need to recycle/re-use wastewater increases. And with that, the demand on operation and maintenance needs for LOSS systems increases directly proportional to the increase in demand for these systems.

It is imperative that private companies be allowed to manage these LOSS systems. LOSS system configurations provide relatively new solutions and responsibilities for public municipalities to manage. Therefore, private operators, such as Aqua Test, are often better equipped and staffed with specialists, familiar with onsite technologies, and more able to demonstrate the sustainability of the LOSS systems in the public arena.

Regulation by the WUTC of a private utility company has many benefits to the public, some of which are:

1. Standardized regulations in how a company is structured, operated, and managed with respect to its capabilities in identifying and tracking both physical and financial performance issues/features.
2. Minimizes the risks of un-regulated, un-disciplined, inadequately staffed companies/competition taking advantage of the general lack of public knowledge with regards to wastewater facilities and operations.

3. Expedite the obsolescence or improvements of LOSS systems that do not prove to be adequately sustainable. There are many onsite wastewater systems available, but, because of high operation/maintenance or repair/replacement costs, not all are readily sustainable without intensive and sustainable operation and maintenance.

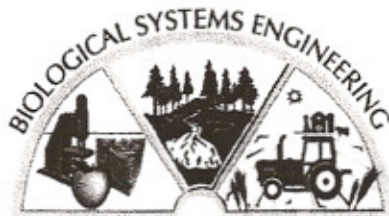
These are a few key points to take into consideration for ensuring sustained public, health, welfare, and safety.

I strongly support the appointment of Aqua Test becoming a private utility regulated under the WUTC. I feel they are capable and able to diligently address these onsite O&M needs. Should you have any questions please do not hesitate to call me at (800) 348.9843 ext. 218

Sincerely,



Terry Bounds, PE
Executive Vice President
Oreco Systems, Inc.



University of Wisconsin - Madison
College of Agricultural and Life Sciences

460 Henry Mall * Madison, WI 53706

608/262-3310 * FAX:608/262-1228

e-mail: bse@facstaff.wisc.edu

Web site: <http://bse.wisc.edu/>

Nov. 2, 2005

Rhys A. Sterling
P. O. Box 218
Hobart, WA 98025

Dear Attorney Sterling,

This letter is in support of granting Aqua Test the ability to operate as a public utility for the purpose of being a service provider for all types of onsite systems (LOSS systems) which includes residential and commercial units.

Attached is a short vitae indicating my qualifications for making this support. In summary, I have been a professor for the past 35 yrs conducting research, teaching and extension work in the onsite wastewater industry. I recently retired from the University and continue to consult in the onsite area.

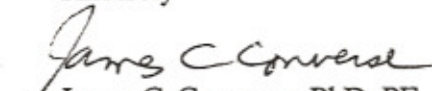
The onsite industry is in critical need of having qualified service providers for all types of onsite systems. Owners of onsite systems, especially homeowners, are very reluctant to pay a service provider to service their onsite systems. They feel that the system does not need to be serviced until something catastrophic has happened to it and they feel that they are not getting a value. Also there is a lack of qualified service providers. The approach of having a service provider being designated as a public utility and thus operating under the public utility rules is forward thinking. It protects the public from being overcharged and provides for a stable and reliable entity that should be there for many years to serve the public. Also the public has a sense of security because they are dealing with a public utility. The public utility concept is ideal for subdivisions as it allows the developer or the home owners association to contract with a known entity and be assured that they are protected under the law and by the rules set forth for public utilities.

Since many onsite systems are located outside of a municipality or water/sewer districts, it is important to be able to set up a public utility that can operate throughout the State of Washington and have the same protection/privileges as those served by public utilities within a municipality or water/sewer district.

Aqua Test is highly regarded by the onsite industry as being a very responsible entity with highly qualified staff. Its founder, Bill Stuth, is nationally known for his knowledge of onsite systems, especially in diagnosing failing systems and servicing onsite systems. He is in demand to speak at a

national level on high strength wastes and diagnosing failing systems. Aqua Test has been an onsite service provider for many years and one of the most qualified in the country. Issuing them a permit to operate as a public utility will allow them to provide better service to the public.

Sincerely


James C. Converse, PhD, PE
Emeritus Professor

Short Vitae - James C. Converse

James C. Converse is currently emeritus professor after having been a professor in the Biological Systems Engineering Department at the University of Wisconsin Madison for 35 yrs. He has been involved in onsite wastewater treatment since joining the faculty in 1970. He was one of the team members who developed the mound system and continued to develop and study it over the last 35 yrs. In addition he has conducted research, teaching and extension in many other areas of on-site wastewater treatment. He currently is on the Board of Directors of the National Onsite Wastewater Recycling Association (NOWRA) and past co-chair of the Education Committee responsible for the technical content of the annual meeting and pre-conferences. He has organized and conducted a number of post conference workshops/symposium for NOWRA annual meeting.

He served as the Chair of the recent 10th National Symposium of Individual and Small Community Sewage Symposium and has served as chair of past symposiums. He is chair of the 11th National Symposium of Individual and Small Community Sewage Symposium to be held in 2007. He consults, lectures and conducts workshops relating to onsite wastewater treatment and dispersal in Wisconsin and around the country including maintenance and Basics of On-site. He completed the Train the Trainer workshop for National O&M Service Provider Program in July 2005.

He served as Department Chair from 1988 – 1996. He has received numerous award including the Gunlogson Country Side Engineering Award in ASAE. He is a Fellow in ASAE. He has numerous publications on-site wastewater treatment which are available upon request.

Rhys A. Sterling, Attorney at Law
P.O. Box 218
Hobart, WA, 98025

Dear Mr. Sterling;

Subject: Statement for Stuth/Aqua Test for LOSS

My name is Albert Robert Rubin and I am an Emeritus Professor in the Biological and Agricultural Engineering Department at North Carolina State University and currently a senior environmental specialist with a consulting firm, McKim and Creed. From October 1999 until July 2005 I was a visiting scientist with the United States Environmental Protection Agency, Office of Wastewater Management in Washington, DC, where I was responsible for providing assistance to The Agency concerning management programs for onsite and decentralized wastewater systems. Publications developed in support of these management programs include Voluntary Guidelines for Management of Onsite and Decentralized Wastewater Systems (832 - C - 03-002, 2003) and numerous papers (ASAE, WEF, NOWRA). These EPA Guidelines and progressive state agencies throughout the nation recognize the importance of properly managed wastewater systems as a permanent and essential element of the wastewater infrastructure.

Management Services:

Onsite and decentralized wastewater systems have become increasingly complex in the last 20 years. Onsite and decentralized wastewater systems are an effective option for protecting public health and the environment, property values, and community investment only when the systems are properly managed. Regardless of the management system selected in a community, the service remains a vital element of the infrastructure as long as the wastewater systems are required. The concept of managed onsite wastewater systems is not a new or novel idea. Fairfax County in Virginia has been managing the onsite wastewater facilities in that county for over 40 years. More recently, the Loudoun County Sanitation Authority and the Hampton Roads Sanitary District are providing services for decentralized systems.

Both public and private management entities exist to provide management services for onsite and decentralized wastewater systems. In rural and sub-urban areas of Tennessee, the Tennessee Onsite Utility Company (a private concern)

has been chartered for over 5 years to provide management services for systems in defined service areas. In New Jersey and portions of Pennsylvania, American Water is providing management services for a variety of decentralized facilities.

The development of public and private facilities is most effective where the management entity is sustained through appropriate state mandate. Utility services licensed by the state possess powers and authorities not granted to homeowner associations and private service providers. Without the powers and authorities listed in the EPA Guidelines, management services are limited. Further, without the power to enforce, management services are very limited in their authority to assure proper system operation, maintenance and repair, monitoring and testing. The key element to a sustainable management structure is the ability to enforce design and operational requirements on customers/clients of the facility.

Private Management Services:

Management services are critical to the success of onsite and decentralized utility systems. Often public entities are limited in their ability to provide service without a mandate from an elected body. A private service provider can, through contractual agreements, provide necessary and essential services immediately. The immediacy of the action serves public health and environmental protection well.

Options for providing management services are directed most effectively when accomplished as an element of a utility service. Private power, gas, phone and solid waste services have been demonstrated as effective in providing a set of essential services, vital to community well-being. Onsite and decentralized wastewater services are no different.

Regulation of Onsite and Decentralized Services:

Onsite and decentralized system complexity has increased dramatically since passage of the Clean Water Act Amendments in 1972. These systems are capable of producing very high quality effluent suited for a variety of recycle and reuse activities, or simply suited for dispersal to land. Regardless of the fate of the liquid generated, some level of professional service is necessary to assure proper system operation and management.

Providing the service requires some level of operator competence, a sustainable management entity to assure service is provided in perpetuity, and necessary cash reserve to assure proper operations. These are best provided through a regulated entity such as a utility.

The utility concept assures the general public that costs for the necessary onsite/decentralized services are reasonable, assures the utility commission that cash reserves are available to operate a system in perpetuity, and assures the client base that the necessary services will be available through time.

Public and private interests are best served when licensed or regulated utilities provide essential services. The regulation originates with trusted bodies such as the Utility Commission and the Commission assures that the operator is successful in the provision of essential services.

Utility operations are essential to assure the proper performance of the complex onsite and decentralized systems designed to protect health and the environment. Without competent operations, systems may not function properly and consequences of failure of the onsite and decentralized systems in a watershed or on a lot have dire consequences for the environment.

I hope these comments are helpful in your deliberations and negotiations with the State. If I may be of additional assistance, please feel free to contact me.

Sincerely;

A handwritten signature in black ink, appearing to read 'A. Rubin', with a long horizontal flourish extending to the right.

A. Robert Rubin, Professor Emeritus
Biological and Agricultural Engineering, North Carolina State University
And
Senior Environmental Specialist, McKim and Creed

PETER BROWNING, DIRECTOR
HOWARD LEIBRAND, M.D., HEALTH OFFICER
CORINNE STORY, ENVIRONMENTAL HEALTH SUPERVISOR
PHONE: (360) 336-9380 FAX: (360) 336-9401



Liquid Waste Program
On Site Operations, Monitoring and Maintenance
700 South Second Street, #301, Mount Vernon, WA 98273-1071

November 9, 2005

Mr. Rhys A. Sterling, P.E., J.D.
PO Box 218,
Hobart, WA 98025

Subject: Aqua Test, Inc. seeking approval from the Washington Utilities and Transportation Commission (WUTC) to be recognized as a public utility.

Dear Mr. Sterling,

Mr. Bill Stuth Sr. has requested a letter of support regarding approval from the WUTC to be recognized as a public utility. I strongly support his request for a number of reasons. As program lead for the Skagit County Public Health Department's Operations and Maintenance Program I have had direct experience with Mr. Stuth's business on a professional level. His company provides operations and maintenance services to several large on site wastewater treatment systems in Skagit County in a professional, reliable and consistent manner.

The problem as it presently exists is that there is lack of regulation of the large on site system's management of the operation and maintenance activities and the requirement to have the services provided by an O&M provider. The WUTC would provide this regulatory enforcement authority with recognition of Aqua Test, Inc, or any other O&M provider as a public utility. Management is necessary for determination of the large or small on site septic system's performance. When the septic system is performing as designed it is meeting the public interest by protecting the environment and public health.

As a public utility the WUTC would then have regulatory authority of Aqua Test, Inc. or any other private O&M provider in order to meet the public interest by providing fair regulation of rates and business practices. This would be accomplished by ensuring the O&M provider is qualified and provides the services necessary as outlined in the Washington Administrative Code.

Thank you for the opportunity to comment on this important issue.

Sincerely,
Steve Olsen
Steve Olsen
Environmental Health Specialist





Public Health

Seattle & King County

HEALTHY PEOPLE. HEALTHY COMMUNITIES.

Dorothy F. Teeter, MHA, *Interim Director and Health Officer*

November 15, 2005

Bill Stuth
Aqua Test Inc.
P.O. Box 1116
Black Diamond, WA 98010-1116

Re: UTC Regulations Governing Private Utilities Performing Onsite Sewage Services

Dear Bill:

It was a pleasure talking with you last week. I think there is a lot of agreement between you and me concerning the potential role that a private utility could play in managing small community and individual onsite sewage systems. As you know I have a lengthy history working with the onsite sewage industry in Washington. The experience includes working at the local regulatory level, both in Jefferson County and now Public Health Seattle King County, and at a state policy level with work with the DOH rule committee, technical review committee and the Board of Engineer's Onsite Advisory Committee to name a few.

As the industry has matured over the last 20 or so years there has been an increasing reliance on the use of more complicated technologies. Commensurate with that has been a growing understanding that use of complex technology on sensitive properties will only be effective if systems are operated and maintained properly. Until now operation and maintenance responsibility has been directed at private individuals with enforcement by local health agencies. While there have been some successes, in my opinion they are limited and due to a variety of factors I won't get into here, I believe are inherently limited.

Another approach to small system operation and maintenance is to have sewer services provided by a public utility. Establishing a framework where there is a utility available to provide "turn key" service to the public by installing, owning and operating onsite systems tailored to the individual site conditions, customer needs and community plans would provide a vital service, both for environmental protection and restoration and for public health protection. In some cases, existing public utilities have provided this service in a limited manner. However, very few existing utilities have shown interest and most existing public utilities serve only within their designated service areas that are often confined to the geographic area of the municipality or special district. This leaves service gaps in the outlying areas where service could be provided by a privately owned public utility company.

However, I believe that there should be in place a regulatory framework before privately owned public utilities should be relied on. Regulations addressing privately owned utilities would need to cover the technical aspects of the services that the utility intends to offer as well the management practices that support the operations. I believe that the UTC is already in the

Eastgate Environmental Health
14350 SE Eastgate Way • Bellevue, WA 98007
T 206-296-4932 F 206-296-4919
www.metrokc.gov/health



City of Seattle

Gregory J. Nickels, Mayor



King County

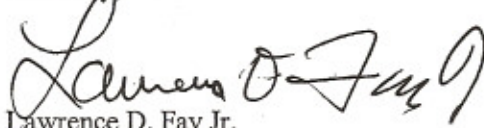
Ron Sims, Executive

Bill Stuth
Page 2
November 15, 2005

business of regulating private water and solid waste handling utilities with responsibility among other things of establishing franchises and setting rates. I believe that UTC regulation of privately owned utilities who engage in onsite sewage system services is logical extension of their current authority. I also believe that such regulation is necessary for the utilities in order for them to be able to develop rational service plans, for the customer to assure that the utilities have the financial capability of delivering the service reliably while keeping costs in line, and to public health in order to assure that utility companies are in it for the long haul.

I should stress that these are my opinions and do not necessarily represent the opinion of PHSKC or the King County Board of Health. Let me know if you have any question or I can be of further assistance.

Sincerely,



Lawrence D. Fay Jr.
Section Manager, Community Environmental Health
Public Health Seattle & King County

LF:dc

cc: Rhys A. Sterling

EXHIBIT "E"

SUGGESTED/DISCUSSION
MODEL RULES OVERVIEW FOR WASTEWATER COMPANIES

A. Definitions:

Wastewater Company or "Company" includes any for-profit business enterprise organized pursuant to applicable law that owns, operates and manages large on-site sewage systems (LOSS), at a minimum, for hire, upon demand, continuously, and under contract with the public served by such LOSS, and is regulated by the WUTC as a public service company pursuant to Title 80 RCW and agency rules and regulations. A Wastewater Company is dedicated to service the public need through its facilities devoted to public use. Expressly excluded are any nonprofit organizations or associations serving only their own members; municipal entities including cities, counties, and towns; quasi-municipal entities including port districts and water/sewer districts; and any other public utilities already regulated by WUTC as public service companies.

Large On-Site Sewage System (LOSS) means a qualifying integrated arrangement of components for a residence, building, industrial establishment or other places, exclusive of all internal plumbing fixtures and building sewers, not connected to a public sewer system which conveys, stores, treats, and/or provides subsurface soil treatment and disposal on the property where it originates, or on adjacent or nearby property; and includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas; and has design flows, at any common point, greater than three thousand five hundred gallons per day but less than 14,500 gallons per day (gpd) as currently or hereafter defined in general by WAC 246-272B-01001 and WAC 246-272B-03001 (5)(a) and regulated by the State Department of Health. In addition and subject to approval/consent of the Department of Ecology, those mechanical/lagoon systems greater than 3,500 gpd and other on-site systems greater than 14,500 gpd under WDOE jurisdiction may be operated, managed, and owned/controlled by a Wastewater Company in the same manner as a LOSS. And, subject to approval by local jurisdictional health departments, and smaller kinds and sizes of on-site sewage systems including those serving individual customers. In such circumstances, the Department of Ecology or the local jurisdictional health department should be substituted for the Department of Health as appropriate herein.

Operate and Manage includes all aspects of large on-site sewage system operation, maintenance, monitoring, and management activities and undertakings, whether continuous or periodic in nature, in order to conduct a safe and nuisance free facility that meets all applicable and relevant operating/discharge permit requirements imposed by state or local government agencies and/or performance standards as set by adopted regulations.

Own means ownership by deed or bill of sale, or ownership under a design/construct/operate arrangement, conveying absolute ownership and control of a large on-site sewage system to the Wastewater Company for dedication of service and devotion to public use, and includes free and unencumbered access by easement to all component parts thereof wherever located on private or public property.

B. Qualifying Large On-Site Sewage Systems:

Large on-site sewage systems that are entitled to be served by a Wastewater Company as a matter of right upon demand made by the public or other customer dependent thereon for wastewater collection, treatment and disposal, must meet the following criteria:

1. The LOSS must/will be designed by a registered professional engineer or other licensed entity; the design plans must/will be approved by the State Department of Health; satisfactory construction must/will be evidenced by a construction certification form and approved Department of Health as-built plans; and any applicable operating permits must/will be issued by the Department of Health and be in full force and effect and in good standing.

2. The LOSS must have a State Department of Health approved operation and maintenance (O&M) manual and approved management plan such as required by WAC 246-272B-08001(2) (a) (vi).

3. An existing LOSS must be currently or initially owned by a homeowners' association or other customer pursuant to Department of Health approved and recorded Covenants, Conditions, and Restrictions (CCRs). The association or other customer must possess the legal authority to assess and collect charges from its membership for operation, maintenance, management, repair, reconstruction and expansion of the large on-site sewage system that may be assigned to the Wastewater Company. Otherwise, the Wastewater Company may contract with each customer served by the LOSS individually.

4. Prior to service being accepted by the Wastewater Company of an existing LOSS, the Company is entitled to full access to the LOSS to inspect such facilities and components, and to monitor essential functions of the LOSS including influent, effluent, and any monitoring wells or other locations whatsoever, to determine whether the LOSS meets all applicable and relevant discharge and/or performance standards and requirements imposed by permit or by regulation of the State or local health departments. The Wastewater Company is not obligated to enter into a service agreement to own, operate and manage any existing LOSS that does not meet current requirements regarding operational or environmental standards unless and until the homeowners' association or other customer commits itself to financing all necessary modifications, upgrades or other changes to the LOSS identified by the Wastewater Company and acceptable to the Department of Health in order to meet current minimum standards and requirements applicable to such LOSS.

5. If approved by WUTC as part of the Wastewater Company tariff and financial plan, prior to service being accepted by the Wastewater Company the homeowners' association or other customer must commit to deliver to the Company cash or other suitable security in an amount as defined by tariff that will be promptly deposited in a dedicated interest bearing account available to the Company to make withdrawals for emergency purposes necessary to ensure safe and continuous operation and management of the LOSS. Emergency situations include sudden disruption of LOSS service by component failure or breakage, power outage, or act of nature. As a condition to continued service by the Company, the homeowners' association or other customer must commit itself to promptly and timely replenishing such account to its full value as declared hereinabove. If the foregoing is not approved by the WUTC as part of the Wastewater Company tariff and financial plan, the Wastewater Company may take into consideration as part of its rate and financial structure the necessity to have adequate and sufficient on hand or readily accessible reserve funds for all such purposes described herein.

6. If approved by WUTC as part of the Wastewater Company tariff and financial plan, prior to service being accepted by the Wastewater Company the homeowners' association or other customer must commit to deliver to the Company cash or other suitable security in an amount as defined by tariff that will be set aside in a reserve fund as a dedicated account for future construction; customary repairs and replacement of components including disposal areas (e.g., drainfields or ponds/irrigation systems), pumps and control panels, and other parts of the LOSS; and to provide an adequate source of funds for making LOSS upgrades or modifications to treatment and/or disposal components necessary to meet operational and/or performance standards and requirements. The status of this reserve account must be assessed at least every five (5) years with additional deposits committed to be made to it to maintain a suitable balance. If the foregoing is not approved by the WUTC as part of the Wastewater Company tariff and financial plan, the Wastewater Company may take into consideration as part of its rate and financial structure the necessity to have adequate and sufficient on hand or readily accessible reserve funds for all such purposes described herein.

7. For new LOSS systems that are only in the pre-design or design phase and are not part of a design/construct service by the Wastewater Company, the developer must timely deliver to the Wastewater Company a full set of plans and specifications, and the proposed O&M Manual and CCRs, for the Company's review. The Company shall have the right to recommend changes to the plans, specifications, O&M Manual, and CCRs for the purpose of achieving a more cost effective, efficient and reliable LOSS, including uniformity or standardization of pumps, control panels, and other component parts of the LOSS and those individual pre-treatment units or systems on private property discharging to the LOSS. Failure of the developer to conform the LOSS and its components to the recommenda-

tions of the Wastewater Company will not affect the commitment to own, operate and manage such LOSS, but such noncompliance may be considered by the Company and factored into its rates and charges for such LOSS.

C. Wastewater Company Requirements:

As a pre-condition to approval as a Wastewater Company by the WUTC, such business enterprise must:

1. Demonstrate to the WUTC that it is appropriately organized pursuant to law and has adequate and sufficient staff and equipment to serve qualifying LOSS systems wherever located in the State of Washington on demand and continuously.

2. Provide proof of adequate all purpose/commercial liability insurance by an acceptable provider, or demonstrate a comparable level of self-insurance and coverage, in an amount defined by tariff based on complexity of LOSS and other appropriate factors. If approved by the WUTC as part of the regulatory scheme for Wastewater Companies, it is permissible for a Wastewater Company to require the homeowners' association or other customer to release and hold Company harmless from any and all types and forms of damages and injuries to persons, property and environmental features (such as soil, groundwater and surface water) that may be caused or attributed to LOSS ownership, operation and management; provided that the Company cannot be released or otherwise held harmless for any damages or injuries caused by its intentional misconduct.

3. Provide a proposed tariff or rate/charge schedule that may be based upon proprietary information or model/matrix system customarily used or developed by the Wastewater Company as grounds for determining and assessing rates and charges for operation and management services for various kinds of LOSS systems on a total and per connection monthly and annual basis. The proposed tariff may also include an annual adjustment factor based on a recognized index, and adjustments based on LOSS location and fuel/labor costs. If the Company proposes to subcontract any part of its services, e. g., laboratory and testing facilities, a standard fee or rate must be included in the tariff. If the Company proposes to provide services such as septic tank or other tank periodic pumping, a separate line item in the tariff must identify the applicable rate/charge. If the Company further provides repair and/or construction services by its own forces and equipment, or under subcontract with a provider of its selection, the tariff must identify basic rates/charges for labor, materials, and equipment. Any and all proprietary information and/or models upon which the Wastewater Company determines its tariff, including rates and charges, shall be considered as and treated by the WUTC as private and confidential information not subject to public disclosure.

D. Reporting Requirements:

As may be required by the WUTC, the Wastewater Company shall keep and maintain appropriate records as to its overall business operation and as to each separate LOSS it operates, manages and/or owns or controls. The WUTC shall set the applicable reporting requirements and records retention applicable to a Wastewater Company in light of established reporting and records requirements imposed on other WUTC regulated public service companies.

E. Complaint Resolution:

The Wastewater Company shall be subject to any standard WUTC customer complaint resolution process, including mediation and/or arbitration.

F. Discontinuance of Service:

The Wastewater Company shall not discontinue services for any LOSS, or to any individual customer or user thereof, based solely on nonpayment for services rendered or failure to maintain sufficient funds in the emergency or reserve accounts. The contract between the Company and the homeowners' association or other customer shall provide for appropriate and prompt resolution of contract issues and disputes arising thereunder, including default in payment. The WUTC and State Department of Health shall be promptly notified in the event of any claimed contract dispute or default, or failure to satisfy any qualifying conditions defined by WUTC Rules. If any material contract dispute or default on the part of the homeowners' association or other customer, as well as any material failure of a qualifying condition that must be met and/or maintained, is not timely resolved to the satisfaction of the Wastewater Company, the Company shall be entitled to give written notice to the WUTC, State Department of Health, the homeowners' association or other customer, and published notice to the individual members or users of such association or customer, of the Company's intent to discontinue all operation and management services, and to divest itself of ownership of the LOSS as may be appropriate under the circumstances, on a date certain not less than 120 days from the date of the written and published notice (whichever occurred first in time). If a cure of the dispute, default, or condition is effected within the 120-day period, the Wastewater Company shall give the same kind of notice to all parties once again that it will continue with its service contract in its prior form or as perhaps amended in writing. The Wastewater Company shall be entitled to recover from the homeowners' association or other customer its reasonable damages and costs incurred as a result of such contract dispute or default, or failure of a qualifying condition, including its attorney fees and other expenses.

EXHIBIT "F"



Tennessee Regulatory Authority

460 James Robertson Parkway

Nashville, Tennessee 37243-0505

FAX

Date: 9/21/2005

Number of pages including cover sheet:

To:

Rhys Sterling

Phone: 425-391-6650

Fax phone: 425-391-6689

KC:

From:

Betty Kendall
Energy + Water

615-741-2904, Ext 123

615-741-2336

EMARKS:
nment

Urgent

For your review

Reply ASAP

Please

TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway
Nashville, TN 37243-0505
(615) 741-2904



DATE: September 21, 2005

INVOICE TO: Rhys A. Sterling,
Attorney at Law
P. O. Box 218
Hobart, WA 98025

INVOICE NO: 06-0004

DESCRIPTION

Copy of:

Tennessee Wastewater Systems, Inc. Orders from Docket No. 93-09040

Fax Transmittal Fee	\$2.50
9 pages x .25	\$2.25

AMOUNT DUE: \$4.75

Please mail one (1) copy of this invoice with your payment to:

Tennessee Regulatory Authority
P.O. Box 198907
Nashville, TN 37219-8709

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

FRANK COCHRAN, CHAIRMAN
KEITH BISSELL, COMMISSIONER
STEVE HEWLETT, COMMISSIONER
PAUL ALLEN, EXECUTIVE DIRECTOR



March 17, 1994

RECEIVED

MAR 17 1994

Mr. Robert J. Pinkney
7638 River Road Pike
Nashville, Tennessee 37209

IN RE: THE APPLICATION OF ON-SITE SYSTEMS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. 93-09040

Dear Mr. Pinkney:

I have enclosed a copy of the Initial Order of the Administrative Judge in the case noted above.

The Commission will review all of the issues addressed by the Judge in his decision and will provide all parties an opportunity to express their opinion of the findings of the Judge.

Enclosed is a copy of the order setting the matter for review. This order does not affect your right to request reconsideration of the Initial Order of the Administrative Judge.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Allen".

Paul Allen
Executive Director

enclosures

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
March 17, 1994

IN RE: APPLICATION OF ON-SITE SYSTEMS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO
PROVIDE SEWAGE COLLECTION, TREATMENT AND DISPOSAL
FOR A PROPOSED DEVELOPMENT IN MAURY COUNTY.

DOCKET NO. 93-09040

ORDER

This matter is before the Tennessee Public Service Commission upon its own motion.

Having reviewed the Initial Order in the above captioned matter on March 17, 1994; the Commission, pursuant to T.C.A. Section 4-5-315(b), hereby notifies all parties that it will review all issues raised in the record of this proceeding before the Administrative Judge.

Any party may note an exception to the Initial Order by filing a brief with the Commission within five days of the date of this order. Reply briefs may also be filed within five days after filing exceptions. Any party may request oral argument on the issues raised in the briefs.

Requests for extensions of time within which to file briefs must be made in writing to the Executive Director of this Commission and accompanied by a proposed order to be signed by the Chairman of this Commission. The request must

Indicate that copies of the request and proposed order have been served on all parties.

The Commission decision to review the Initial Order does not affect any party's right to petition the Administrative Judge to reconsider the Initial Order pursuant to T.C.A. Section 4-5-317. Should such a petition be filed, the time limits set forth in this Order for the submission for exceptions and replies will be suspended and will begin to run ab initio, from the date of the final order disposition of the petition to reconsider.


CHAIRMAN FRANK COCHRAN


COMMISSIONER KEITH BESSELL


COMMISSIONER STEVE HEWLETT

ATTEST TO:


PAUL ALLEN
EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
March 17, 1994

IN RE: APPLICATION OF ON-SITE SYSTEMS, INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE SEWAGE COLLECTION,
TREATMENT AND DISPOSAL FOR A PROPOSED DEVELOPMENT IN
MAURY COUNTY

DOCKET NO. 93-09040

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the petition of On-Site Systems, Inc., (On-Site Systems or Petitioner) for a certificate of public convenience and necessity to provide sewage collection, treatment and disposal for a proposed development of a 175 acre parcel of land in Maury County, Tennessee.

The matter was set for hearing and heard on February 23, 1994 before Administrative Judge Mack Cherry, at which time the following appearances were made:

APPEARANCES:

ROBERT J. PINKNEY, 7638 River Road Pike, Nashville, TN 37209, appearing on behalf of the petitioner, pro se

DAVID W. YATES, Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37243-0505, appearing on behalf of the Commission Staff.

A proposed initial order was filed by the Staff March 16.

Certificates of Public Convenience and Necessity are granted pursuant to T.C.A. 65-4-204. Should a certificate be granted, rates approved must be just and reasonable and must conform to the requirements of T.C.A. 65-5-201.

THE APPLICANT

On-Site Systems is a corporation established to provide sewage collection, treatment and disposal for a proposed development of a 175 acre parcel of land in Maury County, Tennessee. The Petitioner is owned by Robert Pinkney and his two brothers and is based in Nashville. Robert Pinkney testified as President of On-Site Systems. Mr. Pinkney is an engineer with a degree from Tennessee Technological University. He and his brothers have substantial experience in this type of engineering.

Currently there is no sewer service available to the site and none is projected to be available in the future. The Maury County Commission has passed resolutions prohibiting the Board of Utilities from providing sewer service in this area. Individual sewage disposal systems are not possible due to large areas of poor soil. The Petitioner has proposed to serve approximately 65 lots in this development. Mr. Pinkney testified that the plans for the system include a small diameter gravity collection system, with sub-surface disposal via a low pressure pipe distribution system. The plans will be reviewed and approved by the Division of Ground Water Protection of the Department of Health and Environment. The concept is relatively new in this area. Mr. Pinkney learned of the concept from similar sewer system developments in the western states.

The developer of the property will pay for all design and installation of the sewer system. On-Site Systems, Inc. will have no capital investment in the system and the developer will turn the system over upon completion to On-Site Systems, Inc.

Rates

The Company proposed a total monthly rate of \$8.49 plus bond costs. As a condition of approval, the Maury County Planning Commission will require a bond, however, the exact amount and type are not known at this time. According to Mr. Pinkney, the Maury County Planning Commission will determine the amount of the bond after the Tennessee Public Service Commission issues a final order in this docket. Mr. Brent Bustin, Financial Analyst for the Commission, testified that the \$8.49 flat rate per month is reasonable based on similar charges for other regulated sewer companies and the City of Spring Hill, the closest incorporated area to the proposed system. However, Mr. Bustin recommended that the Commission not set rates based on the future action of the Maury County Planning Commission. Mr. Bustin recommended that the Company file a petition for a rate increase, if necessary, after the bond issue is settled.

CONCLUSION

Mr. Pinkney appears knowledgeable and well qualified to bring about the utility. The sewer system proposed should serve the interest of the people who come to live in the development as well as the surrounding community. The concept proposed should have application in other areas of the state in the future.

On-Site Systems appears to have satisfied the requirements of T.C.A. 65-4-204. The public convenience and necessity will be well served by a grant of the authority. I also find that the flat rate of \$8.49 per month is just and reasonable.

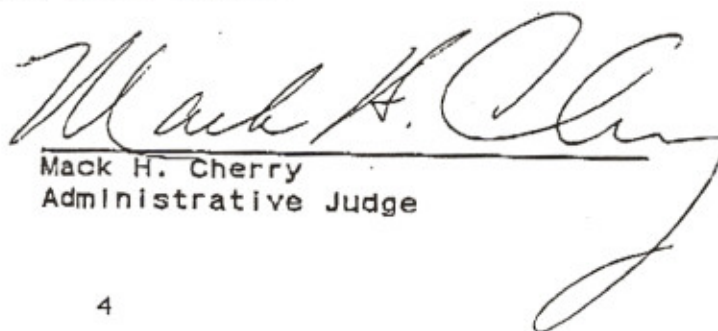
T.C.A. 4-5-315 provides that all parties shall have an opportunity to appeal initial orders to the Commission. However, the Commission reviews all initial orders, thereby assuring review. All parties may file exceptions in the form of a brief setting forth specific issues. The exceptions and any replies will be considered by the Commission in its review. The Commission will consider the matter in a regularly scheduled Commission Conference. Affected parties may then seek reconsideration of the Commission's Final Order or may appeal the Final Order to the Court of Appeals, Middle Division, within 60 (sixty) days of the Final Order.

This Initial Order is prepared in conformity with the Tennessee Uniform Administration Procedures Act, T.C.A. 4-5-101, et seq. Procedures whereby parties seek review stay or reconsideration are found in T.C.A. 4-5-315 - 318. Judicial review of Commission orders is described in T.C.A. 4-5-322.

IT IS THEREFORE ORDERED:

1. That a public certificate of convenience and necessity be granted to On-Site Systems, Inc. to provide sewage collection, treatment and disposal for a proposed development in Maury County, Tennessee.

2. The rate of \$8.49 per month is reasonable and is hereby approved. On-Site Systems, Inc. is hereby ordered to file a tariff with the Commission containing those rates.


Mack H. Cherry
Administrative Judge

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee

APRIL 6, 1994

IN RE: THE APPLICATION OF ON-SITE SYSTEMS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
SEWAGE COLLECTION, TREATMENT AND DISPOSAL FOR A PROPOSED
DEVELOPMENT IN MAURY COUNTY.

DOCKET NO. 93-09040

O R D E R

This matter is before the Tennessee Public Service Commission upon the application of On-Site Systems, Inc. for a Certificate of Convenience and Necessity as set forth in the above caption.

The matter was set for hearing and was heard on February 23, 1994, before Mack H. Cherry, Administrative Judge. On March 17, 1994 the Administrative Judge issued his Initial Order recommending that the application be granted.

The Commission considered this matter at the Commission Conference held on April 5, 1994. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and all applicable laws and statutes and particularly the requirements of T.C.A. 65-15-107 that the Administrative Judge's Initial Order should be approved and the authority granted. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated March 17, 1994, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.


2. That On-Site Systems, Inc. is hereby authorized to provide sewage collection, treatment and disposal for a proposed

development in Maury County.


3. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.


4. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

ATTEST:


EXECUTIVE DIRECTOR


CHAIRMAN


COMMISSIONER


COMMISSIONER

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

October 23, 2001

IN RE:)	
)	
PETITION OF ON-SITE SYSTEMS, INC.	)	DOCKET NO.
TO AMEND ITS CERTIFICATE OF	)	00-01128
CONVENIENCE AND NECESSITY)	

ORDER APPROVING AMENDMENT OF ON-SITE SYSTEMS, INC.'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, FRANCHISE, AND COMMERCIAL RATE ADJUSTMENT

This matter came before the Tennessee Regulatory Authority (the "Authority") at a regularly scheduled Authority Conference held on July 10, 2001, to consider the Petition (the "Petition") of On-Site Systems, Inc. ("On-Site" or the "Company") to amend its Certificate of Public Convenience and Necessity ("CCN") to expand its service area to include the Town of Coopertown in Robertson County, Tennessee, for approval of a franchise granted by the Town of Coopertown ("Coopertown" or the "Town"), and for approval of a proposed adjustment of On-Site's commercial rates.

Authority Approval of CCN and Franchise

Tenn. Code Ann. § 65-4-201 requires a public utility to obtain "a certificate that the present or future public convenience and necessity require or will require" the establishment or construction of proposed utility facilities or the establishment of utility service in a specific area. In addition, Tenn. Code Ann. § 65-4-107 requires that any privilege or franchise granted to any public utility by the state of Tennessee or by any political subdivision thereof be approved by the Authority. Such approval is to be granted only after a hearing and upon a determination by the

Authority that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.

Background

On April 4, 1994, On-Site received a CCN in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, On-Site has been granted approval to expand its service territory to include other areas in Tennessee.

On-Site's Petition

On December 21, 2000, On-Site filed its Petition requesting amendment of its CCN to include Coopertown. The Petition also requests approval of a franchise granted by Coopertown. The Petition states that the Town, which has the sole right to provide sewer service within its territory, has granted On-Site a franchise to provide sewer service in the city. The franchise is contained in Coopertown Ordinance 00-13, which was passed on November 28, 2000. On-Site also requests that the Authority approve a reduction in its existing commercial rates and filed revised commercial tariff sheets with its Petition.

On-Site filed a rate schedule with its Petition which states that residential rates for Coopertown will be as follows:

Total monthly charge	Lagoon	\$30.98
	Sand-Gravel Filter	\$35.11
Non-payment fee		5% of monthly charge
Disconnection fee		\$10
Reconnection fee		\$15
Returned check fee		\$20
Access fee		\$84/year

This rate schedule comports with the rate schedule for On-Site approved by the Authority in Docket No. 99-00393 on January 11, 2000.

Franchise Fees

When On-Site's Petition was originally filed, no franchise fee was part of the franchise. However, the Petition was amended on March 9, 2001 to include a franchise fee authorized by the Town (Coopertown Ordinance 01-01). The fee ranged from \$4.00 per month for residential customers to \$35.00 per month for commercial and industrial customers. On-Site filed an amended rate schedule which reflects the inclusion of the proposed franchise fee in the residential rates. By letter dated May 14, 2001, the Hon. Herman Davis, Mayor of Coopertown, informed the Authority that the Town would amend the fee so that it would be expressed as a percentage of the billed cost of service to each customer. The amount was to be six percent (6%) and would have applied to all customer classes.

On-Site's Hearing

Pursuant to a Notice of Hearing issued on May 1, 2001, a Hearing on On-Site's Petition was held on May 15, 2001. At the Hearing, the Directors heard testimony from Mr. Charles Pickney, On-Site's president, and from Mayor Davis.

Mr. Pickney testified that On-Site's proposed service will benefit the citizens of Coopertown by increasing property values and encouraging growth, which will in turn increase the Town's revenues. Mr. Pickney stated that septic tanks and overflows are the only means of wastewater disposal currently available to Coopertown's residents. In addition, Mr. Pickney testified that he is confident that On-Site is capable of maintaining the proposed system in Coopertown. According to Mr. Pickney, the Tennessee Department of Environment and Conservation has never cited any of On-Site's systems for being out of compliance with the

Department's regulations.¹

Mr. Pickney further testified that because of its decentralized method, On-Site may place up to twenty (20) separate systems in Coopertown. According to Mr. Pickney, On-Site will not have difficulty obtaining adequate land on which to locate these systems because the Town is lightly populated and because the land on which the system serving a particular customer is located does not have to be contiguous with the customer's residence but could be located up to a quarter of a mile away or more.

Mayor Davis testified that the Town studied the possibility of purchasing its own wastewater system but determined that such a system would cost "\$5 million and upwards" and was therefore cost prohibitive.² Mayor Davis stated that he definitely believed that the overall benefits of On-Site's proposed system outweighed any costs to Coopertown. According to Mayor Davis, in the past four years, the population of Coopertown has doubled and is expected to double again within the next five years. Mayor Davis testified that the only options he was aware of for the Town's residents were to continue using septic tanks or to use On-Site.

Mayor Davis testified that the Town added a franchise fee requirement to its franchise ordinance after being approached by a developer who planned to develop a large subdivision, which made the Town realize that the increased development made possible by On-Site's service would increase the Town's expenses. Mayor Davis cited expected increases in the Town's expenses for fire and police protection as well as the Town's annual contribution to the county

¹ Mr. Pickney testified that he did not expect environmental concerns to increase with the increase in the number of systems. Mr. Pickney stated that the Tennessee Department of Environment and Conservation, Division of Water Pollution Control, regularly monitors On-Site's systems and is "very comfortable" with the treated wastewater that On-Site's systems return to the environment. Transcript of Proceedings, Docket No. 00-01128, May 15, 2001, p. 66.

² *Id.*, p. 61.

school system. Mayor Davis also cited such "indirect costs" as street repairs.³ Mayor Davis stated that the Town currently has no property tax but does impose a sales tax.

Mayor Davis testified that the Town held public hearings before final passage of the franchise ordinance and that the Company provided "at least two or three" open forums on Saturday afternoons to explain its system to the public.⁴ Mayor Davis further testified that the public was well aware of the proposed franchise fee and had not objected to the fee.

Following the Hearing before the Authority, on May 24, 2001, the Town amended the franchise (Coopertown Ordinance 01-12) to reflect a reduction of the proposed franchise fee to three percent (3%) to apply to all customer classes.

Commercial Rates

In conjunction with its request for approval of a franchise and an extension of its CCN, On-Site requests approval of a change in its commercial rate schedule. This change is reflected in revised tariff rate sheets filed with the Petition and a February 5, 2001 letter to the Authority.

By Order dated October 30, 2000, in Docket No. 00-00272, the Authority granted an extension of On-Site's CCN to include the Townsend Town Square area in Blount County. This area is a shopping center and is currently On-Site's only commercial customer. Along with the petition in that docket, On-Site filed separate rate schedules for commercial customers whose businesses involve food service and those whose businesses do not involve food service, and these rate schedules were approved by the Authority.

Each of these schedules provides for a minimum bill for up to 300 gallons of designed daily flow regardless of treatment (sand-gravel filter or lagoon) or disposal (drip irrigation or

³ *Id.*, p. 46. In a letter submitted following the Hearing, Mayor Davis stated that Coopertown would incur "direct costs" as a result of the On-Site franchise such as administrative costs, advertising costs, and attorney's fees, as well as other long-term costs associated with exchanging information with On-Site. Letter from Mayor Herman Davis, Town of Coopertown, to Chairman Sara Kyle, Tennessee Regulatory Authority, May 22, 2001.

⁴ Transcript of Proceedings, Docket No. 00-01128, May 15, 2001, p. 54.

point discharge) type, except for off-site treatment, for which On-Site charges pass-through costs plus a flat fee. A monthly fee is then added for each additional 1,000 gallons of designed daily flow. This monthly fee varies according to treatment and disposal type. On-Site's revised commercial tariff rate sheets put a cap on the rates for each additional 1,000 gallons. Under the revised tariffs, for designed daily flows over 3,000 gallons, the monthly charge on all disposal and treatment configurations would be lowered to the rate for the category with the lowest rate (lagoon plus drip irrigation).

During the May 15, 2001 Hearing, Mr. Pickney testified that the Company would now be serving significantly higher volume customers, thus reducing its per unit cost for wastewater service. The proposed changes in the rate structure would only affect high volume users. Mr. Pickney also testified that the existing customers and infrastructure of the Company would not be adversely affected by the proposed rate reduction and that no rate increase will be sought to compensate for any reduction in revenues experienced by the Company.

Findings and Conclusions

On-Site has presented sufficient evidence to demonstrate that Coopertown will benefit from the franchise. On-Site will provide a clean, flexible, and affordable alternative to septic tanks, the only means of wastewater disposal currently available to Coopertown's residents. The record in this matter shows that On-Site's proposed service in Coopertown is "required by the present or future public convenience and necessity" and thus meets the requirements set forth in Tenn. Code Ann. § 65-4-201. In addition, the Coopertown franchise "is necessary and proper for the public convenience and properly conserves the public interest" and thus meets the requirements of Tenn. Code Ann. § 65-4-107.

Tenn. Code Ann. § 65-4-105(e) requires that "any franchise payment . . . shall, insofar as practicable, be billed pro rata." Either of the revised fees would be pro rata and would thus

satisfy the requirements of Tenn. Code Ann. § 65-4-105(e). Although the proposed fee does not appear to be prohibited on the basis of Tenn. Code Ann. § 65-4-105(e) or any other provision of Tennessee law, the Authority can and should scrutinize the fee under the standards contained in Tenn. Code Ann. § 65-4-107 as part of the Authority's determination of whether the franchise "properly conserves the public interest." In this instance, however, the proposed franchise fee is not so excessive as to render the franchise contrary to the public interest. The Authority also finds that the proposed adjustment of its commercial rates is a reasonable and, indeed, commendable action on On-Site's part and is fully supported by evidence in the record. On-Site may charge its customers the three percent (3%) franchise fee based on the residential rates originally filed with the Petition and the adjusted commercial rates.

On July 10, 2001, On-Site's Petition came before the Authority at a regularly scheduled Authority Conference. Upon consideration of the Petition and the entire record, the Authority finds that the proposed service meets the standards set forth in Tenn. Code Ann. §§ 65-4-107 and 65-4-201, and the Authority accordingly grants On-Site's Petition. In addition, the Authority approves On-Site's proposed adjustment of its commercial rates.

IT IS THEREFORE ORDERED THAT:

1. The Petition of On-Site Systems, Inc. to amend its Certificate of Public Convenience and Necessity to expand its service area to include the Town of Coopertown in Robertson County, as shown in the map attached to the Petition, is approved;
2. The Petition of On-Site for approval of a franchise granted by the Town of Coopertown in Coopertown Ordinance 00-13, as amended to require a three percent (3%) franchise fee, is approved;
3. On-Site's rates for wastewater service to the Town of Coopertown shall be as listed in the rate schedule filed with On-Site's Petition and as set forth in this Order;

4. On-Site's proposed adjustment of its commercial rates, as set forth in revised tariff rate sheets filed with its Petition, is approved; and

5. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

ON-SITE SYSTEMS, INC.

A PUBLIC UTILITY CO.

RECEIVED

2003 SEP 11 PM 12:53

E.R.A. DOCKET ROOM

September 11, 2003

Honorable Deborah Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

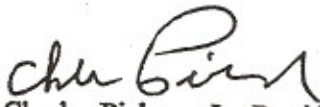
RE: Petition to Change Name of Company

03-00578

Dear Chairman Tate:

On-Site Systems Inc. desires to change its name from On-Site Systems, Inc. to Tennessee Wastewater Systems, Inc.. The attached Petition is in support of our request.

Sincerely,


Charles Pickney, Jr., President
On-Site Systems, Inc.

7638 River Road Pike Nashville TN 37209-5733
(615) 356-7294 Fax (615) 356-7295

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

_____, 2003

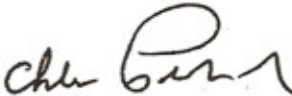
**IN RE: PETITION OF ON-SITE SYSTEMS, INC. TO AMEND ITS
CERTIFICATE OF CONVENIENCE AND NECESSITY**

DOCKET No. _____

Petition of On-Site Systems, Inc.
For Name Change

On-Site Systems, Inc. ("On-Site") petitions the Tennessee Regulatory Authority ("TRA") to change its name from On-Site Systems, Inc. to Tennessee Wastewater Systems, Inc. The proposed name change better reflects the nature of the business of providing wastewater service to areas in Tennessee.

Respectfully submitted,


Charles Pickney Jr., President
On-Site Systems, Inc.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 19, 2004

IN RE:)	
)	
PETITION OF ON-SITE SYSTEMS, INC.	)	DOCKET NO.
TO CHANGE ITS NAME TO TENNESSEE	)	03-00518
WASTEWATER SYSTEMS, INC.)	

**ORDER GRANTING APPROVAL OF THE PETITION OF
ON-SITE SYSTEMS, INC. FOR A NAME CHANGE**

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 26, 2004, upon the Petition of On-Site Systems, Inc ("On-Site" or the "Company") to change its operating name

On April 6, 1994, the Tennessee Public Service Commission granted On-Site a Certificate of Convenience and Necessity to provide wastewater service to the Oakwood Subdivision in Maury County, Tennessee (Docket No. 93-09040). Since that time, through various other dockets, On-Site has been granted approval to expand its service territory to include other areas in Tennessee

On September 11, 2003, On-Site filed a petition to change its operating name to Tennessee Wastewater Systems, Inc. In the petition, On-Site states that the proposed name change better reflects the nature of the business of providing wastewater service to areas in Tennessee

Based upon careful consideration of the record of this matter, the panel found that the Company has met all the requirements for changing its name and voted unanimously to approve the name change, effective February 1, 2004

IT IS THEREFORE ORDERED THAT:

The Petition of On-Site Systems, Inc. to change its name to Tennessee Wastewater Systems, Inc. is approved, effective February 1, 2004



Deborah Taylor Tate, Chairman



Pat Miller, Director



Sara Kyle, Director

EXHIBIT "G"

Source: Tennessee Code : TITLE 65 PUBLIC UTILITIES AND CARRIERS : CHAPTER 4 REGULATION OF PUBLIC UTILITIES BY AUTHORITY : PART 1 GENERAL PROVISIONS : 65-4-101. Chapter definitions.

65-4-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Competing telecommunications service provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after June 6, 1995 unless otherwise exempted from this definition by state or federal law.

(2) "Current authorized fair rate of return" means:

(A) For an incumbent local exchange telephone company operating pursuant to a regulatory reform plan ordered by the former public service commission under TPSC rule 1220-4-2-.55, any return within the range contemplated by TPSC rule 1220-4-2-.55 (1)(c)(1) or TPSC rule 1220-4-2-.55(d);

(B) For any other incumbent local exchange telephone company, the rate of return on rate base most recently used by the former public service commission in an order evaluating its rates.

(3) "Gross domestic product-price index (GDP-PI)" used to determine limits on rate changes means the final estimate of the chain-weighted gross domestic product-price index as prepared by the United States department of commerce and published in the Survey of Current Business, or its successor.

(4) "Incumbent local exchange telephone company" means a public utility offering and providing basic local exchange telephone service as defined by § 65-5-208 pursuant to tariffs approved by the former public service commission prior to June 6, 1995.

(5) "Interconnection services" means telecommunications services, including intrastate switched access service, that allow a telecommunications service provider to interconnect with the networks of all other telecommunications service providers.

(6) "Public utility" means every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof. "Public utility" as defined in this section shall not be construed to include the following nonutilities:

(A) Any corporation owned by or any agency or instrumentality of the United States;

(B) Any county, municipal corporation or other subdivision of the state of Tennessee;

(C) Any corporation owned by or any agency or instrumentality of the state;

(D) Any corporation or joint stock company more than fifty percent (50%) of the voting stock or shares of which is owned by the United States, the state of Tennessee or by any nonutility referred to in subdivisions (a)(1), (2), and (3);

(E) Any cooperative organization, association or corporation not organized or doing business for profit;

(F) Any individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission; provided, that the real and personal property of such domestic public cellular radio telephone entities shall be assessed by the comptroller of the treasury pursuant to §§ 67-5-801(a)(1), 67-5-901(a)(1), and § 67-5-1301(a)(2); provided, however, that until at least two (2) entities, each independent of the other, are authorized by the federal communications commission to offer domestic public cellular radio telephone service in the same cellular geographical area within the state, the customer rates only of a company

offering domestic public cellular radio telephone service shall be subject to review by the Tennessee regulatory authority pursuant to §§ 65-5-101 - 65-5-104. Upon existence in a cellular geographical area of the conditions set forth in the preceding sentence, domestic public cellular radio telephone service in such area, for all purposes, shall automatically cease to be treated as a public utility under this title. The Tennessee regulatory authority's authority over domestic public cellular radio telephone service is expressly limited to the above extent and the authority shall have no authority over resellers of domestic public cellular radio telephone service. For the purpose of this subdivision (6)(F), "authorized" means six (6) months after granting of the construction permit by the federal communications commission to the second entity or when the second entity begins offering service in the same cellular geographical area, whichever should first occur. This subdivision (6)(F) does not affect, modify or lessen the regulatory authority's authority over public utilities that are subject to regulation pursuant to chapter 5 of this title;

(G) Any county, municipal corporation or other subdivision of a state bordering Tennessee, but only to the extent that such county, municipal corporation or other subdivision distributes natural gas to retail customers within the municipal boundaries and/or urban growth boundaries of a Tennessee city or town adjoining such bordering state;

(H) Any of the foregoing nonutilities acting jointly or in combination or through a joint agency or instrumentality; and

(I) For purposes of §§ 65-5-101 and 65-5-103, "public utility" shall not include interexchange carriers. "Interexchange carriers" means companies, other than incumbent local exchange telephone companies, owning facilities in the state which consist of network elements and switches, or other communication transmission equipment used to carry voice, data, image, and video traffic across the local access and transport area (LATA) boundaries within Tennessee.

(7) "Public utility" does not mean nonprofit homeowners associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, construct, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, however, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee regulatory authority.

(8) "Telecommunications service provider" means any incumbent local exchange telephone company or certificated individual or entity, or individual or entity operating pursuant to the approval by the former public service commission of a franchise within § 65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law.

[Acts 1919, ch. 49, § 3; Shan. Supp., § 3059a86; Code 1932, § 5448; Acts 1935, ch. 42, § 1; 1943, ch. 51, § 1; C. Supp. 1950, § 5448; Acts 1979, ch. 195, § 1; T.C.A. (orig. ed.), § 65-401; Acts 1984, ch. 869, § 1; 1995, ch. 305, §§ 14, 20; 1995, ch. 408, §§ 2, 3; 1999, ch. 317, § 1; 2001, ch. 27, § 1.]

**DRAFT RULES
OF
TENNESSEE REGULATORY AUTHORITY
UTILITIES DIVISION**

**CHAPTER 1220-4-13
WASTEWATER REGULATIONS**

TABLE OF CONTENTS

1220-4-13-.01	Application and Purpose	1220-4-13-.08	Title of Physical Assets and Sale,
1220-4-13-.02	Definitions		Transfer, Merger, Termination,
1220-4-13-.03	Retention of Records		Acquisition, or Abandonment
1220-4-13-.04	Data to be Filed with the Authority	1220-4-13-.09	Receiverships
1220-4-13-.05	Maps and Records	1220-4-13-.10	Customer Relations
1220-4-13-.06	Adequacy of Facilities	1220-4-13-.11	Customer Billing
1220-4-13-.07	Financial Security	1220-4-13-.12	Denying or Discontinuing Service
		1220-4-13-.13	Reconnection

1220-4-13-.01 APPLICATION AND PURPOSE

- (1) These rules shall apply to public wastewater utilities as defined in these rules and also in Tenn. Code Ann. § 65-4-101.
- (2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Authority: T.C.A. §65-2-102

1220-4-13-.02 DEFINITIONS

- (1) Authority - Tennessee Regulatory Authority.
- (2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to Tenn. Code Ann. § 65-4-201 et seq.
- (3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater facility.
- (4) Local government – any political subdivision of the state of Tennessee, including, but not limited to a county or incorporated municipality.
- (5) Public utility or public wastewater utility - any person, partnership, corporation, company, association, or two or more persons having a joint or common interest that owns, operates, and manages any wastewater system for the public for compensation within the state subject to the jurisdiction of the Authority.
- (6) TDEC – Tennessee Department of Environment and Conservation
- (7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters.

Authority: T.C.A. §§65-2-102 and 65-4-101(6)

1220-4-13-03 RETENTION OF RECORDS

Unless otherwise specified by the Authority, the National Association of Regulatory Utilities Commissioners, or other governmental agency, all records required by these rules shall be preserved for the period of three (3) years. All records shall be kept at the office or offices of the public wastewater utility in Tennessee or shall be made available to the Authority or its authorized representatives upon request.

Authority: T.C.A. §§65-2-102 and 65-4-104

1220-4-13-04 DATA TO BE FILED WITH THE AUTHORITY

The public wastewater utility shall file with the Authority the following documents and information, and shall maintain such documents and information in a current status. Rates, schedules, special contracts, and other charges for and rules and regulations governing wastewater service shall not become effective until filed with and notified as effective by the Authority.

- (1) A copy of the public wastewater utility's tariff as specified in Rule Chapter 1220-4-1-.02 that includes the rates, rules, and terms and conditions, describing the policies and practices in rendering service that conform with all applicable rules and regulations
- (2) Any public wastewater utility desiring to obtain a Certificate of Public Convenience and Necessity (CCN) authorizing such person, firm or corporation to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule Chapter 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the applied for wastewater services. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.
- (3) Before initiation of service, the public wastewater utility shall furnish the Authority with the following:
 - (a) TDEC approval of the wastewater system design.
 - (b) As-Built certification by its design engineer that states that the wastewater system was constructed according to plans and specifications approved by TDEC.
 - (c) TDEC permit for the wastewater system.
- (4) Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in compliance with these rules and requirements established by the Authority.

Deleted: possess a TDEC permit,

Authority: T.C.A. §§65-2-106, 65-2-102, 65-4-104, and 65-4-201

1220-4-13-05 MAPS AND RECORDS

- (1) Each public wastewater utility shall keep on file in its office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service upon its wastewater system, including a statement of time, duration, and cause of such interruptions.

Authority: T.C.A. §65-2-102

1220-4-13-06 ADEQUACY OF FACILITIES

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local governmental agencies to assure, as far as reasonably possible, continuity of service, and uniformity in the quality of service furnished so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to assure safe, adequate and continuous service at all times by appropriate qualified staff and shall make inspections on a regular basis. These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years.
- (3) Each public wastewater utility shall provide service in the area described in its CCN within a reasonable period of time. If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, or finds that extension of service to any such customer could be accomplished only at an unreasonable cost and that addition of the designated service area to that of another provider of wastewater services is economical and feasible, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that particular public wastewater utility.
- (4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve, whether or not there has been a demand for such service, within two (2) years after the date of authorization for service to such part, the Authority may require the public wastewater utility to demonstrate either that it intends to provide service in the area or part thereof or that, based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation of authorization or amendment of a CCN.
- (5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules.
- (6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with Tenn. Code Ann. § 65-2-106 and after notice and an opportunity to be heard.

Deleted: to

Deleted:

Deleted: to

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0", First line: 0"

Authority: T.C.A. §§65-2-102; 65-4-104; and 65-4-203

1220-4-13-07 FINANCIAL SECURITY

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish an acceptable financial security in an amount not less

than \$20,000 to the Authority using a format prescribed by the Authority prior to providing service to a customer. The public wastewater utility shall ensure that the financial security is maintained in continuous force in conformity to this rule.

(2) Proof of financial security shall be furnished to the Authority for review and approval as follows:

(a) The amount of the financial security required by public wastewater utilities holding a CCN at the time these rules become effective shall be one hundred percent (100%) of the gross annual revenue in the most recent UD16 or, if a UD16 has not been filed, the estimated gross annual revenue forecasted in the CCN application submitted to the Authority. A public wastewater utility holding a CCN at the time these rules become effective shall file proof of the required financial security with the Authority seventy-five (75) days after the effective date of these rules.

Deleted: thirty

Deleted: 30

(b) Public wastewater utilities submitting their initial application for a CCN shall be required to present to the Authority, prior to approval of this application, proof of financial security in the amount of one hundred percent (100%) of the forecasted gross annual revenue from the wastewater system project(s) submitted in the application for a CCN.

(c) The Authority shall review each subsequent UD16, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.

(3) Sufficient financial security shall be provided in one of the following manners:

(a) The financial security may be a bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee.

(b) Irrevocable letters of credit issued by financial institutions acceptable to the Authority.

(c) The public wastewater utility shall provide written notification by means of both certified mail (return receipt requested) and regular mail to the Authority and the holder of the financial security at least sixty (60) days prior to any termination action, expiration date for an irrevocable letter of credit that will not be renewed, or the expiration date for a bond of non-perpetual duration that is not to be renewed.

(4) If the public wastewater utility proposes to post financial security other than that permitted above, a hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule Chapter 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.

(5) Financial securities required by any local government may be considered by the Authority as fulfilling this financial security obligation. The public wastewater utility

shall file with the Authority evidence of this financial security and a written request that the Authority consider the security as fulfilling Rule Chapter 1220-4-13-.07(2).

- (6) The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on an individual basis.
- (a) Each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the pass-through mechanism. The tariff filing shall contain a price-out calculation (number of customers multiplied by the pass-through mechanism) supporting the amount of increase proposed and the percentage increase this represents. This supporting calculation shall be based on the cost of the financial security to the public wastewater utility, the number of customers forecasted for the ensuing twelve (12) month period of operations, and the current approved monthly customer rates. Where applicable, a separate increase shall be calculated for residential and commercial customers
- (i) For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.
- (ii) For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff shall be submitted to the Authority with its CCN application.
- (b) On May 1 of each year, each public wastewater utility shall file a tariff with the Authority for its consideration, containing a true-up calculation for the preceding period and updating the financial security pass-through percentage calculation going forward. The tariff filing shall include but not be limited to the following:
- (i) The actual financial security costs for the most recent twelve (12) month period ending December 31. For the first year this rule is in effect and the first year of operations in the case of a new CCN or amended CCN, the true-up calculation shall be based on the actual months the security was in effect.
- (ii) The actual financial security costs collected from its customers during the previous twelve (12) months or part thereof.
- (iii) A true-up calculation to establish the amount of refund or surcharge due to or required from its customers. This residual amount shall be subtracted from or added to the estimated financial security cost for the next twelve (12) month period.
- (iv) The rate ~~adjustments~~ stated as an amount to be reflected in a customer's bill and the corresponding percentage ~~adjustment~~.
- (7) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness or incapacity, or refuses to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action that may include making a claim against the public wastewater utility's bond or other financial security.

Deleted: increases

Deleted: added to

Deleted: increast

- (8) Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. Public wastewater utility employees having signature authority over such account may be subject to a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
- (9) The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Within one year from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of December 31, 2005 to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in subsection (8) of this Rule. The financial condition of any applicant seeking a CCN to provide wastewater service after December 31, 2005 shall be reviewed by the Authority and a determination shall be made regarding the establishment of a reserve/escrow account during the CCN application process. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.

Authority: T.C.A. §§65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305

1220-4-13-08 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, ACQUISITION, OR ABANDONMENT

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.
- (2) Any person, lessee, trustee, or receiver owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer, merge, terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.
- (3) The Petition filed with the Authority shall include the following:
 - (a) The name, address, and telephone number of the public wastewater utility.
 - (b) The identity of the person(s) to contact regarding the Petition with their address telephone number, and fax number.
 - (c) The location of the public wastewater utility's books and records.
 - (d) The purpose and filing date of the Petition.
 - (e) The proposed effective date of the transaction.

- (f) The name, address, and telephone number of any potential buyer.
- (g) A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.
- (h) A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.
- (i) A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations.
- (j) A statement detailing the effect of the transaction upon customers.
- (k) A customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no less than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider of wastewater services. Good cause includes, but is not limited to, evidence that the current provider is no longer providing wastewater service in Tennessee.

Authority: T.C.A. §§65-4-102, 65-4-104, 65-4-112, and 65-4-113

1220-4-13-09 RECEIVERSHIPS

- (1) Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13-07(7) above, the funds of that public wastewater utility funds, including escrow accounts, shall be subject to forfeiture in the event that the public wastewater utility goes into receivership or is transferred to another owner for any reason. In addition, after notice and hearing, the Authority may take the following actions through appropriate court action:
 - (a) Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to:
 - (i) Operate the wastewater system(s) in compliance with law and the Authority's orders; and,
 - (ii) Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
 - (b) Provide for the appointment of a receiver by the Authority that has demonstrated the ability to:
 - (i) Operate the wastewater system(s) in compliance with law and the Authority's orders; and,

- (ii) Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
- (2) Before taking such action as provided in subparagraphs (1)(a) and (b), the Authority shall give notice of the hearing to the following:
 - (a) The subject public wastewater utility.
 - (b) Other public wastewater utilities in Tennessee.
 - (c) All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system.
 - (d) Holder of the security.
- (3) An order under subparagraph (1)(a) shall provide that:
 - (a) The entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition.
 - (b) The specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined.
- (4) An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:
 - (a) A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.
 - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
 - (c) Other incentives to the entity acquiring the subject public wastewater utility.
- (5) If the Authority takes action as provided in paragraph (1) for the appointment of a receiver, the receiver shall:
 - (a) Have the same rights and duties under Tennessee law as a public wastewater utility.
 - (b) Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility:
 - (i) Has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s); and
 - (ii) Has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority.
- (6) The appointment of a receiver shall be accomplished under an Interim Operating Agreement until a long-term option for the provision of wastewater service is available to the customers.

- (7) Upon appointment of a receiver, the Authority shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer to another owner.
- (8) Within thirty (30) days of the appointment of the receiver, the receiver shall file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver.
- (9) The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board.
- (10) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).
- (11) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority.
- (12) At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds.

Authority: T.C.A. §§65-4-102, 65-4-104, and 65-4-106

1220-4-13.10 CUSTOMER RELATIONS

Each public wastewater utility shall comply with applicable provisions of Rule Chapter 1220-4-3-14 including but not limited to the following:

- (1) Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.
- (2) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints. If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue; the time, date, and action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request at any time within the period prescribed for retention of such records.
- (3) Each public wastewater utility shall, within ten (10) business days after receipt of a complaint forwarded by the Authority, file a written reply with the Authority.
- (4) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.
- (5) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority: T.C.A. §§65-4-102 and 65-4-104

1220-4-13.11 CUSTOMER BILLING

- (1) Before customers are charged for wastewater services, the Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility. All bills for wastewater service shall state how the charge is calculated. The bill form used shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule Chapter 1220-4-3-.16.
- (2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall avoid sending a customer two successive estimated bills.
- (3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at that time. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate (e.g. high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.
- (4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which service was not provided. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate. The public wastewater utility may refund the amount owed as credit toward the customer's subsequent bill for service.
- (5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule Chapter 1220-4-3-.18. The public wastewater utility shall retain customer billing records for not less than three (3) years

Authority: T.C.A. §§65-4-102 and 65-4-104

1220-4-13.12 DENYING OR DISCONTINUING SERVICE

- (1) No public wastewater utility shall deny or discontinue service to any customer without first providing notice to the customer and diligently trying to induce the customer to comply with its rules and regulations provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule Chapter 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing in a "Subscription Service Contract" that would for the various reasons listed in this part to allow either:

- (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Authority, and this rule, or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service shall be discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Authority prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer.
- (a) Non-payment for service by a previous occupant of the premises to be served.
 - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
 - (c) Failure to pay the bill of another customer as guarantor thereof.
 - (d) Failure to pay for a different type or class of public wastewater utility service.
- (4) The public wastewater utility's tariff on file with the Authority shall define all terms and conditions as they relate to denying or discontinuing wastewater service.

Authority: T.C.A. §§65-4-102 and 65-4-104

1220-4-13-13 RECONNECTION

The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority.

Authority: T.C.A. §§65-4-102 and 65-4-104

EXHIBIT "H"

Subj: **RE: Inventory of Large On Site Sewage Systems**
Date: 11/7/2005 10:00:15 AM Pacific Standard Time
From: Richard.Benson@DOH.WA.GOV
To: RhysHobart@aol.com

Hi Rhys:

Attached is an Excel spreadsheet containing a list of LOSS (may include some smaller systems) currently in our database with name of system, county where the system is located and design flow (if known)....Richard

Richard M. Benson, P.E.
LOSS Program Lead; WA Dept. of Health
1500 W. 4th AVE - Suite 403
Spokane WA 99204-1656
(509) 456-6177; Fax (509) 456-3127
richard.benson@doh.wa.gov
<http://www.doh.wa.gov/ehp/ts/WW/Loss/default.htm>
Public Health - Always Working for a Safer and Healthier Washington

From: RhysHobart@aol.com [<mailto:RhysHobart@aol.com>]
Sent: Sunday, November 06, 2005 2:11 PM
To: Benson, Richard (DOH)
Subject: Inventory of Large On Site Sewage Systems

Richard:

Does DOH maintain an inventory of large on-site sewage systems for the entire State? If so, please send me a copy – by email or by fax. If not an actual inventory, do you have a number of how many LOSS systems are currently in operation in the State (how many are there)? Thanks.

Rhys A. Sterling
Attorney at Law
Hobart, Washington

County	System Name	Design Flow (GPD)
Benton	Desert Pines Mobile Home Park (formerly Columbia West Mobile Home Estates)	7000
Benton	Finley SD No. 53, Riverview High School	9400
Benton	Finley SD No. 53, Finley Elementary School	10962
Benton	Finley SD No. 53, Finley Middle School	4536
Benton	100 Circles Farm Migrant Facility (formerly Green Circles Farms)	6000
Benton	Kiona Village Mobile Home Court	
Benton	Sandvik Special Metals Corporation	4500
Benton	The Vineyard Homeowners Association	3700
Benton	WSU Prosser Irrigated Agriculture Research and Extension Center	13100
Benton	Holtzinger Fruit Company	5000
Chelan	Wenatchee Public Schools, Maintenance & Transportation Facility	5865
Douglas	Daroga State Park (2 Systems)	11000
Chelan	Imperial Restaurant	4000
Chelan	Lake Chelan State Park	5970
Chelan	Nason Creek Rest Area	10250
Chelan	Pine Crest Vista - Manson	5950
Chelan	Pine Village KOA Campground	5300
Chelan	River Bend Mobile Park LLC	8040
Chelan	Sleeping Lady Resort and Conference Center	11982
Chelan	Twenty-five Mile Creek State Park (approved 82/83)	5355
Chelan	Wenatchee National Forest, Fields Point (U.S. Forest Svc)	430
Clallam	Cedar Glen Division I	8050
Clallam	Dungeness Bay Plat	12600
Clallam	Elk Creek Mobile Home Park	29200
Clallam	Sunshine Acres	17150
Clallam	Sunland Shores	
Clallam	Parkwood Adult Community (MHP) Div. 1,2,3	37462
Clallam	Wildwood RV Park	2500
Clark	Greenway Terrace Mobile Estates	
Clark	Old Apostolic Lutheran Church	9150
Cowlitz	Camp Samaritan 1	3200
Cowlitz	Camp Samaritan 2	4000
Cowlitz	Camp Samaritan 3	10800
Cowlitz	Camp Samaritan 4	1560
Cowlitz	Coldwater Ridge Visitor Center	14100
Cowlitz	Cresap Bay Park	14000
Cowlitz	Weyerhaeuser Green Mountain Mill	4867
Cowlitz	Mount St. Helens Visitor Center/Sequest State Park (combined system)	12418
Douglas	Riverside Mobile Home Park	10125
Ferry	Barney's Junction Motel, Restaurant & Gas	8500
Ferry	Cooke Mountain Mobile Home Park	7920
Ferry	Curlew Lake Sewer District	
Ferry	Malo Mobile Home Park	3960
Ferry	Curlew SD No. 50, Curlew School	6772

Franklin	Chiawana Park	3499
Franklin	Kahlotus Trailer Park	15000
Franklin	North Franklin SD, Basin Elementary School	4320
Franklin	Pasco SD No. 1, Edwin-Markham Elementary School	3780
Franklin	Pasco SD No. 1, McLoughlin-John Jr. High School	11500
Franklin	City of Pasco/NW Pacific Energy Co.	1200
Franklin	Sacajawea State Park	4170
Franklin	Scooteney Park	4150
Franklin	Lamb-Weston, Inc. (Pasco Plant)	7330
Franklin	Pasco SD No. 1, Livingston Elementary (formerly West Pasco Elementary)	12600
Grant	Gorge Amphitheatre, System 1	7200
Grant	Elm Grove Mobile Home Park (aka - S&P Rentals)	0
Grant	Pelican Point Addition No. 3	3150
Grant	Quincy Valley Rest Area	3700
Grant	Sunbanks RV Park	10000
Grant	Warden Lake Resort	3860
Grays Harbor	Surfcrest Condominiums	7530
Grays Harbor	Wildwood Village Mobile Home Park (33 units)	8250
Grays Harbor	Oakville SD No. 400, Oakville Middle School	4480
Hanford	HWVP (Relocatable Latrine Facility)	3000
Hanford	Holding Tank System for 100 K Area (Project 183-KE)	1500
Hanford	Septic Tank 6607-11 for HWVP (Project B-595)	11820
Hanford	Septic Tank 6607-16 for 242-A (Project C-018H)	5000
Hanford	Septic Tank 6607-13 (Project "200 East Unsecured Area On-site System")	2850
Hanford	Septic Tank 6607- 17 for (Conoco) Vehicle Fueling Station (Project L-044) (Bldg 6291)	50
Hanford	Septic Tank 2607-W1, 2607-W2, 2607-W3 (one system) (Project L-169)(Project L-281)	14500
Hanford	Septic Tank 6607- 9 for WSCF (Project W-011H)	6435
Hanford	Septic Tank 2607-EP (Project L-132 & L-277) (2607-EL, EM, EN, EO, & EP/6601-03,04)	14500
Hanford	Septic Tank 2607-E12 for Bldgs 272-AW, 242-A & Trailers (Project W-172)	6700
Hanford	Septic Tank 2607-W10 (Project W-219)	1900
Hanford	Septic Tank 2607-W11 (Project W-219)	1300
Hanford	Septic Tank 2607-W12 (Project W-219)	1300
Hanford	Septic Tank 2607-E10 for Grout Processing Facility (Project W-299)	1100
Hanford	Septic Tank 2607-EQ (Project L-092)	14297
Hanford	Septic System Upgrade for 209-E (Project W-364)	4575
Island	Camano Country Club, Division # 25 (21 lots)	5950
Island	Camano Village Shopping Center	6200
Island	Camano West Division # 3 (17 lots)	5950
Island	The Captain Whidbey Inn	4800
Island	Chateau Saint Michelle Winery (Greenbank Farm)	5482

Island	Country Place Mobile Home Park	4800
Island	Fort Ebey State Park	3750
Island	Island Park Mobile Home Park	3800
Island	Kineth Point Woods Development (26 lots)	9100
Island	Lakeside Bible Camp	5000
Island	Utsalady Cove Condominiums	4800
Island	Mutiny Bay Riviera Apartments (52 units)	13000
Island	North Whidbey RV Park	7500
Island	Onamac Community (Phase 1 - 41 lots)	14350
Island	Onamac Community (Phase 2 - 41 lots)	14300
Island	Rocky Point Community (Phase 1 - 18 lots)	6480
Island	Rocky Point Community (Phase 2 - 20 lots)	7020
Island	Sherhill Vista Community (20 lots)	4200
Island	Sunrise Hills Community Division 1 (8 lots)	2200
Island	Sunrise Hills Community Division 2 (2 lots)	550
Island	Sunrise Hills Community Division 3 (32 lots)	8800
Island	Sunrise Hills Community Division 4 (4 lots)	1100
Island	South Whidbey Island SD No. 206, South Whidbey Primary School	4390
Island	South Whidbey Island SD No. 206, Intermediate School	
Island	South Whidbey Island SD No. 206, South Whidbey High School	8000
Island	China City Restaurant & Lounge (formerly Teddy's On Whidbey Restaurant)	5140
Island	Useless Bay Golf & Country Club	4000
Island	The Village at Useless Bay Condominiums	6300
Jefferson	Discovery Bay RV Resort	
Jefferson	Discovery Bay Condominiums Phase 1	3150
Jefferson	Discovery Bay Ridge, Phases 2 & 3	14400
Jefferson	Garden Court Apartments	9600
Jefferson	Ocean Grove LUD No. 5	14500
Jefferson	Inn at Port Hadlock - Villas By The Sea	6750
Jefferson	Tananamus RV Park	10000
Jefferson	Thousand Trails Campground	7400
Jefferson	Southpoint/Trails End Homesites	4680
Jefferson	Reeds Laundromat Repair (+ Church system)	5000
Jefferson	Chimacum SD No. 49, Chimacum Elementary and Jr. High School System	12500
Jefferson	Chimacum SD No. 49, Chimacum High School	4556
King	Camp Don Bosco	12760
King	Seattle Air National Guard Station	5500
King	Riverview School District, Stillwater Elementary School	4500
King	Lower Snoqualmie SD No. 407, Tolt Jr. & Sr. High Schools	22500
Kitsap	Lynnwood Center Wastewater Treatment Facilities	15000
Kitsap	Seattle Country Club (Restoration Point)	7150
Kittitas	Cle Elum-Roslyn SD No. 404, Cle Elum-Roslyn High School	6963
Kittitas	Homestead Barbecue Restaurant	
Kittitas	Lake Easton State Park	5105

Kittitas	Salmon LaSac Campground	
Klickitat	Dallesport Mobile Home Park	12500
Klickitat	Columbia Hills RV Village	10000
Klickitat	Peach Beach RV Park	5330
Lewis	Cowlitz Falls Campground (Bud Allen Park)	7220
Lewis	Cowlitz Motel & RV Park (17 units + 50 RV sites)	10735
Lewis	Gee Cee Truck Stop and Restaurant	5600
Lewis	Ike Kinswa State Park	4380
Lewis	Lewis & Clark State Park (Residence Mound System)	450
Lewis	Mayfield Kamper Klub Drainfield No. 1 (48 lots)	13440
Lewis	Mayfield Kamper Klub Drainfield No. 2 (93 lots)	27000
Lewis	North Pacific Bible Camp	3600
Lewis	Plants Paradise Resort (97 RV spaces)	7275
Lewis	Peters Inn Restaurant	4608
Lewis	Spiffy's Restaurant	6000
Lincoln	Keller Ferry Marina	5200
Lincoln	Keller Ferry Store & Houseboat Facility	1975
Lincoln	Seven Bays Marina	6954
Lincoln	Sprague Lake Rest Area Westbound Facility (mens restroom only)	8000
Mason	Allyn Inn Repair	
Mason	Quality Food Center (QFC) No. 101	5000
Mason	Blue Heron Condominiums # 1	2667
Mason	Blue Heron Condominiums # 2	2100
Mason	Blue Heron Condominiums # 3	2100
Mason	Blue Heron Condominiums # 4	833
Mason	Blue Heron Condominiums #5	1400
Mason	Brisco Point Community Drainfield (14 units)	5850
Mason	Fawn Lake Community Septic System (29 homes)	6960
Mason	Mission Creek Correctional Center	10000
Mason	Pioneer SD No. 402, Pioneer Elementary	3300
Mason	North Mason SD No. 403, Sand Hill Elementary School	4850
Mason	Shelton Correctional Facility drainfield # 3	37000
Mason	Twanoh State Park (approved 1978, flows > 14,500 gpd)	20000
Mason	Little Creek Casino Systems 1 & 2	28420
Okanogan	Alta Lake State Park	5761
Okanogan	Bridgeport State Park	5871
Okanogan	Buckhorn Ranch (Lodge & Cabins)	4500
Okanogan	Deer Run PUD	4320
Okanogan	Early Winter Cabins	
Okanogan	Upper Methow & Mazama	
Okanogan	Five Y Resort (Pearrygin Lake) Phase 1,29RV,54 cam	6800
Okanogan	Methow Valley SD No. 350, Liberty Bell High/Methow Valley Elementary	12000
Okanogan	Liberty Woodlands PUD, Trunk 1 (20 units)	7000
Okanogan	Liberty Woodlands P.U.D. Trunk B (40 units)	14000
Okanogan	Lost River Airport Tracts Divisions 5 & 6 (49 unit	12600

Okanogan	Parry's Acreage (75 homes)	27000
Okanogan	Wilson Ranch Planned Development	12123
Pacific	Grayland Beach State Park	6000
Pacific	Surfside Condominiums (96 units)	20000
Pend Oreille	Copeland Subdivision Homeowners' Association Utilities	4900
Pend Oreille	Lenora Sewer District No. 1 (Lancelot Shores, Arthur Subdivision 1 & 2)	14500
Pend Oreille	Lenora Sewer District No. 2 (Guinevere Add'n, Camelot Shores RV Park, Robin Wd)	14400
Pend Oreille	Ponderay Newsprint Company	13500
Pend Oreille	Pend Oreille Mine	6005
Pend Oreille	YMCA Camp Reed, Dining Hall	3805
Pend Oreille	YMCA Camp Reed, Shower/Laundry Facility (Phase 1)	4104
Pierce	Barbara's Addition	14450
Pierce	Bethel SD No. 403, Bethel High School	27600
Pierce	Bethel SD No. 403, Camas Prairie Elementary School	6307
Pierce	Bethel SD No. 403, Bethel Jr. High School	9000
Pierce	Bethel SD No. 403, Bethel SD Transportation Facility	
Pierce	Bethel SD No. 403, Naches Trail Elementary School	14400
Pierce	Bethel SD No. 403, Rocky Ridge Elementary	6739
Pierce	Bethel SD No. 403, Spanaway Lake High School (Systems 1-4)	8440
Pierce	Bowman Hilton Mobile Home Park	4895
Pierce	Salvation Army Camp Arnold at Timberlake	13908
Pierce	Cliffside 2 Apartments System "A"	10920
Pierce	Cliffside 2 Apartments System "B"	13713
Pierce	Cliffside 2 Apartments System "C"	11466
Pierce	Cliffside 2 Apartments System "D"	10920
Pierce	Crystal Mountain Resort (Restaurant, Chalets)	6666
Pierce	Safeway Store No. 547 (Graham)	3500
Pierce	Gold Hill Community	4000
Pierce	Country, The, Division 1	
Pierce	Country, The, Division 4	5850
Pierce	Dieringer SD No. 343, North Tapps Middle School	7920
Pierce	Elbe, Town of, 70 homes	17000
Pierce	Heather Hills Community (85 units)	29750
Pierce	Norwood Conominiums (24 units)	6820
Pierce	Peninsula SD No. 401, Kopachuck Park Middle School	8000
Pierce	Pack Forest Facility (U. of Washington)	8000
Pierce	Penrose Point State Park	5000
Pierce	Safeway Store No. 522 (Puyallup)	5525
Pierce	Summit House Restaurant (Crystal Mtn.)	3500
Pierce	Town & Country Mobile Manor	13333

Pierce	Sumner SD No. 320, Victor Falls Elementary School	6000
Pierce	Shorecrest Community (18 lots)	6480
Pierce	Oakwood Motel (64 units + Mgr. Apt)	6476
Pierce	Peninsula SD No. 401, Peninsula High School (7 systems)	14500
Pierce	Penn Thicket Shopping Center	7796
Pierce	Sumner SD No. 320, Liberty Ridge Elementary School	5382
San Juan	Decatur Northwest Community Drainfield (#1 of 7)	7350
Skagit	Bayview State Park	6000
Skagit	The Farmhouse Restaurant	14000
Skagit	North Cascades National Park Camp & Visitor Center	12000
Skamania	USDA Forest Service, Coldwater/Johnston Ridge Obsevatory	14100
Skamania	USDA Forest Service, Wind River Nursery/Ranger Station, System "A"	7200
Skamania	USDA Forest Service, Wind River Nursery/Ranger Station, System "B"	3500
Snohomish	Cedar Manor Community Wastewater Disposal System	14400
Snohomish	Clearview Plaza Shopping Center System "A"	5900
Snohomish	Clearview Plaza Shopping Center System "B"	2900
Snohomish	Clearview Plaza (Strip Mall, Albertsons, McDonald's and AFN Bank)	10500
Snohomish	Gold Basin Campground (Comfort Station)	
Snohomish	Kayak Point County Park	7200
Snohomish	Snohomish SD No. 201, Centennial Middle School	6825
Spokane	Airway Tower First Addition	
Spokane	Airway Heights Wash & Dry	3600
Spokane	Valley Ridge Apartments	6240
Spokane	Argonne-Mission Center	5585
Spokane	U.S. Marine (R 86-0280)	4500
Spokane	Brentwood Forest Phase 1	20880
Spokane	Club South Athletic Facility and KZZU Radio	4593
Spokane	Douglas, H. Apartments	4800
Spokane	East Valley SD No. 361, East Valley High School	10800
Spokane	Farwell Estates	3960
Spokane	Galen Park I	3840
Spokane	Galen Park II (South System)	3850
Spokane	Gleneden 5th Addition	23760
Spokane	Gunning Apartments, Module No. 1	12000
Spokane	Gunning Apartments, Module No. 2	11400
Spokane	Gunning Apartments, Module No. 3	10800
Spokane	Gunning Apartments, Module No. 4	10200
Spokane	Gunning Apartments, Module No. 5	10800
Spokane	Sunny Creek Mobile Home Park (Guthrie Gardens)	9000
Spokane	R.A. Hanson Company, Inc.	3525
Spokane	Hayford Mobile Home Park Sys. # 1	8400
Spokane	Hayford Mobile Home Park Sys. # 2	9450

Spokane	Hawthorne Manor (repair)	4000
Spokane	Central Vally SD No. 356, Horizon Jr. High School	8250
Spokane	Northwest Christian High School	3560
Spokane	McDonald Manor Apartments	3840
Spokane	Mead Laundromat (repair)	3161
Spokane	Heatherwood PUD (28 apartments)	8400
Spokane	Mead SD No. 354, Meadow Ridge Elementary School	10836
Spokane	Metals Fabrication Plant	4680
Spokane	East Valley SD No. 361, Mountain View Middle School	9994
Spokane	Mountain View Mobile Home Court	4320
Spokane	Mount Saint Michaels Parish/Academy (Main Building)	6000
Spokane	Mt. Spokane Mall	14500
Spokane	Mt. Spokane Mobile Home Park	9045
Spokane	North Country Homes Estates	7275
Spokane	Sunburn Arms Apartments (repair)	4800
Spokane	Painted Hills Subdivision	
Spokane	Peone Pines I Subdivision	30000
Spokane	Perry & Holyoke Commercial Complex	2642
Spokane	Quality Inn Motel & Perkins Restaurant (2 systems)	9200
Spokane	Perkins Restaurant	9300
Spokane	Inland Mobile Home Park	4900
Spokane	Riverside SD No. 416, Chattaroy Elementary School	6625
Spokane	Riverside SD No. 416, Riverside High School	4000
Spokane	Riverside SD No. 416, Riverside Elementary School	6930
Spokane	Shenandoah Forest Mobile Home Park, System No. 1	14500
Spokane	Shenandoah Forest Mobile Home Park, System No. 2	14500
Spokane	Shenandoah Forest Mobile Home Park, System No. 3	12430
Spokane	Shenandoah Forest Mobile Home Park, System No. 4	13810
Spokane	Shenandoah Forest Mobile Home Park, System No. 5	14153
Spokane	Splash-Down Water Slide Facility	7290
Spokane	Sun Acres Addition	14350
Spokane	Cheney SD No. 360, Sunset Elementary School	7560
Spokane	Twin Cedars Condominiums	5520
Spokane	Wandermere Mall	13750
Spokane	West Valley SD No. 363, West Valley High School	10822
Spokane	West Valley SD No. 363, Centennial Middle School (formerly Park Middle School)	8000
Spokane	Wild Rose Commercial Complex	4000
Stevens	Echo Estates	8000
Stevens	Flowery Trail Subdivision I (27 lots)	8100

Stevens	Flowery Trail Subdivision II (34 lots)	10200
Stevens	Fruitland Bible Camp	6700
Stevens	Loon Lake Sewer District	4905
Stevens	Lopp's Second Addition	9720
Stevens	Mill Restaurant, The (repair)	3000
Stevens	Waits Lake Open Bible Camp	5644
Stevens	Panorama Mobile Home Court	
Stevens	Park Rapids Inn Convenience Store	3400
Stevens	Singing Waters Ministry Ranch	4000
Stevens	Wellpinit SD No. 49, Wellpinit School (K-12)	4650
Stevens	Nine Mile Falls SD No. 325, Lakeside High School	11920
Wahkiakum	Skamokawa Community Sewer System	7700
Walla Walla	Two Rivers Mobile Home Park	14500
Walla Walla	Broetje Orchard Proposed Housing Project	
Walla Walla	Boise Cascade Wallula Plant (Pfizer)	5512
Walla Walla	Buell 4-Day Convention Restroom Facility	4000
Walla Walla	Columbia SD No. 400, Columbia Elementary School	6250
Walla Walla	Hood Park Day Use Area (Trailer Dump Station and Comfort Station)	3960
Whatcom	Breakers Tavern, The (repair)	14500
Whatcom	North Cascades Environmental Learning Center	7500
Whatcom	Ferndale Mobile Village (24 units)	8640
Whatcom	Seacliffe Phase 1 (48 lots)	8100
Whatcom	Seacliffe Phase 2 (124 condominiums)	12540
Whitman	W.S.U. Swine Center	960
Yakima	Country Squire Mobile Manor	12250
Yakima	Friday Point Development (40 lots)	14400
Yakima	Larson Subdivision	
Yakima	Highland SD No. 203, Marcus Whitman-Cowiche Elementary School	6000
Yakima	Naches Valley SD No. 3, Naches Valley Primary School	5000
Yakima	Selah, City of, Friday Point WW Trtmt System	8000
Yakima	Skyline Mobile Manor Estates	5400
Yakima	Sundown M Ranch Youth Treatment Center	6450
Yakima	Sun Tides RV Park	6450
Yakima	White Pass Ski Area Northside System (Condos, Restaurant)	12000
Yakima	Zirkle Fruit Company (Selah Plant)	5000
Yakima	Inland-Joseph Fruit Company Packing Facility (Zillah Plant)	5000
Spokane	Alderwood RV Resort	10500
Spokane	Lane Park Villa Manufactured Home Park (52 units)	14410
Spokane	Mead SD No. 354, Mead Jr. High School (2 Systems)	5500
Spokane	West Prairie Village (formerly Indian Prairie MHP) 2 Systems	20520
Spokane	Indian Prairie Mobile Home Park Phase 2 (28 units)	10080
Franklin	Douglas Fruit Company (Pasco)	5000
Snohomish	Warm Beach Senior Community	5088

Island	Camp Casey Conference Center (South System)	14500
Lewis	Adna SD No. 226, Adna Middle/High School	6960
Pierce	Gig Harbor Athletic Club	7000
Mason	Park Place Market & Mobile/RV Park	5038
Grant	Champs de Brionne Gorge Summer Theater Meadow	1019
Spokane	Curtis Park Club Tracts (26 unit)	7800
Clark	Battle Ground SD No. 119, CASEE Facility	5535
Clark	Battle Ground SD No. 119, Prairie High School	7320
Klickitat	Trout Lake SD No. 400, Trout Lake School	6612
Kittitas	Cle Elum-Roslyn SD No. 404, Cle Elum-Roslyn Elem./Middle School	12482
Yakima	West Valley SD No. 208, Cottonwood Elementary School	6399
Snohomish	Sultan SD No. 311, Gold Bar Elementary School	5040
Pierce	Bethel SD No. 403, Elk Plain Elementary School	5499
Pierce	Bethel SD No. 403, Centennial Elementary School	10080
Spokane	Shenandoah Forest Park # 6	24840
Spokane	Shenandoah Forest Park # 7	28440
Clark	Evergreen School District, Pioneer Elementary School	7920
Clark	Battle Ground SD No. 119, Yacolt Primary School	5200
Columbia	The Last Resort RV Campground and Store	3550
Snohomish	Kayak Point Golf Course and Restaurant	5500
Spokane	Monte Del Rey Planned Residential Community	44100
Spokane	Pasadena Ridge Apartments	0
Pierce	Sumner SD No. 320, McAlder Elementary School	8760
Grant	Gorge Amphitheatre System 2 (New Plaza Drainfield)	11400
Jefferson	Discovery Bay Condominiums & Restaurant	21420
Chelan	Dawn Lee Trailer Court	13060
Franklin	South Columbia Basin Irrigation District Eltopia Facility Repair	4680
Adams	Radar Mobile Home Park Repair	7200
Okanogan	Methow Valley SD No. 350, Methow Valley Elementary School	0
Clark	Evergreen School District, Frontier Jr. High School	12800
Skamania	USDA Forest Service, Wind River Administrative Site	6000
Pacific	Moby Dick Hotel	4150
Skamania	Carson Mineral Hot Springs Resort (Interim System Only)	
Ferry	Lakeside Mobile Home Park	4680
Island	Island Athletic Club (IAC - Phase 1)	4914
Stevens	Loon Lake Acres Mobile Home Park	9720
Hanford	(BHI) 100-B/C Area, Remedial Action Support Trailer (MO474) HTS (T)	300
Hanford	(BHI) Holding Tank System (Temporary) for 100-D (R. A. Sppt. Fac.)	200
Hanford	Holding Tank System (Temporary) 1607-D2 (100-D Area)	150
Hanford	(BHI) 600/ERDF Area, Construction Trailers (Project W-296) HTS (T)	60

Hanford	(BHI) 600/ERDF Area, Truck Maintenance Facility, HTS (T)	210
Hanford	Septic Tank 2607-WA (2 systems - East & West) (Project L-190)	1300
Hanford	Septic Tank 2607-E8-A for 2750-E and Adjacent Facilities (Project L-218)	14500
Hanford	Septic Tank 2607-W14 for Waste Rcv & Proc Facility (Project W-026)	2530
Hanford	Septic Tank 2607-W15 for Solid Waste Operations Complex (Project W-112)	2700
Hanford	(BHI) 600/ERDF Area, Operations Buildings (Project W-296), SS	750
Hanford	Holding Tank System (Temporary) for ERS (Septic Tank 2607-E13, Project W-320)	870
Hanford	Septic System 2607-W6, Drainfield Replacement for 222-S Facility (Project W-370)	13285
Walla Walla	Jubilee Youth Ranch (3 systems - Boys, Girls Dormitories, Cafeteria)	6000
Chelan	Blu-Shastin RV Park	9600
Hanford	Two Holding Tank Systems (Temporary) near Bldgs. 105-KE & 105-KW	3740
Pierce	Puyallup School District No. 3, Stahl Jr. High School	14310
Spokane	Riverside SD No. 416, Riverside Middle School	0
Ferry	Curlew Job Corps (Ecology Assist)	0
Jefferson	Snow Creek Ranch	6490
Pend Oreille	Dalkena Community Church Camp	5000
Clark	New Heights Baptist Church	6600
Hanford	(BHI) Holding Tank System (Temporary), for 300-FF-1 R.A. Cnst. Spt Facility	278
Spokane	NW Christian High School	0
Spokane	Mount Saint Michaels School, Convent and Gymnasium	4000
Spokane	East Valley SD No. 361, East Farms Elementary School	8190
Spokane	East Valley SD No. 361, Skyview Elementary School Expansion	4090
Lincoln	Sprague Lake Rest Area-Westbound Facility (Women's Restroom)	5900
Island	Rolling Hills Community Sewer	10500
Yakima	Apple Tree Clubhouse	7782
Hanford	Project L-272 (200 E Central Core Septic Systems Replacement) Septic System 2607-E1A	14500
Franklin	Bonnie Brae Apartments & Mobile Home Park	4920
Stevens	Forshee Resort	5130
Snohomish	Snohomish SD No. 201 Machias Elementary School	12000
Grant	Moses Lake SD Longview Elementary School	0
Mason	Allynview Mobile Home & RV Park / Sherwood Hills RV Park	7000
Mason	Golden Bell Mobile Home Park	12000
Benton	LIGO Hanford Observatory	3000
Spokane	Fairchild Air Force Base Clear Lake Resort	6000

Mason	Potlatch State Park	6200
Pend Oreille	Cusick Treatment Facility	1.2
Jefferson	Pleasant Harbor Marina	
Island	Island County Septage System	
Jefferson	Jefferson County Corrections Facility	6000
Island	Norcliffe Community System	0
Kittitas	Irene Rhinehart Park Restroom Facility	5000
Lincoln	Spring Canyon Campground	4810
Clark	Old Apostolic Lutheran Church of Brush Prairie	6000
Benton	Hills Manufactured Home Community (formerly The Hills Mobile Home Park)	37640
Cowlitz	Camelot Estates Sub-division	12900
Grant	Swanson Mobile Home Park	360
Grays Harbor	Evergreen Mobile Home Park	6600
Pierce	Shawnee Hills LOSS Modifications & Repairs, (2 Systems)	7650
Stevens	Nine Mile Falls SD No. 325, Lakeside Middle School	14400
Stevens	Country Villa Mobile Home Park (North System)	5280
Spokane	Picnic Pines Mobile Home Park & Resort	17500
Chelan	Wenatchee SD No. 246, Sunnyslope Elementary School	3750
Chelan	Wenatchee River County Park (Temporary Farm Worker Housing Camp)	13300
Spokane	Mead SD No. 354 Mt. Spokane-Mead High School (System "A")	10000
Spokane	Mead SD No. 354 Mt. Spokane-Mead High School (System "B")	10000
Spokane	Mead SD No. 354 Mt. Spokane-Mead High School (System "C")	14500
Benton	LIGO Warehouse System	200
Stevens	Blackstone PRD (Suncrest)	14400
Benton	LIGO Shop/Support Facility	480
Adams	Jake's Restaurant	4000
Mason	Belfair Valley Plaza (Safeway #1571)	5400
Whatcom	Meridian SD No. 505, Meridian High School	6900
Grant	Crescant Bar Condominiums	0
Grays Harbor	Linkshire Mobile Home Park	12720
Yakima	Fairway Estates	3600
Jefferson	Pleasant Harbor Marina Expansion	0
Hanford	(BHI) 100-D/R Area, On-site Distribution System for MO-980 & 4-closet RR Facility	975
Pierce	Safeway Store No. 551 (Spanaway)	3500
Island	Brentwood PRD (Division 2)	14400
Chelan	Apple Acres Mobile Home Park	6960
Douglas	BJ's Auto / Truck Plaza	3525
Grant	Perch Point Mobile Home Park	0
Grays Harbor	Oceana II Resort (East and West Expansion)	0

Pierce	Peninsula SD No. 401, Harbor Ridge Middle/Elementary School	14499
Columbia	Camp Touchet	4000
Columbia	Marjorie Lowe RV Park	0
Stevens	Tshimakain Creek Camp (formerly Union Gospel Mission Camp)	3750
Pierce	Olympic Alzheimer's Residence	9000
Spokane	Mt. Spokane Plaza--Albertson's	6000
Grant	Grove Terrace Mobile Home Park	0
Spokane	Mt. Spokane Plaza - Retail Stores	3500
Pierce	Bethel SD No. 403, North Star Elementary School	4800
Yakima	Mountain Shadows Estates	5280
Hanford	K-Basin OST Temp Hold System (MO-054, MO-500, MO-846, MO-910)	2250
Stevens	Country Villa Mobile Home Park (South System)	5520
Hanford	Project W-519 Temporary Holding Tank System for 2 Dbl Wide Trailers, 200 East Area	230
Mason	Mission Creek Youth Camp Site Sewage Disposal System Improvement	0
Benton	Clarneau 36 Space RV Park	0
Hanford	100 K Area CVDF Temporary Holding Tank System (142 K)	815
Spokane	URM Stores (Yoke's - Market and Mt. Spokane Park Drive)	4500
Skamania	Washougal SD No. 112, Cape Horn Skye Elementary/Canyon Creek Middle School	5025
Clark	Evergreen School District, Marrion Elementary School	0
Clark	Battle Ground SD No. 119, Amboy Middle School	0
Clark	Battle Ground SD No. 119, Maple Grove Elementary School (Portables)	0
Clark	Battle Ground SD No. 119, Pleasant Valley Middle School (Portable)	0
Chelan	Lake Chelan State Park (Building 15)	3800
Spokane	McDonalds Restaurant (Mead)	1800
Mason	Johnson Laundromat and Jimmy D's Restaurant	9000
Grant	One-Thousand Trails - Crescent Bar Campgrounds	16560
Island	Brentwood PRD (Divisions 1 & 3)	14400
Kittitas	Ryegrass Rest Area (eastbound/westbound septic tank replacement)	50000
Spokane	Camp Dart-lo Drip System	2303
Spokane	Overland Station RV Park (repair)	0
Clallam	Greenacres Mobile Home Park (repair)	0
Walla Walla	Columbia SD No. 400, Columbia High School	2880
Clark	Nguyen Berry Farm	9000
Asotin	Cherry Hill Mobile Home Park	3950
Adams	Texas John's Southern Pit	0
Adams	Wheatland Community Fairgrounds-Race Track	0
Benton	Meadows Spring Ranch #1	0
Benton	Oldham RV Park	0
Chelan	Bear Mountain Resort and Golf Course	0

Chelan	Dryden RV Park	0
Jefferson	Pleasant Harbor Marina (commercial development, etc.)	0
Clark	Glenwood Elem./Lauren Middle Sch.(prop. expansion)	0
Pacific	Chinook RV Park / K&M Resorts	0
Chelan	MacBryer RV Park	0
Clark	Crossroads Retreat Center	0
Clark	Frenchman's Bar County Park	0
Clark	New Season's Church	0
Clark	Vancouver Lake Park (Phase 2)	0
Cowlitz	Lewis River Golf / PUD	0
Douglas	Aspen Shores	0
Douglas	Rio Vista Development	0
Douglas	Rock Island Motel 6	0
Ferry	Dollar Bar Beach	0
Ferry	Mount Elizabeth Resort	0
Franklin	Lakeview Mobile Home Park	0
Grant	Desert Aire Restaurant	0
Grant	Moses Point Development	0
Grant	O'Sullivan Shores	0
Hanford	(BHI) 100-N Area, D&D Support Facilities, SS	0
Hanford	Septic System 2607-WC	0
Hanford	Septic System for Solid Waste Retrieval Facility (Project W-113)	0
Island	Camas Beach State Park	0
Island	Camano Island State Park (Phases 1 / 2)	8745
Island	Nichols Brother's Boatworks	0
Island	Sandy Point Community System	0
Island	Saratoga Conference Center	0
Stevens	Wilderness West Subdivision (Deep Lake)	4320
Clark	Nguyen Berry Farm	10000
Grant	Cascade Village MHP System 1 (repair)	0
Jefferson	Green Acres Mobile Home Park (repair)	0
Hanford	Rattlesnake Mountain Observatory (RMO) SS	0
Island	Useless Bay Village Square	0
Jefferson	NE Peninsula Safety Rest Area	0
Jefferson	Snow Creek Ranch	0
King	Vashon Island Beulah Park / Cove	0
Kittitas	Kittitas Travel Lodge	0
Kittitas	Mountain Star Development	0
Kittitas	Swiftwater Mobile Home Park	0
Klickitat	Bridgepark RV Park	0
Klickitat	Del Matthews Subdivision	0
Klickitat	Town of Roosevelt	0
Mason	Allyn Inn	0
Mason	American Development (157 Lot Sub-division)	0
Mason	Corbitt Site	0
Kitsap	Islandwood (formerly Puget Sound Environmental Learning Center)	4500
Stevens	Chewelah Golf & Country Club	7000
Jefferson	Fort Flagler State Park	14500

Spokane	Bethany Homes - Assisted Living Facility	0
Yakima	East Valley Mobile Ranches	0
Clallam	Finnerty Community Drainfield	0
Snohomish	Surfside Development (County Assist)	0
Douglas	International Christian Center	0
Pacific	Grayland Beach State Park Campground Extension	0
Adams	Huntwork RV Park	0
Lewis	Partner's Mortgage Corporation (Napavine Restaurant)	1990
Ferry	Whispering Pines Resort (proposed expansion)	0
Clark	Battle Ground SD 119, Glenwood/Laurin Schools (portables)	3750
Stevens	Camp Prince's Pines (4-H Camp and Church Camp)	0
Mason	Hank's Country Inn / Casino	0
Mason	Pat's Red Bard Restaurant	0
Mason	Sand Hill Mobile Home Park	0
Okanogan	Battle Mountain Gold Co. (aka Crown Jewel Mine)	0
Okanogan	Okanogan Inn / Sun Valley Restaurant (formerly Cedars Inn)	9600
Okanogan	Loup Loup Ski Area (Camp Easter Seal at the Loup)	0
Okanogan	Mazama Country Inn	0
Okanogan	Sieble (32 lot development)	0
Okanogan	Wauconda Laundry & Showers	0
Pacific	B.J. Squidley's Restaurant (system failure)	0
Pend Oreille	Diamond Village Mobile Home Park	0
Pend Oreille	Grubbe (proposed MHP)	0
Pend Oreille	Fourth Memorial Church (Riverview Christian Retreat)	0
Pend Oreille	Sacheen Lake Waterfront Club	0
Pierce	Cascadia Development	0
Yakima	Borton & Sons Fruit & Cold Storage	7500
Yakima	The Vineyards Hotel and Golf Resort	0
Pend Oreille	Skookum Rendezvous RV Park	13600
Lewis	Adna High School - Concession Stand	0
Benton	Agate Acres RV Park (formerly known as Plymouth RV Park)	7000
Stevens	Chewelah Peak Learning Center (Phase 1)	2880
Spokane	LDS Stake Center	4005
Benton	Badger Mountain Golf & Country Club	0
Spokane	Fairchild Air Force Base White Bluffs JPRTF, Phase 1	5000
Hanford	(BNI) 200-E Area, ORP-WTP (Vitrification)	37800
Spokane	Fairchild Air Force Base Satellite Operations Center - Lower System	1080
Snohomish	Camp Omache (Boy Scouts of America)	4500
Pierce	YMCA Camp Seymour	14000

Hanford	Septic System 1607-K4 (100K Area) (Bldgs 1709K, 1717K, 1718K & 1722k)	3800
Spokane	Fish Lake Park	0
Skagit	Raspberry Ridge Apartments (System # 1)	8160
Jefferson	Inn at Port Hadlock - Hotel and Marina Restroom/Shower Facility	3683
Skagit	Raspberry Ridge Apartments (System # 2)	8760
Jefferson	Inn at Port Hadlock - Flagship Landing Restaurant	3511
Mason	Hood Canal SD No. 404, Hood Canal School	0
Hanford	(USDOE) 200-W Area, Septic System 2607-W16 (Project L-338)	14500
Spokane	Crossover Church	0
Skagit	Bow Hill Commercial Development	0
Pierce	Lorayne Heights	0
Skagit	Rasar State Park	0
Skagit	Sandman Motel (41 Units)	0
Snohomish	Clearview Plaza - Dutch Hill Corporation	0
Snohomish	Goldbar Leisure Resort	0
Snohomish	Lakeside Shores Community Drainfield	0
Spokane	Aloha Pines Manufactured Home Park	0
Spokane	Camp Comia (Antonian School)	0
Spokane	Barber's Resort Sewage System	0
Spokane	Carl Grub Project ZW-45-91	0
Spokane	Chapter Eleven Restaurant	0
Spokane	Chatteroy Valley Mobile Home Park	0
Spokane	Eastern Washington Bible Camp Expansion	0
Spokane	GTX Truck Stop	0
Spokane	Hide-A-Way Mobile Home Park	0
Spokane	Highland Park Subdivision	6480
Spokane	John Jacks Development	0
Spokane	Northview Bible Church	0
Spokane	Patterson Addition	0
Spokane	Riverbluff Ranch (Planned Unit Development)	0
Spokane	The Oaks Academy at Glenrose (Grades K-12)	0
Spokane	West Valley School District No. 363, Elementary Schools Expansion Project	0
Spokane	Williams Lake Sewer System	0
Spokane	Wolffy's Restaurant (Wolffy's Rockin' 50's Hamburgers)	0
Spokane	Woodland Hills	0
Stevens	Canyon Crest Condominiums (Phase 3)	0
Stevens	Dear Meadows - Loon Lake	0
Stevens	Mending Wall RV Park	0
Walla Walla	Bill Youngsman Office Park System	0
Thurston	Carlyon Beach Wastewater Plant	0
Walla Walla	Pierces Green Valley RV Park	0
Whatcom	Point Roberts Marina Resort (expansion)	0
Whatcom	Point Roberts Golf Course	0
Island	Senior Thrift and Housing Complex (IAC - Phase 2)	0
Skagit	Bay View Mobile Home Park	4140
Okanogan	Country Estates Mobile Home Park (Repair)	3600

Pend Oreille	Saddle Mountain Guest Ranch (proposed)	0
Island	Fort Casey State Park (Battery Area Day Use Comfort Station)	5150
Mason	Belfair State Park	10800
Island	Camano Commons	0
Mason	Jimmy D's Restaurant	0
Hanford	Holding Tank System 6607-07 (Yakima Barricade-Bldg. 604A)	103
Island	Second Wind at Ten	4914
Snohomish	Ramar Estates	0
Walla Walla	Charbonneau Park	6875
Hanford	(USDOE) Portable Temporary Holding Tank Systems (Hanford)	0
Hanford	100-K Area, Group 4 Remediation Project (MO-751), HTS (T)	285
Yakima	Green Valley (Moisture Retention & Soil Conditioning Project)	0
Whitman	WSU Swine Center (Municipal Waste Project)	0
Spokane	Mullen Hill Terrace Mobile Home Park	0
Whatcom	Newhalem Visitors Center	0
Spokane	Glencrest Addition	0
Spokane	Hangman Hills Valley / Sewage Treatment Plant	0
Spokane	Argonne Road McDonalds	0
Spokane	Belle Terre Third Addition (23 lots)	8050
Spokane	Bella Vista (formerly Vista Ridge)	0
Spokane	Camelot Addition	0
Skamania	Mount St. Helens National Volcanic Monument (Johnston Ridge Observatory)	14100
Mason	Belle Town Square	0
San Juan	Camp Nor'wester	11600
San Juan	Deer Harbor Resort	0
Lewis	Winlock SD No. 232, Winlock Middle / High School (Upgrade)	5576
Pierce	Lakewood SD No. 306, Lakewood School Bus Maintenance Facility	0
Snohomish	Edmonds SD No. 15, Oak Heights Elementary School	3000
Snohomish	Edmonds SD No. 15, Martha Lake Elementary School	9810
Skamania	Camp Bonneville	0
Skagit	Draper Valley Farms	0
Skagit	Dewey-Similk Beach Facility Plan (Elbe Mound Repair)	0
Snohomish	Mt. Pilchuck State Park	0
Yakima	Naches Valley SD No. 3, Naches Valley Middle School	0
Yakima	Naches Valley SD No. 3, Naches Valley High School	0
Whitman	Park West Mobile Home Park (Josephine Cooper)	0
Island	Mutiny Bay Resort Condominiums	4080
Hanford	WIDS Site (Bldg 151-D) (1607-D3) SS	0
Hanford	WIDS Site (Bldg 151-B) (1607-B4) SS	0

Hanford	Canton Avenue SS	0
Hanford	(BHI) RA Support Facility (ISS, 105C) (HTS (T)	197
Hanford	(BHI) RA Restroom Facility (ISS, 105C) (HTS (T)	510
Hanford	Project C-018H, Evaporator/Purex Plant Support Trailers, 2-HTS (T)	0
Hanford	Project D-384, Environmental Molecular Science Lab (EMSL) Constr. Trailer HTS (T)	390
Hanford	WPPS Supply System (ST-4505) SS	0
Hanford	Project B-503, Decontamination Laundry Facility, SS (Proposed)	0
Hanford	Project L-116, Centralized 200 Area SS (Proposed)	0
Hanford	Project W-236A-East, MTWF SS (Proposed)	0
Hanford	Project W-236A-West, MTWF, SS (Proposed)	0
Whatcom	Flying J Travel Plaza	0
Whatcom	Mt. Baker Ski Area Expansion	0
Whatcom	Bellingham Evangelical Free Church	0
Whatcom	Dodson Mobile Home Park	0
Whatcom	Basil Pullar Sites	0
Yakima	Selah Hills Mobile Estates	0
Yakima	Lookout Point Development	0
Yakima	Tieton Estates	0
Yakima	Larsen Subdivision	0
Yakima	Inaba Produce Farms - Farm Labor Housing	0
Whitman	Morrison's Sunset Trailer Court Lagoons	0
Island	Bayview Park (motel, restaurant and business office)	
Spokane	Whitetail Ridge (Rural Cluster Development)	0
Pend Oreille	Pondoray Shores Subdivision	14400
Clark	Bethesda Slavic Church (Proposed System)	0
Chelan	Rocky Reach Dam (proposed LOSS)	0
Whatcom	I-5 Industrial Park (Proposed)	0
Lewis	White Pass Ski Resort Southside System (Day Lodge)	10000
Skagit	Upper Skagit Tribe (IHS Technical Assist)	0
Spokane	DJ's Restaurant	0
Stevens	Brauner Manufactured Home Park	0
Pierce	Mie Valley	0
Pierce	Peninsula SD No. 401, Purdy Elementary School & Educational Service Center	0
Pend Oreille	Lenora Sewer District No. 2 (Robins Wood Collection System)	0
Okanogan	Cascade Holdings (Migrant and Permanent Orchard Worker Housing)	5040
Chelan	Wenatchee River County Park (System 2 - Public RV Park)	4300
Stevens	Homeland RV Park	0
King	Briarwood Shopping Center	0
Pierce	Chambers/Clover Creek Basin Onsite Systems	0
Pierce	Harbor Country Estates	0
Pierce	The Country	0

Grant	Wahluke SD No. 73, Mattawa Elementary School	4745
Grant	Wahluke SD No. 73, Wahluke High School	5300
Grant	Wahluke SD No. 73, Morris Schott Middle School / Wahluke High School Expansion	8640
Grant	Wahluke SD No. 73, Saddle Mountain Intermediate School	8000
Kittitas	Orrion Farms (Arabian Horse Division)	0
Franklin	Arrow Ridge Ranch (Temporary Worker Housing Camp)	0
Franklin	Grower Ice (Temporary Worker Housing Camp)	0
Kitsap	Blake Island State Park	6000
Spokane	Home Boys Four Lakes Subdivision	0
Walla Walla	Mill Creek Resort RV Park and Campground	0
Kittitas	Pine Loc Sun III Beach Club (formerly Mountain Home)	0
Pierce	Easter Seals - Camp Stand By Me	0
Pierce	Falling Water PPD (Division 1) System "D"	0
Pend Oreille	Aspen Reflections Landing	0
Island	Cama Beach State Park	14500
Pend Oreille	Selkirk SD, Selkirk Jr/Sr High School	5000
Stevens	Colville Free Methodist Church	0
Stevens	Granite Point Park Resort	3780
Spokane	Greenbluff Church of the LDS	3660
Clark	Paradise Point State Park	5500
Chelan	Blue Chelan	0
Snohomish	The Manor	0
Columbia	Willow Creek Prison Site Sewage System	0
Stevens	Mary Walker SD, Mary Walker School	0
Ferry	US Forest Service Curlew Job Corps Center	18000
Columbia	Town of Starbuck	20000
Spokane	Picnic Pines Resort	23000
Skagit	Town of Edison	15000
Spokane	Somerset Meadows Apartments	11520
Snohomish	Remington Heights Estates (4 Systems)	52370
Whatcom	South Cape Subdivision (proposed)	0
Mason	Iron Horse Crossing Subdivision (Proposed)	0
Spokane	Wicomico Beach	0
Snohomish	Camp Kalsman	0
Spokane	Spokane Junior Academy (Upper Columbia Academy)	0
	Central Valley SD	0
Spokane	Central Valley SD No. 356, Greenacres Elementary (Portable)	0
Walla Walla	Hood Park (2) (proposed expansion)	0
Skamania	Home Valley Resort (proposed)	0
Stevens	Deer Meadows MHP (proposed)	0
Hanford	(BHI) 100-B/C Area, Mobile Restroom Trailer (MO-764) HTS (T)	200
Okanogan	Cedars Inn (See: Okanogan Inn / Sun Valley Restaurant)	0
All	Evergreen Pre-cast (Whitewater) Tank	0

Hanford	100-B/C Area Temporary Holding Tank system (Remaining Pipelines/Sewers Projec	400
Chelan	Bear Mountain Ranch Resort	0
Jefferson	Beckett Point	0
San Juan	Spencer Spit State Park	0
King	Druids Glen Golf Course (LHD Assist)	0
Hanford	(BHI) 100-B/C Area, Remaining Pipelines and Sewers (MO-773) HTS (T)	400
Spokane	URM Stores Warehouse [LOSS Replacement Project]	0
Island	Camano Plaza Shopping Center	0
Chelan	Anatone, Village of	0
Jefferson	South 7 Senior Village	0
Spokane	Ford Cluster Residential Development	0
Spokane	Mead SD No. 354, Johanssen Road Elementary	0
Stevens	Grandview Inn-Motel & RV Park	0
Benton	Hays RV Park (proposed)	0
Grant	Sunserra Community	0
King	Patterson Creek Camp for Kids	0
Grant	Long Lake Shores (Billy Clapp Lake)	4320
King	Gold Creek Country Club (repair)	0
Okanogan	Champerty Shores Subdivision	0
Whatcom	Delta Tech Industrial Park (System Upgrade)	0
Snohomish	Christian Family Center (church and school)	0
Grant	Grace Acres Estates	4320
Hanford	(BHI) 100-F Area, R A Project Trailers (MO-780 and MO-781) (2 systems) HTS (T)	1200
Hanford	(USDOE) 200-E Area, IDF Mobile Restroom Facilities HTS (T)	0
Cowlitz	Cowlitz Tribe (IHS Assist)	0
Pend Oreille	Beauty Rock (proposed LOSS)	0
Hanford	(USDOE) 200-W Area, Waste Retrieval Project (MO- 501) 2-HTSS	500
Hanford	(BHI) 600/ERDF Area, Waste Operations Office HTSS	0
Hanford	(USDOE) 200-E / 200-W Areas, ORP S-Farm and C- Farm Mobile Restroom Trailers, HTSS	0

* * * * *

EXHIBIT "I"

* * * * *

WUTC Regulation of Large Onsite Sewage Systems

Where public sewer service is not available, large onsite sewage systems (LOSS) serve residential subdivisions and other facilities from which the daily flow of sewage equals or exceeds 3,500 gallons. Depending upon their size and the type of treatment equipment, these sewage treatment systems are regulated by the Washington Department of Health (DOH), local public health jurisdictions under contract with DOH, or the Washington Department of Ecology. Such systems must be operated by a public entity, or a private entity for which a public entity serves as a third party trust. As suburban development in the Puget Sound region proceeds and the clustered retrofit of individual onsite sewage systems occurs in rural areas, the numbers of such LOSS are growing. At the same time, municipalities and water/sewer districts are increasingly reluctant to provide services, or as trusts, commit to doing so in the future outside their jurisdictional boundaries.

A few private business entities, which specialize in the monitoring and maintenance of small onsite sewage systems, have developed the knowledge, equipment, and other resources necessary to provide effective management of LOSS. These firms seek to fill the needed management gap. However, they do not meet the regulatory requirement for public entity status.

The proposed solution to this dilemma is for capable businesses to achieve "public entity" status by becoming public service companies regulated by the Washington Utilities and Transportation Commission (WUTC). To that end, one company, Aqua Test, Inc., petitioned the WUTC seeking regulation. Aqua Test, Inc.'s request was rejected on the basis of unclear authority. However, the Thurston County Superior Court ruled that the WUTC must determine whether Aqua Test, Inc. qualifies for public service company status.

The Puget Sound Action Team should support the regulation of firms whose purpose is LOSS maintenance as public service companies for the following reasons:

- Large onsite sewage systems can be an effective means for providing decentralized, or "distributed" sewage treatment services in areas where public sewer districts have not been, and may never be, created.
- Achievement of the potential value of LOSS depends their systematic management by entities that possess sufficient resources to be effective. Quality private firms will fill the present service gap.
- WUTC regulation will ensure that companies engaged in this business provide fair rates, accountable business practices, and timely service. The market will purge existing firms, whose practices are inadequate to meet high standards and ensure protection of the environment.