

# Large On-site Sewage Systems RCW 70.118B

January 2008



## Background

Regulation of on-site sewage systems is currently divided between local health jurisdictions, the Department of Health (DOH), and Department of Ecology. This division of regulatory authority causes confusion for homeowners, developers, the wastewater industry, as well as state and local governments and ultimately creates barriers to permitting. The Puget Sound Partnership and the On-site Sewage Advisory Committee recommended transferring the authority for all large on-site sewage systems to DOH as a way to address these issues.

In 2006, the legislature passed ESHB 1458 to strengthen management of on-site sewage systems to protect Puget Sound. ESHB 1458 focused on the smaller septic systems regulated by local health jurisdictions. The rule result, WAC 246-272A, was adopted by the State Board of Health in 2007.

## New Legislation

In 2007, ESSB 5894 focused on Large On-site Sewage Systems (LOSS) that handle over 3,500 gallons per day (gpd) of domestic wastewater. The bill passed, and has been codified as RCW 70.118B. The law:

- Grants us regulatory authority for all domestic subsurface wastewater disposal systems that discharge between 3,500 and 100,000 gpd.
- Directs us to review the design and construction of systems and to make rules that protect human health and the environment. The rules will also include public notice and third party appeals for the largest systems.
- Assures on-going maintenance and operation of systems by requiring operating permits.
- Requires us to use the work group convened under RCW 70.118A.080(4) to make recommendations for certification or licensure of large on-site system operators.
- Clarifies civil penalty authority for local health jurisdictions and our agency.

Local health jurisdictions retain regulatory authority for systems up to 3,500 gpd under State Board of Health rules.

On-site Sewage Regulatory Framework		
Regulatory Authority	Current	Under Rule Development
Local Health Jurisdictions (chapter 246-272A WAC)	Systems 3,500 <sup>1</sup> gpd and under (More than 800,000 systems state-wide)	No change
Department of Health (chapter 246-272B WAC)	Non-mechanical systems 3,500-14,500 <sup>2</sup> gpd (300 with current operating permits; up to 2,500 installed before permits required.)	All systems 3,500 – 100,000 <sup>3</sup> gpd, regardless of treatment type
Department of Ecology (chapter 90.48 RCW & chapter 173-240 WAC)	Mechanical systems 3,500 – 14,500 gpd; All systems over 14,500 gpd (About 16 systems permitted state-wide; likely more systems existing)	Systems over 100,000 gpd

<sup>1</sup> 3,500 gpd is approximately 10 houses or a small strip mall

<sup>2</sup> 3,500 -14,500 gpd is a full service restaurant, large grocery store or up to approximately 45 houses

<sup>3</sup> 100,000 gpd is a community system serving approximately 300 homes

# Frequently Asked Questions

## RCW 70.118B

### Large On-site Sewage Systems (LOSS)

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#### **Q. What systems does Department of Health currently regulate and under what authority?**

**A.** DOH currently regulates non-mechanical systems with flows of 3,500 to 14,500 gallons per day (gpd). State Board of Health rules (chapter 246-272B WAC) authorize the department to regulate systems. The Board's authority to adopt rules regarding wastewater is RCW 43.20.050. There are currently 300 systems permitted by DOH and we believe there may be as many as 2,500 systems of this size that were installed prior to DOH regulation of the systems.

#### **Q. What systems does Department of Ecology currently regulate and under what authority?**

**A.** Ecology regulates mechanical systems with daily flows of 3,500-14,500 gpd, and all systems over 14,500 gpd. Ecology regulates LOSS under Chapter 90.48 RCW and chapter 173-240 WAC. There are about 30 on-site sewage systems permitted by Ecology. We think there may be more systems that are not currently permitted.

#### **Q. Why does the law add annual operating permits? What will the fee be?**

**A.** RCW 43.70.250 requires the cost of permits and licenses to be fully borne by the members of the profession, business, or occupation. Currently, DOH issues annual operating permits for some systems sized between 3,500 gpd and 14,500 gpd under chapter 246-272B WAC (currently includes about 300 of the estimated 2500 LOSS systems). The law addresses operating permits in order to establish clear authority for DOH to issue operating permits for *all* systems 3,500 gpd–100,000gpd. The operating permits are an important way for us to be sure that LOSS owners are operating and maintaining their systems adequately.

The current annual operating permit fee is a \$150 base fee plus \$0.01 for each gallon of approved design flow. For noncompliant or conditional systems the annual operating fee is \$150 plus \$0.02 for each gallon of design flow. Fees may change as we begin providing more on-going technical assistance and oversight.

#### **Q. What additional authority does this law give DOH?**

**A.** Under the current regulatory system, we regulate non-mechanical systems with design flows of 3,500 gpd to 14,500 gpd. We review the system design and construction and issue annual permits to assure protection of public health. RCW 70.118B transfers the State Board of Health and the Department of Ecology rulemaking authority to DOH for systems treating 3,500 gpd to 100,000 gpd. We will review the design and construction of systems to assure protection of the environment in addition to public health.

**Q. How does the law change the current program at DOH?**

A. RCW 70.118B expands our program to include the LOSS currently regulated by Ecology. The law also directs us to develop rules protective of the environment as well as public health. This law expands annual operating permits to all large systems. Now only systems permitted after 1984 are required to have annual operating permits. The older systems also need inspection and maintenance in order to assure public health and water quality protection.

**Q. Why is the penalty for non-compliance set at \$10,000 per day?**

A. The \$10,000 penalty is consistent with the existing maximum penalty authority for systems larger than 14,500 gpd under RCW 90.48.144. We will have that same level of authority for the systems previously permitted by the Department of Ecology. We believe fines will usually be much smaller and correspond with the public health or environmental risk. DOH and local health jurisdictions rarely use fines, but they are an important enforcement option to use before eviction.

**Q. How do the water quality standards under RCW 90.48.035 and the land use regulations under 36.70A interact with the new authorities under this law?**

A. The law should provide consistency between the various laws that govern land use, water quality, and public health. RCW 70.118B directs us to establish rules for LOSS that comply with the water quality standards established by Ecology under RCW 90.48.035. Also, we are directed to assure a system's consistency with local development regulations before we may issue a permit.

**Q. Why doesn't the current system work?**

A. There are several reasons the current system is not working:

- The division of regulatory authority causes confusion for homeowners, developers, the wastewater industry, as well as state and local governments. The current regulations for LOSS over 14,500 gpd are more suited to very large wastewater operations. Some believe they are a barrier to community LOSS. RCW 70.118B streamlines and simplifies the regulatory structure and provides more regulatory certainty for all interests.
- Our current permitting authority is directed towards addressing potential public health related concerns. A consistent statewide program will address potential environmental concerns and public health concerns during the permitting process.
- Few existing LOSS currently have operating permits to ensure long term operation and maintenance. Systems without ongoing operation and maintenance are more likely to fail in the future, creating both public health and water quality problems.

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For more information, please call:

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