

On-Site Rule Revision Issue: Property Transfer Inspections (Time of sale inspections)

Problem Statement

The rule does not mandate property transfer inspections (PTIs), but does authorize LHJs to require them as part of their OSS management plans. Eleven of the twelve Puget Sound counties require PTIs while only four counties outside the Puget Sound area require these inspections, resulting in 15 out of 35 local health jurisdictions requiring time of property transfer inspections. Without uniform time of sale inspection requirements in place, some lending institutions will set their own requirements that do not necessarily let buyers know exactly what they are purchasing. Property transfer/OSS inspection requirements established in rule would help identify and resolve issues before title transfer, better protecting buyers from inheriting serious and expensive OSS problems.

Options

- Rule requiring the owner of the OSS to have an inspection of the OSS at the time of property transfer.

Pros/Cons

Pros	Cons
<ul style="list-style-type: none">• Public health and environmental protection by identifying and eliminating failing septic systems.• Protects the buyer's investment by ensuring that the system can safely accommodate their wastewater.• Provides an educational opportunity for prospective buyers to know more about the on-site sewage system and to understand their role in the operation and upkeep of a properly functioning system.• Help ensure consistent procedures for inspections are used throughout Washington State (a buyer's inspector always finds the same results as a seller's inspector), whereby the buyer is protected from inheriting an expensive problem.• Provide an opportunity for LHJs to build their inventory database inspection systems, and verify systems are functioning as intended.	<ul style="list-style-type: none">• Need for collaboration between LHJs, realtors, register of deeds, and third party evaluators and a system for entering, tracking, and transferring information.• Requirement of additional LHJ staff time to administer program (and possibly information technology expenses).• Increase length and complication of real estate transactions.• Requirement for certification protocols for third-party evaluators.

<ul style="list-style-type: none">• Helps identify and resolve on-site sewage system issues before title transfer so that the occurrence of unplanned expenses resulting from the need to replace on-site sewage systems after loans have closed are reduced.• Additional work for local septic system related businesses.• Creation of new business opportunities for registered evaluators from the private sector.• Improved confidence of lending institutions based upon direct knowledge of status of on-site sewage systems.	
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**Adapted with permission from the Marquette County Health Department*

Recommendations & Optional Rule Language to Consider

We recommend that there is a state mandatory time of property inspection.

-0015 **Blue** = Additions **Red** = Deletions

[...]

(7) In order to implement the plan described in subsections (1) and (5) of this section, the local health officer may require the owner of the OSS to:

- (a) Ensure additional maintenance and monitoring of the OSS;
- (b) Provide dedicated easements for inspections, maintenance, and potential future expansion of the OSS;
- (c) Place a notice to title identifying any additional requirements for OSS operation, maintenance and monitoring. ~~;~~~~and~~

(8) In order to implement the plan described in subsections (1) and (5) of this section, the local health officer shall require the owner of the OSS to:

- (a) ~~(d)~~ Have an inspection, as defined by section -0260, of the OSS at the time of property transfer by an inspector authorized by the local health officer. ~~including the preparation~~ The local health officer may verify the results of the property transfer inspection for compliance with section -0260. The local health officer may waive the requirement for a property transfer inspection if the OSS is in compliance with inspection requirements in -0270. ~~of a "record drawing" if necessary.~~
- (b) Have an inspection, as defined by section -0260, of advanced treatment systems with proprietary products done at the time of property transfer by an inspector approved by the local health officer per the product manufacturer recommendations. The local health officer may verify the results of this inspection for compliance with section -0260 and the product

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manufacturer recommendations. The local health officer may waive the requirement for a property transfer inspection if the OSS is in compliance with inspection requirements in -0270.

[...]

-0270(1)(k)

At the time of property transfer provide to the buyer, maintenance records, ~~if available,~~ in addition to the completed seller disclosure statement in accordance with chapter 64.06 RCW for residential real property transfers.

Future Issue

Section -0260 Inspection, will need language as indicated in proposed language (above) defining inspections at the time of property transfer and for proprietary products,

Supporting information

Mohamed, R. 2009. Why Households in the United States do not Maintain Their Septic Systems and Why State-Led Regulations are Necessary: Explanations from Public Goods Theory. International Journal of Sustainable Development. 4(2):41-55. (available at <http://www.doh.wa.gov/Portals/1/Documents/4450/WW-SM-008.pdf>)

This paper investigates why routine OSS maintenance is not being done by property owners. Despite educational programs some local and state jurisdictions offer, a majority of OSS are not receiving routine inspections. A time of sale inspection would reveal whether a system is functioning correctly.

National Environmental Services Center. 2011. Pipeline: Buying or Selling a Home with an Onsite Wastewater System. Summer, 22(1):1-7. (available at http://www.nesc.wvu.edu/pdf/ww/publications/pipline/PL_SU11.pdf)

Farrell-Poe, K., J. Garrett, and D. Long. 2012. What you should know when you're having your septic system inspected for the Transfer of Ownership Program. UA Extension publication, AZ1554. Tucson, AZ: UA. (available at <http://cals.arizona.edu/pubs/water/az1554.pdf>)

EPA Webcasts about Onsite Wastewater Treatment: Property Transfer Inspections of Onsite Wastewater Treatment Systems: Lessons Learned From Around the Nation (4/23/14)

- **Moderators:**
 - Maureen Tooke, U.S. Environmental Protection Agency, Office of Wastewater Management
 - Patrick Jones, MDB, Inc.
- **Panelists:**
 - Kit Rosefield, California Onsite Wastewater Association of Wastewater Technicians (NAWT)
 - Kitt Pharrell-Poe, University of Arizona
 - Ray Erb, Thomas Erb and Sons, Inc.
- **Presentation:**
 - [Property Transfer Inspections: The Good, The Bad, The Ugly Lessons Learned Policy Successes and Failures](#)
- **Webcast transcript:**
 - [Transcript](#)

National Association of Wastewater Technicians Inspector Certification Program (<http://www.nawt.org/training.html>)

- Qualification requirements prior to receiving certification include:
 - Completing a comprehensive 2-day (12-hour) onsite wastewater treatment systems course covering terminology, treatment, tanks, construction methods, applications, and inspection training
 - Or, demonstrating competence in the field

- An exam score of 70 or above is required to receive a national inspector certification
- The national certification is good for two (2) years from the date of the completed certification training session
- Registration procedures and fees will be managed by the association sponsoring the training or by the NAWT office per their mutual agreement. If NAWT does not collect the registration fees, the sponsoring Association will be invoiced by NAWT for Fifty Dollars (\$50.00) per individual taking the course.
 - This fee will cover the cost of the training manual, handouts, exam, exam grading, certificate, and two years of listing on the NAWT website registry.
- Exams will be prepared by the NAWT Education Program Coordinator or delegate. Exams will be updated annually or as the NAWT Education Program Coordinator deems appropriate.
- Training instructors must remit exams to the Education Program Coordinator within 7 days of the exam date for grading and/or review.
 - The sponsoring Association may grade the exams before remitting them to the Education Program Coordinator for review.
- The Education Program Coordinator should mail the graded exams to the Executive Director for entry into the NAWT database within thirty (30) days of the exam date.
- The Executive Director will enter the participant's exam score, the session training ID, certification expiration date, and their website registry preference into the NAWT database (FileMaker Pro 10).
 - Each training session will be given a different ID number, which will include the training session date and location (city and state).

Other States' Approaches

Some states' statutes require inspection of on-site sewage systems at the time of transfer, others enable a state-level public health agency or local authorities to impose the requirement, and some do not address the specific requirement at all.

Arizona: Arizona Administrative Code R18-9-A316 requires inspection of all onsite wastewater treatment facilities whenever ownership of property changes. Pumping is required, but repairs are not mandatory. The seller is required to retain a qualified inspector to perform the inspection within 6 months before the date of the property transfer. The inspector must provide a report on an approved form to the seller. The buyer is required to complete a *Notice of Transfer* form with a \$50 reporting fee to the Arizona Department of Environmental Quality (DEQ) within 15 days following the property transfer.

Inspectors must hold a certificate of training course by the National Association of Wastewater Technicians (NAWT). Applicants for the NAWT inspection course must be licensed engineers, registered sanitarians, owners of septage trucks or their employees, certain licensed contractors, wastewater treatment plant operators, or persons qualified under another

category designated by the Arizona DEQ. Inspectors must renew their certification every two years with eight continuing education units (CEU).

California: California state law does not require inspection of septic systems when a change in ownership occurs. California septic systems are permitted through Waste Discharge Requirements (WDRs) that are administered by one of nine regional boards. Most of the WDRs do require a seller to notify a buyer that a septic system is permitted by the state and that the buyer has a duty to notify the state of a change of ownership. Each of the nine regional boards has its own inspection program, most of which require annual inspection of septic systems.

Delaware: Revised 2014 septic systems regulations from the Delaware Department of Natural Resources and Environmental Control require inspection of all septic systems prior to property transfers. All system inspection reports must be submitted to the department on forms approved by the department within 72 hours of inspection completion. The regulations also require inspectors to hold a Class H license. This license authorizes individuals to inspect, investigate, and collect the necessary data to determine the operational condition of onsite wastewater treatment and disposal systems. Any person seeking a license is required to pass an examination prepared and administered by the Delaware Department of Natural Resources and Environmental Control to demonstrate relevant competency and knowledge. Maryland Onsite Wastewater Professionals Association, Delaware Technical and Community College, Pennsylvania Septage Management Association, and NAWT provide inspection training courses.

Florida: Florida HB 1263, passed in 2012, gives local governments in Florida a choice of whether or not to adopt onsite septic system evaluation programs in their jurisdictions. Local governments located near a "first magnitude spring" were required to decide whether or not to impose an evaluation program by January 1, 2013. All other local governments may decide at any time. A first magnitude spring is defined as an area where water flows to the surface of the earth from underground at a rate of at least 100 cubic feet per second or around 64.8 million gallons per day. The evaluation program is not tied to time of sale; rather an evaluation must occur every five years in jurisdictions that have adopted the program.

Idaho: Idaho state law does not require septic system inspection at the time of transfer of property, and no authority exists for the Idaho Department of Environmental Quality or the state's seven regional health districts to impose such a requirement. Some lenders in Idaho do require that a purchaser of property have a mortgage survey conducted prior to final sale of the property and loan approval. The mortgage survey is conducted by a representative of the regional health district. It usually includes a requirement that the property owner have the septic tank pumped out and provide the receipt of the pumping to the district. A mortgage survey may also involve a district representative doing a visual survey of the property for any signs of septic failure and may include a water well test.

Iowa: Iowa Code 455B.172(11) states: "If a building where a person resides, congregates, or is employed is served by a private sewage disposal system, the sewage disposal system serving

the building shall be inspected prior to any transfer of ownership of the building." The term "transfer" is specifically defined, as are conveyances that are not considered to be transfers. Properties valued at less than \$500, transfers within intra-family business or organizations, foreclosures, or transfers by estates are exempt from inspections. A system found to be failing must be renovated by the seller or, if agreement is reached between the parties, the buyer within a timeframe approved by the Iowa Department of Natural Resources (DNR). An inspection is valid for 2 years. A copy of the inspection report must be sent to County Environmental Health staff and the DNR. County environmental health offices review inspection reports and determine required corrective action, if needed. County and state official review reports to ensure inspection protocols are followed.

To ensure uniformity of inspections, inspectors must be certified through a DNR training program. Inspection course applicants must have two years of on-site experience in installation, design, or operation and maintenance, or complete the Basic of Onsite course of the Onsite Wastewater Training Center of Iowa or an equivalent course approved by the department. Upon meeting the experience requirements, an applicant can take the two day inspection course and must pass an exam. To qualify for recertification, inspectors must complete 12 CEU every two years. Inspections are valid for two years even if the property sells within that time. Septic tanks must be pumped at the time of inspection or within the last three years, with documentation. Failing systems must be brought up to code. The rule brought about the replacement of 3,000 problem systems and a 25% increase in permit activity in the state.

Massachusetts: Massachusetts General Laws Ch21A s. 13 requires the Commissioner of the Department of Environmental Protection to adopt regulations that comprise the state environmental code, including regulations that address standards for sewage disposal. Although Title 5 (310 CMR 15.000) of the environmental code does require inspection of septic systems at the time of property transfer, the section of law cited above states that the "department shall not require an inspection of a system for the treatment and the disposal of sanitary sewage below the ground surface if the transfer is of residential real property, and is between the following relationships: (1) between current spouses; (2) between parents and their children; (3) between full siblings; and (4) where the grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor." The inspection report must be submitted within 30 days of the inspection.

The Massachusetts Department of Environmental Protection has allowed septage haulers, board of health members, engineers, installers, and others with one year documented onsite knowledge to become inspectors. The New England Interstate Water Pollution Control Commission conducts the training and certification program. The three-year renewal cycle includes 10 hours of continuing education. Certified inspectors are posted on the state's Website. Systems with metal or cracked septic tanks, broken or obstructed pipes, uneven

distribution boxes, or malfunctioning pump chambers can qualify for a conditional pass on inspection reports, but not soil absorption systems and cesspools. If a system fails inspection and the owner decides not to sell as a result, the owner still had an obligation to repair the system. Once the local board of health approves the repaired or replaced components, the systems pass inspection.

Minnesota: Section 115.55 of the 2013 Minnesota Statutes includes rulemaking requirements, inspection criteria, compliance provisions, requirements for local standards and ordinances, and a requirement that a seller of property disclose in writing information on how sewage generated at the property is managed. The disclosure must include a description of the system and a map. The seller must also disclose the compliance status of the system and include any previous inspection reports. A seller who fails to disclose the existence or status of the system is liable for any costs a buyer incurs in bringing the system into compliance.

Missouri: State law in Missouri does not require an inspection or evaluation of onsite sewage systems at regular intervals or at time of transfer, but, similar to Washington State, some counties in the state do require inspections at time of transfer. If a lender or buyer requires an inspection, it must be conducted by a licensed individual.

Oregon: Oregon proposed rule requires a time of transfer evaluation of systems that use alternative treatment technology. Oregon Revised Statutes section 454.615 requires the Environmental Quality Commission to adopt rules that, among other things, "prescribe minimum requirements for the operation and maintenance of subsurface sewage disposal systems . . ." Proposed rule 340-071-0131 provided, in part: "After January 1, 2006, before transferring ownership of real estate served by an onsite system using alternative treatment technology, the seller must have the system evaluated in accordance with this rule." The proposed rule also prescribes the information that must be included in the evaluation.

New Mexico: New Mexico's Environment Improvement Board is given broad rulemaking authority in section 74-1-8 of the New Mexico Statutes Annotated. Section 20.7.3.902 of the New Mexico Administrative Code provides, in part: "Prior to the transfer of a property with an established onsite liquid waste system, the transferor of the property shall have the system evaluated." The evaluation must be completed by a qualified third-party inspector on forms provided by the New Mexico Environment Department. NAWT certifies the inspectors. Inspectors must submit copies of all evaluations reports, whether completed or not, within 15 days of the evaluation to the department. The tank must be pumped during the inspection. Deficiencies listed on inspections reports must be corrected within 15 days or as approved by the department. Replacements or modifications require a permit.