

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

April 6, 2006

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
**PETITIONERS' LIST OF ADDITIONAL FACTUAL ISSUES AND POSSIBLE
WITNESSES, INCLUDING DATA/DISCOVERY REQUEST**

Dear Ms. Washburn:

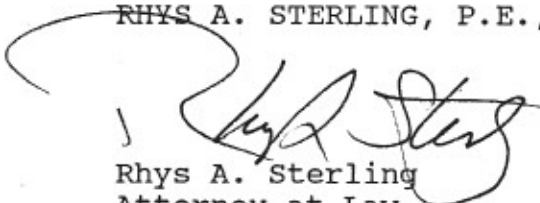
Enclosed herewith is the original and five (5) copies of Stuth and Aqua Test's List Of Additional Factual Issues And Possible Witnesses For The Hearing AND Data/Discovery Request.

I am also e-mailing a *.pdf copy and a MS Word version of this paper to the WUTC records center and to all participating parties.

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

Enclosures

cc: Jonathan C. Thompson, Assistant AAG, UTC Division
Bill Stuth/Aqua Test, Inc.

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Honorable C. Robert Wallis
Administrative Law Judge

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,)	STUTH AND AQUA TEST'S LIST
INC.,)	OF ADDITIONAL FACTUAL ISS-
)	UES AND POSSIBLE WITNESSES
For Declaratory Order Designating)	FOR THE HEARING <u>AND</u> DATA/
a Public Service Company)	DISCOVERY REQUEST
_____)	

Pursuant to Order 05 Denying Summary Determination Motions entered in this matter on March 27, 2006, and in particular Paragraph 10 thereof, Petitioners William Stuth and Aqua Test, Inc. hereinbelow set forth their preliminary list of additional factual issues and possible witnesses for presentment at the hearing.

I. ADDITIONAL FACTUAL ISSUES

At this time Stuth and Aqua Test have identified three additional issues of fact as to which testimony and/or documentary evidence should be produced at the hearing; namely:

1. WUTC staff has yet to produce any facts by way of testimony and/or documentary evidence that supports its opposition to the Petition filed in this action as a factual matter. What competent evidence in fact exists that supports and underlies WUTC staff's opposition in this case?

- 1 2. We are aware of at least one meeting between high ranking
2 officials in the WUTC and the Puget Sound Action Team at
3 which the Stuth and Aqua Test Petition and/or the generic
4 issue of regulation of wastewater companies as set forth
5 in the NRRI Briefing Paper on State Commission Regulation
6 of Wastewater (October 2005) were discussed. Factual iss-
7 ues arising therefrom include how many conversations were
8 had and who were the participants from WUTC and PSAT; the
9 matters discussed; any decisions or policies made or dev-
10 veloped by WUTC staff stemming from such discussions; and
11 what affect such meeting(s), discussion(s), and/or conv-
12 ersation(s) have had on the development of WUTC staff's
13 position regarding the Petition in this matter?
- 14 3. What is it that WUTC is being asked to regulate, what are
15 the attributes of a wastewater company subject to regula-
16 tion by WUTC, why is it being asked to regulate wastewa-
17 ter companies serving the public with LOSS systems as pub-
18 lic service companies, and why is it in the public inter-
19 est and the best interest of the public and the environ-
20 ment for WUTC to regulate wastewater companies regardless
21 of the DOH "public entity"/"back-up" concerns?

II. POSSIBLE WITNESSES

22 Following is a preliminary list of the possible witnesses that
23 Stuth and Aqua Test may call to present testimony at the hearing to
24 address the factual issues raised by the Administrative Law Judge,
 the WUTC staff, or the additional issues raised above:

- 1 1. William L. Stuth
2 31424 W. Lake Morton Dr SE
3 Kent, Washington 98042

4 Mr. Stuth is an owner of and the President of Aqua Test, Inc.
5 and is also an individual petitioner in the underlying Petition for
6 Declaratory Order. Mr. Stuth may testify as to his personal and
7 professional knowledge, background, and expertise in the area of
8 wastewater treatment, LOSS systems, and the need for and manner in

1 which Aqua Test will provide essential utility services for hire as
2 a public service company to the public served by LOSS systems in
3 the State of Washington. The scope of his direct testimony may co-
4 ver all relevant factual issues within his lay and/or professional
5 competency.

6 2. Matt Lee
7 Aqua Test, Inc.
8 P.O. Box 1116
9 Black Diamond, Washington 98010

10 Mr. Lee is an owner of and the General Manager of Aqua Test,
11 Inc. -- a co-petitioner in the underlying Petition for Declaratory
12 Order. Mr. Lee may testify as to his personal and professional
13 knowledge, background, and expertise in the area of wastewater
14 treatment, LOSS systems, and the need for and manner in which Aqua
15 Test will provide essential utility services for hire as a public
16 service company to the public served by LOSS systems in the State
17 of Washington. The scope of his direct testimony may cover all
18 relevant factual issues within his lay and/or professional compe-
19 tency.

20 3. Richard M. Benson, P.E.
21 Washington Department of Health
22 Large On-Site Program
23 1500 West 4th Avenue, Suite 403
24 Spokane, Washington 99204-1656

Mr. Benson is the Program Lead for the State Department of
Health's Large On-Site Sewage System program. Mr. Benson may
testify as to all relevant matters within his professional knowl-

1 edge, background, and expertise in the area of wastewater treat-
2 ment, LOSS systems, and current problems with the DOH requirement
3 for public entity back-up for privately owned, operated and maint-
4 ained LOSS systems by municipal and quasi-municipal entities, and
5 the urgent need for a viable and effective alternative thereto by
6 a WUTC-regulated public service company that would function as the
7 requisite public entity for ownership, operation and management of
8 LOSS systems. The scope of his direct testimony may cover all rel-
9 evant factual issues within his lay and/or professional competency,
10 including addressing the matters presented in his March 9, 2005 le-
11 tter to the WUTC and an update thereto.

12 4. Tony R. Kastens, President
13 Barclays North, Inc.
14 10515 - 20th Street S.E.
Suite 100
Everett, Washington 98205

15 Mr. Kastens is the President of Barclays North, Inc., a large
16 residential and commercial real estate development company serving
17 the Puget Sound region of the State of Washington. The scope of
18 his direct testimony may cover all relevant factual issues within
19 his lay and/or professional competency, including addressing the
20 matters presented in his September 30,, 2005 letter previously sub-
21 mitted to the WUTC and any other issues related thereto.

22 5. Terry Bounds, P.E.
23 Executive Vice President
Orenco Systems, Inc.
24 814 Airway Avenue
Sutherlin, Oregon 97479

1 Mr. Bounds is the Executive Vice President of Orenco Systems,
2 Inc., a company that has over 24 years of experience in LOSS sys-
3 tems and the operation and management thereof. The scope of his
4 direct testimony may cover all relevant factual issues within his
5 lay and/or professional competency, including addressing the matt-
6 ers presented in his October 5, 2005 letter previously submitted to
7 the WUTC and any other issues related thereto.

8 6. A. Robert Rubin
9 192 Weatherband
10 Pittsboro, North Carolina 27312

11 A. Robert Rubin is Professor Emeritus in the Biological and
12 Agricultural Engineering Department at North Carolina State Uni-
13 versity in Raleigh, North Carolina. Professor Rubin's extensive
14 background and expertise is set forth at least in part in his let-
15 ter received November 14, 2005 and previously submitted to the WUTC
16 in this matter. He has consulted with the US EPA in areas regard-
17 ing effective management alternatives for on-site sewage systems.
18 The scope of his direct testimony may cover all relevant factual
19 issues within his lay and/or professional competency, including
20 addressing the matters presented in his previous letter and any
21 other issues related thereto.

22 7. Lawrence D. Fay, Jr.
23 Section Manager, Community Environmental Health
24 Seattle-King County Public Health Department
Eastgate Environmental Health
14350 SE Eastgate Way
Bellevue, Washington 98007

1 Mr. Fay is the Section Manager for the Community Environmental
2 Health division of the Seattle-King County Department of Public
3 Health. The scope of his direct testimony may cover all relevant
4 factual issues within his lay and/or professional competency, inc-
5 luding addressing the matters presented in his November 15, 2005
6 letter previously submitted to the WUTC and any other issues relat-
7 ed thereto.

8 8. Craig Goodwin
9 NCS Wastewater Solutions
10 10412 John Bananola Drive
11 P.O. Box 73399
12 Puyallup, Washington 98373

13 Mr. Goodwin is the General Manager of NCS Wastewater Solutions
14 LLC, a company that designs, builds and operates LOSS systems. The
15 scope of his direct testimony may cover all relevant factual issues
16 within his lay and/or professional competency, including addressing
17 the matters presented in his November 9, 2005 statement previously
18 submitted to the WUTC and any other issues related thereto.

19 9. Robert J. Pinkney
20 Tennessee Wastewater Systems, Inc.
21 7638 River Road Pike
22 Nashville, Tennessee 37209-5733

23 Mr. Pinkney was the original petitioner before the Tennessee
24 Regulatory Authority for the purpose of obtaining TRA approval of
a certificate of public convenience and necessity for his company,
On-Site Systems, Inc., to provide sewage collection, treatment and
disposal for a proposed residential development in Maury County,

1 Tennessee. Since that time the company has been granted numerous
2 additional CPCN's around the State of Tennessee, and has expanded
3 its operations as a public utility providing comparable services in
4 several other States. His testimony may cover all relevant factual
5 issues within his lay and/or professional competency, including ad-
6 dressing the various issues he and his company have faced and met
7 over the years such as the effects and benefits from regulation by
8 various State public utility regulatory commissions.

9 10. David R. Jensen, P.E.
10 D.R. Strong Consulting Engineers, Inc.
10604 N.E. 38th Place, Suite 101
11 Kirkland, Washington 98033-7903

12 Mr. Jensen is a Professional Engineer with D.R. Strong Consul-
13 ting Engineers and has many years of direct experience in the des-
14 ign, operation, and management of LOSS systems. Mr. Jensen is very
15 familiar with the current problems with depending solely on munici-
16 pal entities as the primary management entity or back-up for LOSS
17 systems in western Washington. The scope of his direct testimony
18 may cover all relevant factual issues within his lay and/or profes-
19 sional competency.

20 11. Scott Jones, P.E.
21 Jones Consultants
P.O. Box 359
Colbert, Washington 98007

22 Mr. Jones is a Professional Engineer and has his own business
23 as to which he has many years of direct experience in the design,
24 operation, and management of LOSS systems. Mr. Jones is very fam-

1 iliar with the current problems with depending solely on municipal
2 entities as the primary management entity or back-up for LOSS sys-
3 tems in eastern Washington. The scope of his direct testimony may
4 cover all relevant factual issues within his lay and/or profession-
5 al competency.

6 12. Steve Wecker
7 On-Site Consulting Services
8 P.O. Box 226
9 Wauna, Washington 98395

10 Mr. Wecker is a licensed designer of on-site sewage systems
11 and has many years of direct experience in the design, operation,
12 and management of LOSS systems. Mr. Wecker is very familiar with
13 the current problems with depending solely on municipal entities as
14 the primary management entity or back-up for LOSS systems. The
15 scope of his direct testimony may cover all relevant factual issues
16 within his lay and/or professional competency.

17 13. David A. Lenning
18 Office of Environmental Health and Safety
19 Washington Department of Health
20 P.O. Box 47825
21 7211 Cleanwater Lane
22 Olympia, Washington 98504-7825

23 Mr. Lenning has many years of experience in the on-site sewage
24 program of the State of Washington, including that for the design,
25 operation and management of LOSS systems. Mr. Lenning is very fam-
26 iliar with the current problems with depending solely on municipal
27 entities as the primary management entity or back-up for LOSS sys-
28 tems. The scope of his direct testimony may cover all relevant

1 factual issues within his lay and/or professional competency.

2 14. Terry Hull
3 Puget Sound Action Team
4 Office of the Governor
5 P.O. Box 40900
6 Olympia, Washington 98504-0900

7 Mr. Hull is the Program Manager for Onsite Sewage Systems and
8 Septics for the Puget Sound Action Team (PSAT). The PSAT has wide
9 ranging program goals including the clean up and protection of Pu-
10 get Sound waters impacted by on-site sewage systems. The scope of
11 his direct testimony may cover all relevant factual issues within
12 his lay and/or professional competency, including addressing the
13 matters presented in his October 25, 2005 memorandum previously
14 submitted to the WUTC and any other issues/updates related thereto.

15 15. David Danner, Executive Director
16 Washington Utilities and Transportation Commission
17 1300 S. Evergreen Park Drive SW
18 Olympia, Washington 98504-7250

19 Mr. Danner is the Executive Director of the WUTC and it is be-
20 lieved that he personally met with official(s) from the Puget Sound
21 Action Team regarding specifically or generically the regulation of
22 wastewater companies by the WUTC in a manner consistent with the
23 Stuth and Aqua Test Petition in this matter. Mr. Danner may testi-
24 fy as to his first hand knowledge regarding such meeting(s) and/or
conversations with PSAT personnel, and what if anything WUTC did or
considered to do as a result thereof, including the factual grounds
for WUTC staff's opposition to the Petition in this matter. Mr.

1 Danner may also testify as to other issues raised in this matter
2 including past history of WUTC, predecessor agency, or legislative
3 regulation or consideration of (a) types of public service compan-
4 ies, common carriers, and/or contract carriers subject to regula-
5 tion by the WUTC or its predecessor agencies but which were not
6 specifically identified or named in Title 80 RCW or other applica-
7 ble statutes, and (b) owners, operators, and managers of any kind
8 of sewage or wastewater systems as public service companies.

9 16. Chris Rose, Policy Director
10 Washington Utilities and Transportation Commission
11 1300 S. Evergreen Park Drive SW
12 Olympia, Washington 98504-7250

13 Mr. Rose is the Policy Director of the WUTC and he was person-
14 ally involved in distributing the NRRI Briefing Paper to Ron Shultz
15 at the PSAT, and to David Danner and Eugene Eckhardt of the WUTC.
16 Mr. Rose is personally familiar with matters of policy in the WUTC
17 regarding and relating to various facets as to the issue of regula-
18 ting wastewater companies as public service companies, and is be-
19 lieved to be familiar with the factual grounds for WUTC staff's op-
20 position to the Petition in this matter. Mr. Rose may testify as
21 to his personal knowledge of facts, evidence and/or policies that
22 support or underlie WUTC staff's opposition to the Stuth and Aqua
23 Test Petition in this matter. Mr. Rose may also testify as to
24 other issues raised in this matter including past history of WUTC,
predecessor agency, or legislative regulation or consideration of

1 (a) types of public service companies, common carriers, and/or con-
2 tract carriers subject to regulation by the WUTC or its predecessor
3 agencies but which were not specifically identified or named in Ti-
4 tles 80/81 RCW or other applicable statutes, and (b) owners, opera-
5 tors, and managers of any kind of sewage or wastewater systems as
6 public service companies.

7 17. Eugene K. Eckhardt, Assistant Director
8 Water and Transportation
9 Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-7250

10 Mr. Eckhardt is the WUTC staff representative in this case and
11 is likely that individual in WUTC who is most familiar with, and
12 has first hand knowledge as to, the facts and evidence supporting
13 and underlying staff's opposition to the Stuth and Aqua Test Peti-
14 tion. Mr. Eckhardt may testify as to his personal knowledge of all
15 such facts, evidence and/or policies that support or underlie WUTC
16 staff's opposition to the Petition in this matter. Mr. Eckhardt
17 may also testify as to other issues raised in this matter including
18 past history of WUTC, predecessor agency, or legislative regulation
19 or consideration of (a) types of public service companies, common
20 carriers, and/or contract carriers subject to regulation by the
21 WUTC or its predecessor agencies but which were not specifically
22 identified or named in Title 80 RCW or other applicable statutes,
23 and (b) owners, operators, and managers of any kind of sewage or
24 wastewater systems as public service companies.

STUTH AND AQUA TEST'S LIST
OF ISSUES AND POSSIBLE WIT-
NESSES -- PAGE 11 OF 14

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

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III. DATA/DISCOVERY REQUEST

Pursuant to WAC 480-07-400 and, as may be appropriate, RCW 42.17.250 et seq., Stuth and Aqua Test hereby request that the following persons identified above as possible witnesses produce for inspection and copying at the pre-hearing conference scheduled for April 17, 2006, all data and records of whatever kind, including e-mail correspondence, personal notes, correspondence, and analysis/policy documents regarding or relating to the WUTC staff's review or consideration of the underlying Petition for Declaratory Order in this matter, including all factual and documentary evidence of whatever kind that exists and is in their possession or WUTC's custody that directly or indirectly supports or opines to WUTC staff's various position(s) taken in this action, either in opposition to, in support of, and/or remaining neutral to Stuth and Aqua Test's Petition. It is requested that each of the following individuals comply with this data/discovery request:

David Danner, Chris Rose, and Eugene Eckhardt.

IV. SUBPOENA REQUIREMENTS

As the specific need may present itself, in order to obtain the personal appearance of specific named individuals with the requisite leave from their government or private positions to attend the hearing in Olympia, Stuth and Aqua Test will request the Administrative Law Judge issue subpoenas ad testificandum/duces tecum to the following individuals, compelling their personal attend-

1 ance at the hearing and to bring with them documentary evidence re-
2 levant to the issues as to which they may testify:

- 3 1. Richard M. Benson
- 4 2. Lawrence Fay
- 5 3. Eugene Eckhardt
- 6 4. David Danner
- 7 5. Chris Rose
- 8 6. Terry Hull
- 9 7. David Lenning

10 V. ANTICIPATED DURATION OF HEARING

11 Considering the number of potential witnesses that may be cal-
12 led by Stuth and Aqua Test in order to address the factual issues
13 raised in this matter, it is anticipated that a minimum of five (5)
14 full days of hearing will be required for the Petitioners to pres-
15 ent their case in chief.

16 VI. SPECIAL A/V REQUIREMENTS

17 Certain witnesses may wish to include an audio/visual presen-
18 tation (e.g., PowerPoint) as part of their direct testimony or pre-
19 pared statement at the hearing to aid, assist, and help the Admin-
20 istrative Law Judge in understanding the several issues and matters
21 of fact regarding and relating to LOSS systems, WUTC regulation of
22 wastewater companies, and the Stuth and Aqua Test Petition. It is
23 requested that the ALJ advise the parties as soon as possible as to
24 the availability of on-site facilities to accommodate such present-

1 ations. Otherwise, the parties will be required to supply their
2 own equipment and support for A/V presentation and display.

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NOTE

5 Stuth and Aqua Test retain and reserve the right to amend the
6 foregoing statement of additional factual issues, possible witness-
7 es, and subpoenas at any time prior to or during the pre-hearing
8 conference of the hearing upon sufficient notice to opposing coun-
9 sel and to the Administrative Law Judge. Amendments may include
10 additions, deletions, or substitutions, including changes to the
11 data/discovery request.

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DATED this 6th day of April, 2006.

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Respectfully submitted,

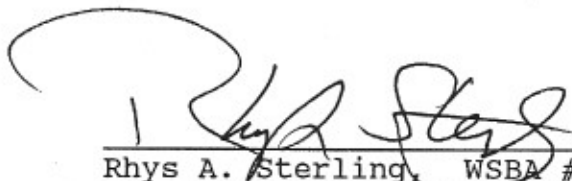
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RHYS A. STERLING, P.E., J.D.

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Rhys A. Sterling, WSBA #13846
Attorney for Petitioners Stuth and
Aqua Test, Inc.

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CERTIFICATION OF SERVICE

I certify under penalty of perjury
under the laws of the State of Washington
that on the 6th day of April
~~2006~~, I mailed a copy of this document
to all parties.

DATED at Issaquah, Washington
[Signature]