

Attachment 3 - Responses to frequently asked questions and concerns for proposed Drinking Water Supply Regulations (May 2018)

Why are updates to the regulations being considered?

Local health regulations to ensure safe drinking water have been in effect since 1991. The current rules overseeing drinking water supplies (Ordinance 1999-6) are out-of-date. The Kitsap Public Health District has been working since 2016 to revise these rules and is recommending adoption of an updated rule by the Kitsap Public Health Board. Local health jurisdictions are responsible for the oversight and administration of Group B public water systems (water systems serving three to 14 residential connections), and the review and approval of private well systems (serving one to two connections), under existing state and local rules and agreements to ensure safe drinking water. Kitsap County has over 850 Group B public water systems. Group A water systems (serving more than 14 connections) are overseen by the State Department of Health.

What are the major changes to the regulations?

Based on public comment and guidance from the Health Board, the most recent draft of the drinking water supply regulations includes the following changes as compared to Ordinance 1999-6 ([click here for a detailed summary](#)):

- Eliminates an existing requirement that all Group B public water systems undergo a complete sanitary survey inspection by the Health District at least once every five years.
- Requires owners of property connected to a Group B public water system or private well to apply to the Health District for a “Water Status Report” only at the time of property sale. A water status report provides information about the drinking water supply and will address any applicable drinking water requirements or concerns. In the past, these reports have been optional, but are now required.
- Requires Group B public water systems to obtain an annual operating permit at \$75.
- Requires each Group B public water system to file a “users agreement” if there is not one already in place. A user’s agreement legally establishes details about the water system’s ownership and management.
- The draft rule does not require owners of 1- or 2-party private wells to obtain an annual operating permit or pay an annual fee.

What changes were made since last year?

Based on the comments we received last year, we made several significant changes to our proposed rule update:

- We **eliminated** the existing requirement that Group B water systems must be inspected (sanitary survey) by the Health District at least once every 5 years. This requirement had been in place since 1999 and was the most expensive element of our past program.
- We **reduced** our proposed annual fee from \$120 down to \$75. If adopted, this fee would raise \$65,000/year to perform the basic administrative services that all Group B systems have been receiving since 1991.

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What does the annual fee cover? What services are provided for the annual fee?

The proposed fee, of \$75 a year for each Group B water system, would raise \$65,000/year to perform the basic administrative services that all Group B systems have been receiving since 1991:

- water system file maintenance and record keeping --- including the number of approved service connections so that when people apply for building permits we have their water adequacy findings available and accurate;
- service/sampling reminders;
- fulfilling data and public records requests about the water system design and capacity;
- responding to public complaints;
- providing technical assistance during contamination events and boil water alerts;
- entering and tracking water quality data to ensure that people are receiving clean and safe water.

Objections to fees / unnecessary regulation / government intrusion:

The Health District has legal responsibility to perform public Group B water system administration. The Health District has not been able to perform many required functions for the County's 857 Group B systems over the past nine years due to funding cuts at the state level. The purpose of the proposed rule updates is to develop and implement a local system to fulfill these legal responsibilities once again.

Group B water systems will pay a \$75 annual operating fee as part of the proposed regulations. Most Group B water systems are partially owned by each property connected to the system, so the cost would typically be apportioned among the owners. The average Group B water system has four residential connections, so an approximate cost would be \$19 a year. There are no other fees associated with the proposals except when a property conveyance occurs.

Is there a "mark-up" of the existing ordinance? Can we get a summary of changes?

Due to the extensive reformatting of the existing document, we do not have a "mark-up" version available for review. We have prepared a summary of the changes to the ordinance which is posted on our website at: www.kitsappublichealth.org/environment/drinking_water_regs.php

In summary, the primary changes are:

- A new \$75 annual operating permit for Group B water systems.
- Required time of sale reports for properties served by Group B water systems and private water supplies.
- All Group B water systems must develop owner/user agreements.

Where can I find the fee information? Why is the fee not included in the ordinance?

All fees are listed in the Kitsap Public Health Board's fee schedule which is available [online](#). The Group B operating permit fee must be approved with a Board resolution. Therefore, the current fee schedule does not yet include the proposed Group B annual fee (The schedule currently shows "TBD" for #6: Group B public water system annual operating permit).

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Fees should only be paid by non-complaint systems, or systems requesting assistance:

Proposed permit fees would support the cost of administrating both compliant and non-compliant public Group B water systems. The Health District incurs some costs to administer any public Group B water system – even those in compliance. For those water systems that are out of compliance, additional inspection fees may be required, and additional design review will be required for any water system seeking Health District approval.

The fee structure is not equitable. Why is it the same fee for big or small systems?

The Health District is proposing a “flat” fee structure as the Health District’s administrative level of effort is the same, no matter the size of the Group B water system.

The fee structure is not equitable – why are private wells not required to pay?

Private wells are not legally required to perform the operations and monitoring activities required of Group B water systems and the Health District does not have as many legal mandates requiring a level of service for private water supplies. However, to address the issue of public health protection equity as you mentioned, as part of this regulation the Health District is requiring time of sale water status reports for both Group B water systems and private water supplies, providing more public health protection to all types of water supplies in Kitsap County.

Objections to / questions about KPHD’s hourly rate / cost projections:

The economic analysis information is based on our Kitsap Public Health Board approved fee schedule, and the Health District’s hourly billing rate for 2019 is \$145. The approved hourly rate includes far more than an individual staff member’s wage. You can find more information about the Health District fees in the Kitsap Public Health Board Resolution 2017-03. It is Board of Health policy to collect fees for service where applicable, and fees must be set at a rate not to exceed the actual cost of providing the service.

The cost to perform services for our 857 Group B water systems includes time and expenses such as databases to keep track of all the water system information, staff time to run reports to mail sampling reminder cards, staff time to enter that sampling data into the database and water system file, staff time for responses to failed bacteria samples, and staff time to provide regulatory requirement information and technical guidance for water systems.

These regulations aren’t needed when there is no evidence of a public health issue:

Although the Health District does not have data to show there in an increase in waterborne illness due to out of compliance water systems, local health jurisdictions are mandated by state law to *prevent disease and promote, preserve, and improve public health* (RCW 70.05). Due to state regulatory and funding changes that have occurred over the last decade, the Health District believes that it is falling short of these responsibilities as they relate to drinking water and groundwater protection and preservation. We would accomplish this by re-establishing a Group B water system program that will guide water systems into compliance and assist them with staying in compliance to prevent waterborne illnesses or contamination of groundwater supplies.

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Group B wells are private not public:

All Group B water systems by law are public water supplies based on Washington State Department of Health rules (WAC 246-291). Water system classification is determined by usage, not ownership. Most Group B water systems are privately-owned, and the proposed annual permit supports the Health District's costs to provide the legally required oversight of these water systems.

Objections to inspection requirements:

The Health District has **eliminated** the existing requirement that Group B water systems must be inspected (sanitary survey) by the Health District at least once every 5 years. This requirement had been in place since 1999 and was the most expensive element of our past program. The only inspections that would be required would be associated with a time of sale water status report for a property connected to a Group B water system or 1- or 2-party private well. (Note: this change was made to the regulations based on public feedback on the revisions proposed in 2017.)

Many counties do not have Group B regulations. Why do we have to have them?

Many local health jurisdictions have not developed a local ordinance, or any fees, and have opted out of managing Group B water systems entirely. Many of those counties have very few systems. Kitsap Public Health does not support this option. With more than 850 Group B systems, Group B Kitsap County has the 4th most Group B water systems in the state. Expected outcomes of eliminating a local program include hindrances for building permit reviews, delays in real estate transactions, unmonitored water systems, and does not address the Health District's legal requirements.

Concerns about lack of notice about proposed ordinance and/or time of public meetings:

We have been working on this ordinance revision for since 2016 and we have contacted every Group B water system on multiple occasions about the proposal since the ordinance was first proposed in the early in 2017.

- The [ordinance information web page](#) has been available since December 2016.
- There was a [Kitsap Sun article](#) about this ordinance revision proposal in March of 2017.
- We currently have 983 subscriptions to our electronic notification system providing updates to the ordinance development process.
- Notifications about the May 7th, 2018 listening session were sent out on April 27th and May 3rd, 2018.
- We held the May 7th public listening session at 5 p.m. to allow people to attend after normal work hours.

Concerns about taxation of private wells:

The Health District has no intention to tax private wells and has no taxing authority to do so. The proposed rules state that at the time of a property sale, the seller of a property that utilizes a private water supply would be required to submit a water status report application to the Health District, so the Health District could prepare a report on the water supply that would then be provided to the purchaser of the property.

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Concerns about requirement for Group B system to hire a Satellite Management Agency:

The Health District has no intention of requiring water systems to acquire a Satellite Management Agency (SMA) as part of this regulation. Any Group B water system approved since July 1995 is required to have an SMA, but systems approved prior to that date have no legal requirement to have these management entities operate their system.

Who were stakeholders involved in developing regulation changes?

The ordinance development process included soliciting input from stakeholder groups who interact with Group B water systems and have an interest in the outcome. The ordinance was developed with input from Group B water system users/owners, Kitsap County water system managers, the Kitsap County Water Purveyors Association, the Kitsap Builders Association, and the Kitsap Association of Realtors. We have contacted every Group B water system about the proposal, and we currently have 983 subscriptions to our electronic notification system providing updates to the ordinance development process.

Why are realtors allowed to take water samples?

Realtors are one example of a qualified individual to collect water samples for a time of sale water status report. Group B water systems managers are already authorized to collect their own regular monitoring samples, and the Health District does not wish to alter that. Group B water systems collect samples on a regular schedule, so an additional water sample for a time of sale report for a property connected to a Group B water system should not be necessary. If realtors are involved at all, it would most likely be associated with a time of sale report for a private water supply.

Questions about Section 5:

Section 5 of the proposed regulations allows for policy development to augment the regulations without having to rewrite the entire rule. As an example, our onsite sewage system regulations have additional policies about septic tank sizing, minor repairs, etc. For water systems, a typical example would be a more detailed policy about pressure tank replacement.

Questions about Section 12 pertaining to the Health Officer entering homes:

The Health District has no intent to enter homes, nor do we anticipate any need to for a water supply inspection. Please be aware that any enforcement actions by the Health District must follow the rules of law as described in the regulations. If an application is submitted to our office, the applicant is inviting the Health District to visit the property, and any access arrangements (locked gates, desire to accompany the inspector, etc.) are most certainly honored. Health District staff would not be entering any properties without the owner's permission.

Questions about Section 14 pertaining to "immunity of liability" for the Health Officer:

Section 14 is legal language that describes how public officials or agencies cannot be held liable for upholding these regulations. For example, a well owner could not pursue legal action against the Health District for being required to perform the monitoring required in the rule.

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What is included in a water status report (WSR)?

A water status report will provide a summary of the compliance status of the water supply including its approvals, operating conditions, monitoring data, and any other information of note. The Health District believes that time of sale water status reports for public and private water supplies are an effective method to ensure that water supplies are still in compliance with their conditions of approval, are providing potable water, and avoids unnecessary inspections and fees.

Water samples already required by mortgage companies at conveyance; additional regulation is not needed:

The water sample that many lenders require does not fully address many of the drinking water requirements for a private well or a Group B public water system. There can be conflicts over varying sample results, and the prospective purchaser or lender misunderstanding that a bacteria sample is the only thing required to determine if the water supply is “approved.”