

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 recommendations 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.