


WHATCOM COUNTY COUNCIL AGENDA BILL

NO. AB2017-053

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	MK	01/09/17		01/24/17	PW Health & Safety
Division Head:	JW	01/09/17		01/24/17	Council - Introduction
Dept. Head:	RD	01/09/17			
Prosecutor:	RB	01/10/17			
Purchasing/Budget:					
Executive:	<i>MS</i>	<i>1.17.17</i>			

TITLE OF DOCUMENT:
Amendment to WCC 24.05 On-site Sewage System Regulations, Section 160 – Operation and Maintenance.

ATTACHMENTS:
Staff Memorandum
Draft Ordinance
Exhibit A: Proposed WCC 24.05 amendment

SEPA review required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Should Clerk schedule a hearing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO
SEPA review completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

Whatcom County Code 24.05 On-site Sewage System Regulations require an amendment to section .160 – Operation and maintenance. The amendment requires evaluations be completed by a licensed operation and maintenance specialist. WCC 24.05 is adopted by reference in the County Comprehensive Plan; therefore an amendment to WCC 24.05 is also an amendment to the Comprehensive Plan.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.*

**WHATCOM COUNTY
Health Department**

*Leading the community in promoting health
and preventing disease.*



Regina A. Delahunt
Director

Greg Stern, M.D.
Health Officer

Memorandum

TO: Jack Louws, County Executive
FROM: Regina Delahunt, Director
Health Department
SUBJECT: Amendment to WCC 24.05 On-Site Sewage Regulations
DATE: January 10, 2017

Whatcom County Health Department (WCHD) is proposing an amendment to WCC 24.05. The proposed amendment will require on-site sewage system operation and maintenance evaluations to be performed only by operation and maintenance professionals licensed by the Health Department. The current regulations allow homeowners the ability to become certified and perform their own evaluations.

On October 6, 2016 the Washington State Supreme Court issued a ruling in the case of Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board. The Court ruled that the "County's comprehensive plan does not satisfy GMA requirements to protect water availability or water quality". Elements of the County's Comprehensive Plan are implemented through WCC 24.05. WCC 24.05 allows homeowners in rural areas to inspect their own septic system. The Court found the "County's current inspection system policies were flawed and that continuing to rely on this flawed system would not protect water quality in the future", and further ruled that "the County's rural element fails to comply with the requirement to protect water quality".

The proposed amendment is in response to the Supreme Court's decision in order to comply with GMA requirements. WCC 24.05 is adopted by reference in the County's Comprehensive Plan; therefore this change would also be a Comprehensive Plan amendment.

If you have any questions, please call Mike Kim, Environmental Health Supervisor, at extension 6032.

Attachments:
Draft Ordinance
Exhibit A: Proposed WCC 24.05 Amendment



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PUBLIC HEALTH
ALWAYS WORKING FOR A SAFER AND
HEALTHIER WHATCOM COUNTY
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ORDINANCE NO. _____

**AMENDMENT TO WHATCOM COUNTY CODE 24.05 ON-SITE SEWAGE SYSTEM
REGULATIONS**

WHEREAS, an October 6, 2016 Washington State Supreme Court decision (Whatcom County, Hirst vs. Western Washington Growth Management Hearings Board, No 91475) has found that Whatcom County’s Comprehensive Plan does not comply with the Growth Management Act (GMA) requirements to protect water quality; and

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan “shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ... protecting critical areas...and surface water and groundwater resources.”; and

WHEREAS, on March 25, 2008, the Whatcom County Board of Health adopted amendments to WCC 24.05 providing the ability for homeowners to perform their own on-site sewage system evaluations; and

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing regulations to protect critical areas and surface water and groundwater resources, adding Policy 2DD-2.C.2, which adopts by reference WCC 24.05; and

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.2 adopts by reference WCC 24.05, any amendment to WCC 24.05 is also an amendment to the Comprehensive Plan; and

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect surface and groundwater quality (GMHB Case No. 12-2-0013); and

WHEREAS, on October 6, 2016, the State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water quality, and stated, “In essence, the Board ruled that the County’s current inspection system policies were flawed and that continuing to rely on this flawed system would not protect water quality in the future. ...We therefore reverse the Court of Appeals and hold that the Board applied proper legal standard and analysis in concluding that the County’s rural element policy does not comply with the GMA.”; and

WHEREAS, in response to the Court’s decision, on-site sewage system evaluations will only be performed by operation and maintenance professionals licensed by the Health Department; and

1 **WHEREAS**, the proposed amendment to WCC 24.05.160 as outlined in exhibit A of
2 this ordinance, provide necessary language to implement this; and

3
4 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Board of Health,
5 that the WCC 24.05 and the Whatcom County Comprehensive Plan are hereby
6 amended as outlined in Exhibit A.

7
8 **ADOPTED** this ____ day of _____, 20____.

9
10
11
12 ATTEST:

WHATCOM BOARD OF HEALTH
WHATCOM COUNTY, WASHINGTON

13
14
15 _____
16 Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Chair

17 WHATCOM COUNTY EXECUTIVE
18 APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

19
20
21 _____
22 Royce Buckingham, Civil Deputy Prosecutor

Jack Louws, County Executive

() Approved () Denied

23
24
25 Date Signed: _____
26

EXHIBIT A

TITLE 24 HEALTH CODE

Chapter 24.05 On-Site Sewage System Regulations

24.05.160 Operation and maintenance.

A. The OSS owner is responsible for properly operating, monitoring and maintaining the OSS to minimize the risk of failure, and to accomplish this purpose shall:

1. Obtain approval from the health officer before repairing, altering or expanding an OSS;
 - a. All systems which were legally permitted at time of installation and which are not currently functional due to failing and/or broken component parts will be allowed to be repaired to functionality. Also see WCC 24.05.090(C);
2. Secure and renew contracts for periodic maintenance where required by the WCHD;
3. Obtain and renew operation permits if required by the WCHD;
4. Assure a complete evaluation of the system components and/or property by a licensed operation and maintenance specialist to determine functionality, maintenance needs and compliance with this chapter and any permits. A report of system status shall be completed at the time of the evaluation and submitted to the WCHD in a timely manner;
5. Assure subsequent evaluations of the system components and/or property are completed as follows:
 - a. At least once every three years for all systems consisting solely of a septic tank and gravity SSAS;
 - b. Annually for all other systems unless more frequent inspections are specified by the health officer;
6. Employ an approved pumper to remove the septage from the tank when the level of solids and scum indicates that removal is necessary;
7. Provide maintenance and needed repairs to promptly return the system to a proper operating condition. A maintenance report shall be completed and submitted to the WCHD in a timely manner;
8. Protect the OSS area and the reserve area from:
 - a. Cover by structures or impervious material;
 - b. Surface drainage and direct drains, such as footing or roof drains. The drainage must be directed away from the area where the OSS is located;
 - c. Soil compaction, for example by vehicular traffic or livestock; and
 - d. Damage by soil removal and grade alteration;

9. Keep the flow of sewage to the OSS at or below the approved operating capacity and sewage quality;
10. Operate and maintain systems as directed by the health officer;
11. Request assistance from the health officer upon occurrence of a system failure or suspected system failure;
12. Ensure that a current report of system status by a licensed O&M specialist is on file with WCHD when a property with an OSS is offered for sale;
13. At the time of property transfer, provide to the buyer a copy of the current report of system status on file with the Whatcom County health department, and any available maintenance records, in addition to the completed seller disclosure statement in accordance with Chapter 64.06 RCW for residential real property transfers.

~~B. OSS owners may perform their own OSS evaluation in accordance with subsection C of this section except for the following:~~

- ~~1. OSS technologies that are listed as proprietary on the Washington State DOH list of registered on-site treatment and distribution products where the contract with the private proprietary manufacturer prohibits homeowner evaluations;~~
- ~~2. Community drainfields;~~
- ~~3. Nonconforming replacement systems that do not meet vertical and horizontal separation installed as a result of a system failure;~~
- ~~4. OSS serving food service establishments.~~

~~C. OSS owners who choose to perform their own evaluations shall complete O&M homeowner training as approved by the health officer. Upon completion of training, OSS owners may perform their own evaluations until property transfer. In cases of hardship, the health officer may approve the homeowner's selection of a designee who has completed the appropriate class to perform the evaluation. If OSS owners are discovered to be noncompliant with this section, the health officer may proceed with legal remedies in accordance with Chapter 24.07 WCC.~~

DB. Persons shall not:

1. Use or introduce strong bases, acids or chlorinated organic solvents into an OSS for the purpose of system cleaning;
2. Use a sewage system additive unless it is specifically approved by WDOH; or
3. Use an OSS to dispose of waste components atypical of residential wastewater.

EC. The health officer shall require annual inspections of OSS serving food service establishments and may require pumping as needed. (Ord. 2010-009 Exh. A; Ord. 2008-015 Exh. A; Ord. 2006-056 Exh. A).

D. Reports submitted by licensed O&M specialists will be verified by the health officer for timeliness, accuracy, and completeness in accordance with administrative policies.



WHATCOM COUNTY
HEALTH DEPARTMENT

Proposed Amendment to WCC 24.05 On-Site Sewage System Regulations

County Council
January 24, 2016



Outline

- Legal Background
- Regulatory Background
- Proposed Amendment to WCC 24.05.160

Supreme Court (“Hirst”) Decision

CONCLUSION

“We reverse the Court of Appeals and hold that the County’s comprehensive plan does not satisfy the GMA requirements to protect water availability or quality”

Supreme Court (“Hirst”) Decision

- “The Board noted significant disparity in reported failure rates and compliance rates between homeowners who self-inspect versus professional inspections, as well as studies showing water quality contamination from faulty septic systems.”
- “In essence, the Board ruled that the County’s current inspection system policies were flawed and that continuing to rely on this flawed system would not protect water quality in the future.”

Supreme Court (“Hirst”) Decision

- “Therefore, we reverse the Court of Appeals’ holding that the Board’s decision improperly imposed a duty on the County to “enhance” water quality rather than merely “protect” water quality and affirm the Board’s ruling that the County’s rural element fails to comply with the requirement to protect water quality.”

Regulatory Background

- November 21, 2006: Adopted Chapter 246-272A WAC by reference
- March 25, 2008: Amendment to WCC 24.05.160 to allow periodic homeowner evaluation. O&M Specialist required for initial evaluation and every 6 years
- March 25, 2008: OSS Local Management Plan approved
- February 23, 2010: Amendment to allow homeowner evaluations at all times (current form)
- February 2, 2016: OSS Local Management Plan Update approved

Regulatory Background

RCW 36.70A.070(5)(c)(iv)

“The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ...Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources;”

Regulatory Background

Ordinance 2012-032 added:

Policy 2DD-2.C.2 Minimize the adverse effects of discharges from on-site sewage systems on ground and surface waters through WCC 24.05, adopted herein by reference.

Proposed Amendment

WCC 24.05.160 A

4. Assure a complete evaluation of the system components and/or property by a licensed operation and maintenance specialist to determine functionality, maintenance needs and compliance with this chapter and any permits. A report of system status shall be completed at the time of the evaluation and submitted to the WCHD in a timely manner;

Proposed Amendment

WCC 24.05.160 A

7. Provide maintenance and needed repairs to promptly return the system to a proper operating condition. A maintenance report shall be completed and submitted to the WCHD in a timely manner;

Proposed Amendment

Remove section WCC 24.05.160 B and C:

B. OSS owners may perform their own OSS evaluation in accordance with subsection C of this section except for the following:

1. OSS technologies that are listed as proprietary on the Washington State DOH list of registered on-site treatment and distribution products where the contract with the private proprietary manufacturer prohibits homeowner evaluations;
2. Community drainfields;
3. Nonconforming replacement systems that do not meet vertical and horizontal separation installed as a result of a system failure;
4. OSS serving food service establishments.

C. OSS owners who choose to perform their own evaluations shall complete O&M homeowner training as approved by the health officer. Upon completion of training, OSS owners may perform their own evaluations until property transfer. In cases of hardship, the health officer may approve the homeowner's selection of a designee who has completed the appropriate class to perform the evaluation. If OSS owners are discovered to be noncompliant with this section, the health officer may proceed with legal remedies in accordance with Chapter 24.07 WCC.

Proposed Amendment

WCC 24.05.160

D. Reports submitted by licensed O&M Specialists will be verified by the health officer for timeliness, accuracy, and completeness in accordance with administrative policies.

Proposed Amendment

- Amendment to WCC 24.05.160 is also an amendment to the Comprehensive Plan
- Implement Comprehensive Plan policy 2DD-2.C.2 in a manner that is in compliance with the GMA requirement to protect water quality