

April 27, 2006

Ms. Mary C. Selecky  
Secretary of Health  
Office of the Secretary  
Washington State Dept. of Health  
1112 SE Quince Street  
PO Box 47890  
Olympia, WA 98504-7890

Dear Ms. Selecky:

The Washington Utilities and Transportation Commission is now reviewing a petition for declaratory order<sup>1</sup> involving the question of whether the commission must, under present law, regulate independent businesses who own, operate or maintain large on-site sewage systems for compensation.

In an earlier phase of the proceeding, the applicants for declaratory order presented a supporting statement from a Department of Health employee, Mr. Richard M. Benson, P.E., expressing the department's support for such regulation. The Superior Court on review found significance in the department's apparent opposition to the commission's view that it lacked jurisdiction to regulate the activities proposed by the petitioners. The court remanded the matter to the commission for a fact-finding hearing, which the commission is now engaged.

After the remand, commission staff offered to the record a statement from another Department of Health employee, Mr. Brad J. Avy, stating that the department has no legal position on the issue whether the commission has jurisdiction to exercise regulation. His statement also says that the department supports the concept of the petition.

Neither Mr. Benson nor Mr. Avy stated that he was authorized to express the department's position on matters pending before the commission. However, their

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<sup>1</sup> In re the Petition of WILLIAM L. STUTH and AQUA TEST, INC., For a Declaratory Order, commission docket number A-050528.

inconsistent statements have led to some confusion as to what the department's position actually is.

In view of the court's concern about this issue and the ensuing uncertainty, and in view of the commission's obligation to the court on remand to gather a complete factual record, I am asking that the Department of Health designate a person who has authority to speak for the department on this matter to present a brief written statement of the department's position (whatever it is, of course, is entirely within the department's discretion). In addition, I am asking that the designated person be available on June 29, 2006, to respond at a hearing before the commission to any brief questions that are within the scope of the statement. The parties are aware that I am making this request, and neither party opposes it.<sup>2</sup>

The specific question is this: What is the department's position, if any, on whether businesses that own, operate or maintain large on-site sewage systems for compensation are public service companies subject to regulation by the commission?

Under the schedule adopted at a recent prehearing conference, we would appreciate it if you would advise us, with copies to counsel, whether the department can provide a person to state its position, by May 12, 2006. That person's statement would be filed with the commission in this docket by May 24, 2006, and the person would present that statement at the hearing scheduled for June 29, 2006, beginning at 9:30 a.m.

Thank you for your assistance. If you have questions, you may reach me at 664-1142.

Sincerely,

C. ROBERT WALLIS  
Administrative Law Judge

Encl: Petition; Benson letter; Avy letter; Excerpt from court's oral opinion;  
Prehearing order

Copies:

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<sup>2</sup> The commission has subpoena authority, but we don't believe it necessary at this juncture. If you deem it necessary for the commission to use this authority for you to respond properly, please advise and we will take the necessary steps to issue the subpoena.