


# DIVISION OF DRINKING WATER POLICY/PROCEDURE

Title:	Group A Water Systems: Construction Without Approval	Number:	J.21
References:	RCW 70.119A.040, WAC 246-290-040, WAC 246-290-100, WAC 246-290-110, WAC 246-290-120		
Contact:	Ethan Moseng or Hal Dygart		
Effective Date:	April 12, 1995		
Supersedes:	N/A		
Approved:			Director, Division of Drinking Water

## **PURPOSE**

The purpose of this policy is to identify Department of Health (DOH) action intended to prevent construction, expansion or modification of public water system facilities without prior DOH approval of all required documents; and to identify DOH action in those cases where public water system facilities have been constructed, expanded or modified without prior DOH approval of all required documents.

## **BACKGROUND**

WAC 246-290-100(2) and (9) provide that, with limited exceptions, purveyors must submit a water system plan for DOH review and approval before DOH will approve project reports (WAC 246-290-110) and construction documents (WAC 246-290-120). With limited exceptions, WAC 246-290-110(2) and WAC 246-290-120(2) provide, respectively, that purveyors shall submit project reports and construction documents to the department for written approval prior to the installation of all new water systems or water system extensions or improvements. WAC 246-290-040(2) requires purveyors to submit a "Construction Report for Public Water System Projects" to DOH within 60 days of construction and before use of any project approved by DOH. DOH review and approval is a principal means of ensuring that, when constructed, a water system will:

1. Provide an adequate quantity of good quality water; and
2. Last over time, thus minimizing customer costs.

Despite these long-standing regulatory requirements, some purveyors and developers continue to construct new water systems or to extend or modify existing systems without first obtaining DOH approval. On some occasions DOH becomes aware that construction of an unapproved system, extension or improvement has commenced without prior DOH approval; often, however, DOH is unaware that a system is under construction until after the system is built.

As a deterrent to construction, modification or expansion of public water system facilities without prior DOH approval, the state legislature passed RCW 70.119A.040(1)(b), which in part provides for penalties of not more than \$5000 per service connection (or if the system serves a transient population, \$400 per person based on the highest average daily population the system is anticipated to serve) with a limit of \$500,000.

This policy is intended to implement these penalty provisions and WAC 246-290-140 which addresses approval of existing systems.

## **POLICY**

DOH shall seek to ensure that public water system facilities are not constructed, expanded or modified without prior DOH approval of all required documents. Where public water system facilities have been constructed, expanded or modified without prior DOH approval of all required documents, DOH shall seek to determine the extent of regulatory compliance, shall require such corrective measures as are necessary to achieve public health protection and may assess civil fines authorized under RCW 70.119A.040 as a sanction.

All provisions of this policy shall apply to systems constructed, expanded or modified without prior DOH approval after the effective date of this policy. Any or all provisions of this policy may be applied to systems constructed, expanded or modified before the effective date of this policy at the discretion of DOH based on circumstances related to water quality, water quantity and reliability.

## **PROCEDURE**

### **Notification**

1. DOH shall publicize this policy, as appropriate, in general mailings and public presentations.
2. Each Regional Office (RO) shall, as a part of its letter acknowledging receipt of water system plans, project reports and construction documents, include the following language in bold type:

**THIS LETTER SERVES AS OFFICIAL NOTICE THAT IF YOU COMMENCE CONSTRUCTION WITHOUT ALL REQUIRED APPROVALS UNDER CHAPTER 248-290 WAC, YOU AND ANY PERSON ASSISTING YOU MAY BE SUBJECT TO A PENALTY OF UP TO FIVE THOUSAND DOLLARS PER SERVICE CONNECTION AND YOU MAY BE REQUIRED TO EXPOSE SYSTEM COMPONENTS FOR DOH INSPECTION AT YOUR EXPENSE. THE DEPARTMENT IS UNDER NO OBLIGATION TO ACCEPT OR APPROVE ANY COMPONENT INSTALLED OR CONSTRUCTED PRIOR TO APPROVAL.**

3. If staff become aware that system construction, expansion or modification has commenced, they shall notify the RO engineer responsible for the county in which the system is located. The responsible engineer shall ensure that a stop work order is sent to as many of the following as can be reasonably ascertained:
  - a. The owner of the system under construction and/or the owner of the system to which connection is planned or is likely;
  - b. The system operator;
  - c. The person principally responsible for construction; and
  - d. The project engineer.

In addition, the responsible engineer shall provide a copy of the order to appropriate county officials.

### **Follow-up Action**

DOH shall require the system owner to comply with any of the following applicable requirements at his or her expense:

1. Submissions. Obtain all approvals which would have been necessary had construction not taken place. Required submissions include, but are not limited to:
  - a. A water system plan or small water system management program;
  - b. A project report;
  - c. Construction documents;
  - d. "Construction Report for Public Water System Projects"; and
  - e. DOH forms, including disinfection and bacteriological test report form and the water facility inventory form.
2. Inspection.
  - a. Excavation of water mains at dead ends, pipe angles greater than 15 degrees, and up to 60% of all fire hydrants and valve locations down to a sufficient depth to visually inspect required thrust blocking;
  - b. Excavation of water mains every 50 feet down to a depth sufficient to visually inspect pipe bedding and verify pipe depth. DOH may require that at least 10% of all pipe joints be exposed for inspection;
  - c. Exposure of up to 10% of all service taps for inspection and verification of

materials used;

- d. A pressure test completed in accordance with approved specifications in the presence of the system's design engineer and DOH representative;
  - e. Draining any reservoir or other storage component to allow for inspection of the interior of the tank and any coatings applied. (In the event of such inspections, lighting and safety equipment necessary to meet OSHA requirements for entering a confined space must be provided by the purveyor);
  - f. A distribution map accurately identifying all excavation locations which shall be available at the time of any on-site inspection;
  - g. A minimum of five coliform bacteria sample containers for taking water samples;
  - h. Sieve analyses of the bedding material for any pipe;
  - i. Copies of invoices of materials purchased and/or copies of truck manifests of materials hauled;
  - j. Copies of any tests done on materials or workmanship by manufacturer, contractor or engineer to ascertain quality control (eg. concrete slump tests, coating thickness tests, etc.);
3. Provide a written inspection schedule. DOH will use best efforts to conduct an on-site inspection within three weeks of receiving written notification that the subject system or site is available for inspection.
  4. DOH may require that a third party professional engineer, agreed to by the owner and DOH, verify and complete construction inspection requirements including necessary inspection forms.
  5. DOH staff may waive or modify any requirement under the section titled "Follow-up Actions" in emergency situations or when responding to an imminent health threat.

### **Sanctions**

1. In addition to "Follow-up Actions" identified in this policy, DOH may impose fines authorized under RCW 70.119A.040 and may take action against any involved certified operator as authorized under Chapter 70.119 RCW.
2. If a licensed engineer is or has been party to unapproved construction, DOH may refer the engineer to the Board of Registration for Professional Engineers and Land Surveyors for investigation and possible license action.
3. Notwithstanding this policy or any action taken pursuant to this policy, DOH, through

the Office of the Attorney General, may pursue injunctive relief, receivership or any other relief available under law with respect to a system that is being or has been constructed, expanded or modified without prior DOH approval of all required documents.

## CONSTRUCTION WITHOUT APPROVAL Checklist of Comments

<b><i>Comment</i></b>	<b><i>Response</i></b>
<b>Ronni Woolrich:</b> Number 1 under "Follow-up" is more stringent than WAC, so the difference between this policy and "existing system" requirements needs to be explained.	Policy is more specific, not more stringent because WAC 246-290-140 is open-ended as long as requirement is in regulation. However, agree with need to clarify the relationship, so added a new paragraph under <b>Background</b> .
<b>Ronni Woolrich:</b> Number 5 under "Follow-up" should require documentation in the file if more stringent actions in emergency situations are pursued.	Agree, added.
<b>Ronni Woolrich:</b> Number 1 under "Sanctions" allowing for penalties -- would this apply if there was a stop work order?	Correct. All follow-up actions mentioned follow a stop work order.
<b>Peggy Johnson:</b> Number 2(g) under "Follow-up" should also include a requirement for the system to pay for coliform sampling.	The introductory sentence states ". . . at the purveyor's expense".
<b>John Aden:</b> 2nd paragraph on page 2 should be revised so it flows better. See specific wording.	Agree. Revised.
<b>Rich Hoey:</b> Number 2 under "Notification" includes harsh wording with which systems may take offense. We should send a general mailing to systems rather than remind them each time something is submitted.	It is appropriate to place the warning on the approval letter because we have experienced problems. General mailings have a way of getting lost or in the wrong hands, so the message is diminished. However, the language has been toned down so it isn't so harsh (but another clause has been added per Simon's suggestion).
<b>Rich Hoey:</b> "Follow-up Actions" should apply to installation of chemical addition or disinfection as well as extension of distribution mains.	The items listed relate mainly to things which can't normally be seen. If items are above ground, it is easier for an engineer to certify construction after the fact as they are readily available for inspection: They are NOT ignored.

<p><b>Judy Murrow:</b> Number 2 under "Background" -- What does "last over time" mean? and should the phrase be used if it will generate questions for the Regional Office?</p>	<p>"Last over time" refers to how well-designed and constructed a facility is. This phrase is in the <b>Background</b> section, so is not likely to be an issue.</p>
<p><b>Vinnie Wright:</b> There is confusion over applicability -- are <u>all</u> "existing systems" affected or just those constructed after a certain date?</p>	<p>This is a good point! A phrase has been added stating that this policy applies to "all construction without prior approval after the date this policy becomes effective".</p>
<p><b>Vinnie Wright:</b> It is not clear if the "follow-up" section applies only if systems are found "in progress" or if they are found after they have completed construction as well.</p>	<p>This policy, and the <b>Follow-Up</b> section apply to both cases.</p>
<p><b>Vinnie Wright:</b> 2nd paragraph on page 2 - there seems to be a word missing.</p>	<p>Agree. The paragraph has been reworded.</p>
<p><b>Simon Tung:</b> When does this policy take effect? and does it include all "existing systems" which do not have approval?</p>	<p>This policy takes effect when signed by Dave Clark. A phrase has been added to clarify that it applies to "all construction without prior approval after the date this policy becomes effective".</p>
<p><b>Simon Tung:</b> WAC 246-290-140 (Existing System Approval) already covers these systems and provides for "department-determined information".</p>	<p>Agree. This policy is intended to clarify WAC 246-290-140, being more specific what is meant by "department-determined information".</p>
<p><b>Simon Tung:</b> It appears the purpose of the "Follow-up" section is to penalize systems. Why wouldn't a construction report be sufficient as long as final construction complies with it?</p>	<p>This policy is intended to protect public health, not penalize. A "construction report" documents that a project was constructed in accordance with APPROVED plans, so it is not appropriate since a purveyor did not obtain approval in these cases.</p>
<p><b>Simon Tung:</b> Rather than this policy, a streamlined and consistent penalty process needs to be instituted -- perhaps a penalty for simply failure to follow approval procedures. The quality of engineering and construction should not be an issue in this penalty.</p>	<p>See the Compliance Manual for our "streamlined" penalty process -- it IS available for these situations. Disagree with the premise that quality of engineering and construction is not an issue -- it is a key issue in our goal of protecting public health.</p>

<p><b>Simon Tung:</b> Number 2 under "Notification" should include as part of the statement: "The department is under no obligation to accept or approve any component installed or constructed prior to approval".</p>	<p>Agree, added.</p>
<p><b>Tim Blake:</b> When does this policy take effect? Does it cover past construction, or that now and into the future?</p>	<p>Added phrase to the policy stating that it covers "construction without prior approval after the date this policy becomes effective".</p>
<p><b>Tim Blake:</b> Number 1(e) under "Follow-up" mentions a pressure and leakage form. What is this? Question whether we want to set ourselves up as "inspector", or should we rely on 3rd party?</p>	<p>A "pressure and leakage form" is not mentioned in the regulations, so it was deleted from the list. If we decide on 3rd party inspection, we can simply empower them to ask for or do what is stated under "Inspection" as our agent. See number 4 under "Inspection".</p>
<p><b>Hal Dygert:</b> Add new paragraph as second paragraph in Policy Section, stating that DOH may apply any or all of this policy depending on circumstances of each situation.</p>	<p>Agree. Added, but shortened slightly.</p>
<p><b>Hal Dygert:</b> Changing "may" to "shall" in several instances leaves District Engineers with little discretion on follow-up actions.</p>	<p>Agree. Clarified lead-in sentences and changed several "shalls" to "mays". This will require district Engineers to exercise more judgement in determining what is needed and balancing against cost.</p>
<p><b>Hal Dygert:</b> The policy may be inconsistent with penalty schedule in the Compliance Manual (policy contemplates larger fines).</p>	<p>The policy does not address amount of fines. But your point is well-taken. The penalty schedule in the Compliance Manual has been revised to increase fine amount (doubling in most cases) to address your comment.</p>
<p><b>Hal Dygert:</b> Delete third paragraph under Background and incorporate those ideas in the fourth paragraph.</p>	<p>Agree. Revised.</p>
<p><b>Hal Dygert:</b> Change "regulatory compliance" to "public health protection" in first paragraph of the Policy Section.</p>	<p>Agree. Revised.</p>



<p><b>Hal Dygert:</b> Suggest revisions and additions in mandatory language to be included in letter acknowledging receipt of documents for review. Intend is to be more hard-nosed.</p>	<p>Added some of the suggested language, but left it a little "softer" and shorter.</p>
<p><b>Hal Dygert:</b> Revise 2a under Follow-Up Section to give District Engineers more flexibility.</p>	<p>Agree. Revised.</p>
<p><b>Hal Dygert:</b> Revise wording in 5 under Follow-Up Section to less stringent actions in emergency situations.</p>	<p>Agree. Revised.</p>
<p><b>Hal Dygert:</b> Add phrase in 1 under Sanctions Section to state DOH may take action against certified operators who are party to constructing systems without approval.</p>	<p>Agree. Added.</p>

Alan Rowe, 3/29/95, CONSWOAP.COM