

On-Site Rule Revision Issue: Service Provider Licensing WAC 246-272A-0340

Problem Statement

LHJs and service providers have reported that a statewide licensing/certification program for service providers would have benefits over the current system of each local health officer having responsibility to approve installers and pumpers and the option to approve maintenance service providers. Many LHJs test and certify individuals who perform inspections, monitoring, and maintenance, while other LHJs do not actively regulate these workers.

There is no state standard of practice for O&M service providers nor is there a standardized exam to test provider competency. A challenge for O&M service providers working in multiple jurisdictions is tracking different local rules for inspections and reports. When local requirements vary, administrative and production costs for business owners increase, raising inspection costs for system owners as well. State standardization of licensing requirements and common inspection and data reporting requirements would improve data reporting accuracy, significantly improving trend analysis for OSS policy and decision making statewide.

DOH, however, lacks statutory authority to develop a statewide service provider licensing program. Conversely, revision to WAC 246-272A-0340 may be an appropriate method to ensure oversight of service providers, improve standards of practice, and potentially standardize provider practices. Public health protection will be improved if all service providers are required to obtain approval, are subject to LHJ oversight, and are held to minimum expectations. There are also potential improvements in public health protection if provider practices are standardized.

Options

- Revise section -0340
- Recommend DOH request statutory authority to develop a statewide licensing/certification program for service providers
- Take no action

Pros/Cons

Pros

- Greater oversight of service providers
- Establishing a standard of practice
- Potential standardization of provider practices

Cons

- Administrative costs to LHJs
- Added burden on service providers not currently subject to approval requirements

Recommendations to Consider

The Policy Subcommittee voted to make the following changes to the current WAC:

Blue = Additions Red = Deletions

WAC 246-272A-0340 Certification of installers, pumpers, and maintenance service providers.

- (1) OSS installers, ~~and~~ pumpers, ~~and maintenance service providers~~ must obtain approval from the local health officer prior to providing services within a local health jurisdiction.
- (2) The local health officer shall establish approval procedures for OSS installers, pumpers, and maintenance service providers. They may also accept proof of competency through a third party certification program, or accept reciprocity of approval through other Washington local health jurisdictions. ~~Local health officer may establish programs and requirements for approving maintenance service providers.~~
- (3) The local health officer may establish a certification process for homeowners to inspect their OSS.

Supporting Information

Review of statutory authority:

DOH review of relevant statutory authority has concluded that although the State Board of Health (SBOH) has general rule making authority for OSS, the Local Health Jurisdictions (LHJ) and the Washington Department of Licensing (DOL) have specific statutory authority for the licensing and certification of OSS professionals.

The SBOH shall adopt rules for the “design, construction, installation, operation, and, maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day”. RCW 43.20.050(3). Local health jurisdictions (LHJ) in each county enforce the on-site sewage system (OSS) rules and any other more stringent requirements adopted by the local jurisdiction. RCW 70.118.050. The LHJ is responsible for issuing OSS permits. RCW 70.05.074.

There are several statutes that specifically address licensing or certification of individuals who inspect or review OSS. The Washington Department of Licensing (DOL) issues a license to design on-site wastewater treatment systems and certificates of competency for on-site inspectors:

<https://www.dol.wa.gov/business/engineerslandsurveyors/osexams.html>

The scope of the design license is fairly broad. The phrase “on-site wastewater treatment system” is defined as “an integrated system of components that: Convey, store, treat, and/or provide subsurface soil treatment and disposal of wastewater effluent on the property where it originates or on adjacent or other property and includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas, for on-site wastewater treatment under three thousand five hundred gallons per day when not connected to a public sewer system.” RCW 18.210.010(9). The phrase “On-site wastewater design” means the “development of plans, details, specifications, instructions, or inspections by application of specialized knowledge in analysis of soils, on-site wastewater treatment systems, disposal methods, and technologies to create an integrated system of collection, transport, distribution, treatment, and disposal of on-site wastewater.” RCW 18.210.010(8).

The certificate of competency is issued to employees of LHJ who work with on-site sewage systems. RCW 18.210.010(2). RCW 70.118.120(1) states that the LHJ “shall ensure that individuals who conduct inspections of on-site wastewater treatment systems or who otherwise conduct reviews of such systems are qualified in the technology and application of on-site sewage treatment principles”. The Department of Licensing issues certificates of competency that will suffice as proof of the person’s qualifications in on-site wastewater treatment system technology. RCW 70.118.120(1).

In 2017, the Legislature passed ESSHB 1503, authorizing counties to certify homeowners, the homeowner’s family or the homeowner’s tenant to inspect the owner’s on-site sewage systems. See RCW 36.70A.690, RCW 70.05.200 and RCW 70.118A.100.

ORRC

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Arguably this requirement only applies to the 12 counties in the “marine recovery area” as it was codified in RCW 70.118A rather than RCW 70.118, although it was also codified under the general authorities for LHJ, in RCW 70.05, so it likely has broader application.

The statutes certifying OSS inspectors, RCW 70.118.120(1) and RCW 70.05.200, give the authority to the LHJs to determine who should be certified. Additionally, the DOL has authority under RCW 18.210 to license OSS designers and to certify LHJ inspectors. There are no statutes that give the SBOH the express authority to license or certify OSS professionals. The SBOH does have the general authority to adopt OSS rules. RCW 43.20.050(3).

In the absence of express statutory authority, it would create some legal risk for the SBOH to adopt a licensing and certification program in rule. The fact that the LHJs and the DOL have statutory authority to certify and license OSS professionals could be an indication that the Legislature meant to create such authority in statute. Additionally, the SBOH would be relying on its general rulemaking authority to create the requirements.

If the SBOH adopted rules, they would need to be consistent with and not conflict with LHJ’s and DOL’s statutory authorities, and, would likely fill in a “gap” in licensing or certification that is not already covered under these authorities. It is unclear if there is any room for additional regulation, or, a “gap”. The first sentence in RCW 70.118.120(1) suggests that the LHJ ensures that OSS inspectors are qualified, however, this could be interpreted as applying only to employees of the LHJ as they can receive a certificate of competency. The sentence could also be interpreted as applying to all people who inspect OSS.

To clarify the ambiguity, DOH and DOL could jointly seek legislative amendments to the “certificate of competency” definition found in RCW 18.210.010(2) to expand it to include not just LHJ employees, but, other citizens who would like to inspect OSS.