

On-Site Rule Revision Issue:

Waivers

(WAC 246-272A-0420 Waiver of state regulations)

Problem statement

WAC 246-272A-0420, Waivers, allows the local health officer to grant waivers to specific requirements of the WAC if certain requirements are met. Section 0420(1) is a nearly direct restatement of RCW 70.05.072 (see below).

There has been confusion and disagreement regarding the waiver process, when waivers are appropriate, and what DOH's role in waivers is/should be. Local Health Jurisdictions (LHJs) have asked for the waiver section to be clarified in general, have asked that it is revised so that it is clear if waivers can be issued for reasons other than site complications/limitations, have stated that they should have authority to grant waivers without DOH oversight/consent, and have stated that waivers that require O&M contracts do not work.

LHJs and members of the public have, in general, expressed concern to DOH that waivers are granted in cases when the property is otherwise able to meet the minimum requirements in the rule. It has been suggested that the WAC is changed so that waivers are expressly prohibited unless the property is otherwise unable to meet the minimum requirements in the rule.

Members of the Onsite Rule Review Panel asked that the section is expanded to address conditions to meet requirements through mitigation, asked if cost should be a consideration in granting of waivers, and asked that data on the number of waivers per year is provided to the Puget Soundkeeper Alliance's representative.

Since section 0420(1) is a restatement of RCW 70.05.072, many of the proposed changes to the WAC would create possible contradictions with statute. Moreover, many of the recommendations are outside of the scope of rule language and are programmatic/implementation issues. Local health officers have authority to develop more stringent regulations, or appropriate procedures, in this regard.

The current wording in the WAC provides a strong foundation to the waiver process that is protective of public health while allowing LHJs and DOH the latitude to develop and adapt policies appropriately. A slight revision to update the language will eliminate obsolete language.

Preferred Option Revise as proposed.

PROs/CONs

PRO	CON
<ul style="list-style-type: none">Removes outdated language from the rule that requires DOH to develop guidance, which has been completed.	<ul style="list-style-type: none">Potentially creates the interpretation that DOH should not develop general guidance for the application of waivers.

Recommendations

RED – deletions **Blue** - additions
to existing rule language

The Policy Subcommittee voted to add additional language (seen here in blue text) to the WAC, while the Technical subcommittee voted to only strike (2). These additions in blue text have not been seen by the Technical Subcommittee.

WAC 246-272A-0420 (identical to RCW 70.05.072, except in (2))

Waiver of state regulations.

(1) The local health officer may grant a waiver from specific requirements of this chapter if:

(a) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(b) The local health officer determines that the waiver is consistent with the standards in, and the intent of, these rules;

(c) The local health officer submits quarterly reports to the department regarding any waivers approved or denied; and

(d) Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and the intent of these rules, **and associated guidance issued by the department, then** the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns. If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected.

(2) **The department shall maintain and update guidance to assist local health officers in the application of waivers.**

~~(2) The department shall develop guidance to assist local health officers in the application of waivers.~~

(3) **The department shall publish an annual report summarizing the waivers issued over the previous year.**

RCW 70.05.072

Local health officer—Authority to grant waiver from on-site sewage system requirements.

The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

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Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected.

[[1995 c 263 § 1.](#)]