

## APPENDIX 5

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# OTHER FEDERAL, STATE, REGIONAL, AND LOCAL PERMITS AND REGULATIONS

## 5.1 Federal

Several federal laws and regulations affect wastewater planning in Kitsap County. This section identifies the federal laws and agencies concerning the planning, design, and construction of a domestic wastewater collection and treatment facility. Some of the federal programs and permits have been delegated to state agencies, which are discussed later in this appendix.

### 5.1.1 Clean Water Act

The Federal Water Pollution Control Act Amendments were enacted in 1972. As amended in 1977, this law became known commonly as the Clean Water Act (CWA). The CWA established the basic structure for regulating discharges of pollutants into the waters of the U.S. It gave the EPA the authority to implement pollution control programs such as setting wastewater standards. The CWA also continued requirements to set water quality standards for all contaminants in surface waters.

The CWA made it unlawful for any person to discharge any pollutant from a point source into navigable waters unless a permit was obtained. The CWA also funded the construction of sewage treatment plants under the construction grants program, and recognized the need for planning to address the critical problems posed by nonpoint source pollution. Changes in 1987 phased out the construction grants program, replacing it with the State Water Pollution Control Revolving Fund, more commonly known as the Clean Water State Revolving Fund (SRF). This new funding strategy addresses water quality needs by building on EPA-state partnerships.

The EPA is the primary administrator of policies and programs developed under the CWA. In Washington, much of the EPA's responsibilities for review and approval of wastewater facility plans and for issuance of permits have been delegated to Ecology.

### 5.1.2 National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires federal agencies to consider the environmental consequences of an action prior to making a decision on that action. Agencies are expected to identify alternatives and mitigation that avoid or otherwise minimize the environmental impacts, while still accomplishing the purpose and need of the proposal. NEPA applies to all major federal actions and projects, to any project requiring a federal permit or located on federal land, and to any proposal receiving federal funding.

The federal agency that grants a permit or approves funding generally would be the lead agency under NEPA. Each federal agency has adopted its own procedures to meet the requirements and intent of NEPA. NEPA review includes both preparing the environmental document and conducting a public review process. The public usually has an opportunity to review and comment on the proposal and the environmental analysis.

Generally, the NEPA process begins with a determination of whether a categorical exclusion applies; a categorical exclusion requires no further NEPA review. If an exclusion does not apply, the lead agency will

prepare an environmental assessment (EA). The EA contains information about the proposal, alternatives considered, and the likely environmental consequences. The lead agency can then use this information to decide whether to prepare a Finding of No Significant Impact (FONSI) or an environmental impact statement (EIS). An EIS would be required if the proposal is likely to have a significant environmental impact.

If a federal permit is required, capital facilities in the plan undergo NEPA review when applying for that permit. NEPA review also is required to obtain federal funding for any facility in the plan. Some facilities may require review under both NEPA and the Washington State Environmental Policy Act (SEPA), which is described later in this chapter. The NEPA and SEPA processes may be combined and a joint document can be prepared.

### 5.1.3 Endangered Species Act

The federal Endangered Species Act (ESA) directs the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries to promulgate a list of endangered and threatened species and to designate critical habitat for these species. The ESA also regulates the “take” of a listed species, which can include any act that kills or injures a species and may include habitat modification. Federally related projects that would likely affect an ESA-listed species may require consultation with USFWS or NOAA Fisheries.

In addition to the federal ESA listings, several Washington State agencies maintain lists of rare or endangered plants and animal species and habitat. The Washington Department of Fish and Wildlife (WDFW) publishes a Priority Habitats and Species (PHS) list and a Species of Concern (SOC) list. The PHS list is a catalog of habitats and species considered to be priorities for conservation and management. The SOC list includes all state-listed endangered, threatened, sensitive, and candidate species, as well as federally ESA-listed fish stocks. The Washington Department of Natural Resources (DNR) lists rare plants and endangered ecosystems under the Natural Heritage Program.

Several federal and state threatened or endangered species, candidate species, and species of concern are known to occur or potentially reside in Kitsap County. The fish and wildlife species include the bald eagle, marbled murrelet, killer whale, humpback whale, chinook salmon, steller sea lion, bull trout, coho salmon, Hood Canal chum salmon, and steelhead trout. The DNR Natural Heritage Program has identified eight species of rare plants occurring in Kitsap County, and the WDFW has documented six priority habitat types in Kitsap County. Other state priority species in Kitsap County include the bald eagle, great blue heron, pileated woodpecker, peregrine falcon, and western pond turtle (Kitsap County, 2006).

Individual projects proposed under the plan could adversely affect federal and state listed species or habitat. Kitsap County would determine if listed species and habitats of concern are present during future environmental review and permitting of individual wastewater facilities. Proposed facilities would be located and designed to avoid impacts on listed species and habitats, where possible, and could include site-specific mitigation. Kitsap County would coordinate individual projects with appropriate agencies and tribes that regulate endangered species to identify mitigation measures and obtain required permits and approvals.

### 5.1.4 Joint Aquatic Resources Permit Application

Potential activities within regulated waters could require multiple federal, state, and local permits and approvals. To streamline the environmental permitting process, regulatory agencies have created one application to apply for more than one permit at a time. The Joint Aquatic Resources Permit Application (JARPA) can be used to apply for several federal, state, and local permits and approvals in Washington. Agencies participating in the JARPA process include the U.S. Army Corps of Engineers (Corps), U.S. Coast

Guard, Ecology, WDFW, DNR, and the local agency with shoreline jurisdiction. The individual permits and approvals are described in this chapter.

### 5.1.5 Corps of Engineers Permits

Section 404 of the CWA regulates the discharge of dredge or fill material in waters of the U.S., including special aquatic sites such as wetlands. Wetlands generally include swamps, marshes, and bogs. Section 404 is administered by the Corps. The Corps' Seattle District is responsible for issuing Section 404 permits in Kitsap County.

Wastewater facilities that involve filling or work in wetlands under Corps jurisdiction may require one of several types of Section 404 permits. An individual permit is generally required for more substantial projects with the potential for adverse impacts on water quality, habitat, or ESA-listed species. Other activities can be authorized by letters-of-permission, nationwide permits, or regional permits. Capital improvement projects that involve filling or work in small areas of wetlands may be permitted under a nationwide general permit.

The Corps also is responsible for Section 10 of the Rivers and Harbor Act of 1899. A Corps Section 10 permit may be required for work in, over, or under navigable waters of the United States. Typical activities potentially requiring Section 10 permits include piers, outfall pipes, pipeline crossings, and dredging and excavation. The Corps can authorize activities under Section 10 by a standard individual permit, letter-of-permission, nationwide permit, or regional permit.

The expansion of the Kitsap treatment plant may require a Section 404 permit because wetlands may occur within the overall site. New and modified pipelines across rivers and/or wetlands also could require Section 404 permits. The effluent discharge line and outfall are not expected to be physically changed under the plan; therefore, a Corps permit likely would not be required for the outfall.

The proposed facilities in the plan should be located and designed to avoid wetlands, where possible. If construction of a facility were to discharge dredged or fill material into wetlands under Corps jurisdiction, then the appropriate Section 404 permit would be obtained. Site-specific mitigation and potential wetland compensation would be evaluated during future Corps review of individual wastewater facilities. One goal of wetlands protection is to avoid the net loss of wetlands, and therefore enhancement of existing wetlands or creation of new wetlands may be required to mitigate for facilities that involve wetland fill.

The application for an individual Corps Section 10 or Section 404 permit is part of the JARPA. If a proposed facility might affect an ESA-listed species or its designated critical habitat, the Corps must consult with NOAA Fisheries or USFWS before it makes a permit decision.

## 5.2 State and Regional

This section describes Washington state agencies with jurisdiction for planning, design, and construction of a wastewater collection and treatment facility. Ecology has been delegated much of EPA's responsibilities under the CWA.

### 5.2.1 Ecology Review of *Central Kitsap County Wastewater Facility Plan*

According to RCW 90.48, all engineering reports, plans, and specifications for new construction, improvements, or extensions of existing sewerage systems, sewage treatment, or disposal plants or systems shall be submitted to and approved by Ecology before construction may begin. In general, this review is intended to ensure that facilities proposed to be designed, constructed, operated, and maintained will meet the applicable state requirements to prevent and/or control pollution of state waters.

This plan will first be approved by Kitsap County as part of the capital facilities element of its Comprehensive Plan. The Kitsap County Comprehensive Plan is discussed later in this chapter. The final Facility Plan must comply with Ecology regulations for facility plans (WAC 173-240-060). Ecology is expected to review the final plan in 2009.

Ecology administers the primary funding programs for planning, design, and construction of domestic wastewater facilities. These two programs are the Centennial Clean Water Fund Program (Centennial) and the Washington State Water Pollution Control Revolving Fund Program (SRF).

### 5.2.2 State Waste Discharge Permit

Discharges to groundwater and industrial discharges to a municipal treatment plant require a State Waste Discharge (SWD) permit. Ecology issues SWD permits according to Chapter 173-216 WAC. The SWD program also regulates the use of reclaimed water. SWD permits are issued on a 5-year cycle and include information such as discharge limits, monitoring schedule, and general and special conditions.

Instances in which a SWD permit would be required for wastewater treatment facilities are where the effluent is discharged into groundwater or the effluent from the treatment plant is reused. The CKWWTP currently does not discharge into groundwater, and an SWD permit has not been required.

Kitsap County may be considering the alternative of reclaimed water percolation into local aquifers. Future discharge of reclaimed water into the ground would require an SWD permit. Water reclamation and land application systems would be required to obtain Ecology review and approval and to meet applicable groundwater quality standards. The evaluation of reclaimed water would require analysis of groundwater conditions in Kitsap County.

### 5.2.3 Hydraulic Project Approval

Any form of work that uses, diverts, obstructs, or changes the natural flow or bed of any fresh water or saltwater of the state, requires a Hydraulic Project Approval (HPA) from the WDFW. The HPA typically specifies how construction projects are designed, managed, sequenced, and conducted to minimize adverse effects on fish and shellfish.

The application for an HPA is part of the JARPA. SEPA compliance must be completed prior to issuance of the HPA by WDFW. The WDFW would consider any state-listed endangered species and priority habitats when issuing an HPA.

An HPA could be required for wastewater facilities typically for stream crossings and in-water construction at the outfall. If affecting state waters, facilities recommended in the Plan may require an HPA prior to construction. The effluent discharge line and outfall are not expected to be physically changed under the Facility Plan; therefore an HPA likely would not be required for the outfall.

### 5.2.4 Section 401 Water Quality Certification

Applicants for a federal permit or license, such as a Section 404 permit, could require a Section 401 Water Quality Certification (401 Certification) from Ecology. A 401 Certification must be obtained for any activity that might result in a discharge of dredge or fill material into water or non-isolated wetlands, or for excavation in water or non-isolated wetlands. The application for a 401 Certification would be part of the JARPA for a project.

Issuance of a certification means that Ecology anticipates that the applicant's project would comply with state water quality standards and other aquatic resource protection requirements under Ecology's authority. The

401 Certification can cover both the construction and operation of the proposed project. Conditions of the 401 Certification become conditions of the federal permit or license.

Activities typically requiring a 401 Certification, which are related to construction or wastewater facilities, include underwater pipeline crossings and outfalls. Facilities in the plan could require a 401 Certification from Ecology, although the effluent discharge line and outfall are not expected to be physically changed under the Facility Plan.

### 5.2.5 Archaeological and Cultural Coordination

Environmental laws and review processes at the federal, state, and local levels require that consideration be given to protecting significant historic, archaeological, and traditional cultural sites from damage or loss during development. Environmental laws such as the National Historic Preservation Act and SEPA require that impacts on cultural resources be considered during the public environmental review process. The Washington Department of Archaeology and Historic Preservation (DAHP) works with agencies, tribes, private citizens, and developers to identify and develop protection strategies to ensure that Washington's cultural heritage is not lost.

DAHP has technical expertise in regard to cultural resources, and provides formal opinions to local governments and other state agencies on a site's significance and the impact of proposed projects upon such sites. Recommendations in the Facility Plan should avoid adverse impacts on identified archaeological, cultural, and historic sites. Development of capital improvement projects would be coordinated with DAHP and the local tribes.

### 5.2.6 Aquatic Use Authorization (Aquatic Lease)

DNR has approval authority for the use of state-owned aquatic lands (beds of saltwater bodies and beds of navigable rivers). Many outfalls in marine waters are constructed in tidelands and aquatic lands managed by DNR. A lease is required from DNR for new and existing outfalls located on these lands. DNR would issue an Authorization to use State-Owned Aquatic Lands. The Aquatic Use Authorization process can be part of the JARPA.

### 5.2.7 Air Quality Notice of Construction

The Puget Sound Clean Air Agency (PSCAA) is responsible for regulating air pollution in Kitsap County. A municipal treatment plant may require a PSCAA permit before constructing a new facility, or before installing or modifying equipment that generates or emits air pollution. The application for an individual permit is called a Notice of Construction. The biggest potential source of air pollutants from the CKWWTP would be the combustion of anaerobic digester gas. Regulatory requirements may include emission limits; work practice standards; and monitoring, reporting, and recordkeeping conditions. In addition, the PSCAA should be notified if demolition or renovation of a structure could involve asbestos.

## 5.3 Local

Development of wastewater facilities must meet various Kitsap County regulations and may require County permits and approvals. Kitsap County requirements are related to comprehensive land use planning, shoreline development, zoning, critical areas, building and fire codes, noise control, and local development regulations.

### 5.3.1 Comprehensive Plan and Growth Management Act

Washington's Growth Management Act (GMA) establishes goals for land use planning, and directs local governments of fast-growing counties and cities to establish comprehensive plans, urban growth areas

(UGAs), and development regulations. As required under GMA, Kitsap County developed its Comprehensive Plan, which was first approved in 1998 and recently updated in December 2006.

The GMA identifies 14 planning goals that are diverse and sometimes competing, such as containing sprawl, providing affordable housing, retaining open space, encouraging economic development, ensuring public facilities, and protecting the environment. The GMA goals that directly apply to wastewater management are to focus urban growth in urban areas, to ensure adequate public facilities and services to support development, to encourage citizen participation, and to protect the environment. Kitsap County has developed the *Central Kitsap GMA Compliance Plan* (Compliance Plan) to meet the overall GMA planning goals applicable to wastewater management.

The GMA requires planning documents, including wastewater facility plans, to be internally consistent with the policies and future land use map in the Comprehensive Plan. Facility plans should be coordinated with the County's ongoing land use and GMA planning efforts. Kitsap County has developed the Compliance Plan to be consistent with the GMA, the Comprehensive Plan, and other County land use planning. In particular, the modeling for wastewater flows in the Compliance Plan has been based on future land uses in the Comprehensive Plan.

The GMA requires comprehensive plans to include a capital facilities plan element. The capital facility plan element applies to planning and construction of wastewater collection and treatment facilities. The Compliance Plan has been prepared to be consistent with the capital facilities element of the Comprehensive Plan. The Compliance Plan includes an inventory of existing capital facilities, projections of wastewater flows based on adopted County land uses, and recommendations for new or expanded capital facilities.

The GMA also requires local jurisdictions to plan for urban growth within the designated UGAs. GMA specifies that local governments must provide adequate public facilities and services, including wastewater collection and treatment. Concurrency under GMA requires public facilities and services to support planned growth at the time development occurs, without decreasing current service levels below County standards. The Compliance Plan includes recommendations for wastewater facilities to support planned growth in unincorporated Kitsap County. Adoption of this plan will allow Kitsap County to meet the concurrency requirements of the GMA.

### 5.3.2 Shoreline Master Program and Shoreline Management Act

The Washington Shoreline Management Act (SMA) regulates all marine waters, larger streams and lakes, associated wetlands and floodplains, and uplands within 200 feet from the edge of these waters. Kitsap County has adopted its Shoreline Management Master Program (KCC Title 22), which guides future development of the shorelines in Kitsap County in a manner consistent with the SMA. Kitsap County could issue a shoreline substantial development permit, a conditional use permit, or a variance permit. The application for a shoreline permit could be part of the JARPA.

If located within regulated shorelines, then facilities recommended in the plan should be consistent with the policies of the state SMA and with the requirements of the Kitsap County Shoreline Management Master Program. Potential wastewater facilities may require the applicable shoreline permit at the time individual projects are designed and approved.

### 5.3.3 Critical Areas Ordinance

The GMA requires Kitsap County to designate critical areas and to adopt regulations to protect these areas. The Kitsap County Critical Areas Ordinance regulates land uses or development that would alter the condition of a critical area or its required buffer (KCC Title 19). The critical areas are wetlands, fish and

wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and aquifer recharge areas.

Wastewater facilities recommended in the plan should be located and designed to avoid critical areas, where possible. If a facility were located in or adjacent to a designated critical area, then the project would comply with the Critical Areas Ordinance and obtain applicable critical areas approvals. The presence of a critical area(s) and any site-specific mitigation for individual facilities would be determined during future review under the Critical Areas Ordinance.

#### 5.3.4 Land Use, Zoning, and Development Regulations

Potential facilities evaluated under the plan could affect land uses regulated by Kitsap County. Development of individual wastewater facilities must be consistent with adopted County land use policies, zoning designations, and development regulations. The Kitsap County Zoning Ordinance is codified in Title 17 of the Kitsap County Code.

The plan should ensure that wastewater facilities are located and designed to be consistent with site-specific land use and zoning designations. Depending on the site's underlying zoning, a project may be permitted outright or could require a conditional use or variance. Individual wastewater facilities would obtain applicable zoning permits and approvals at the time they are designed and approved.

Other Kitsap County permits and approvals may be applicable to new or expanded wastewater facilities. A Site Development Activity Permit (SDAP) provides a mechanism to ensure stormwater quantity and quality concerns are addressed prior to site development (KCC Title 12). A new driveway access should meet Kitsap County Road Standards and may require a Road Approach Permit.

#### 5.3.5 Building and Fire Code

The Kitsap County Building and Fire Code regulates construction and/or development of site work within the unincorporated boundaries of Kitsap County (KCC Title 14). The Code regulates site improvement work, plumbing and sanitation, water conservation, heating, air conditioning, ventilation, energy efficiency, fire suppression systems, alarm systems, and fire department access. The Kitsap County Department of Community Development (DCD) is charged with the administration and enforcement of the Code. A building permit may be required for construction of permanent buildings or additions to existing buildings recommended under the plan.

#### 5.3.6 Noise Ordinance

Kitsap County has a noise ordinance that limits noise levels at the property lines of neighboring properties (KCC Chapter 10.28). When such a local ordinance is in effect, the state of Washington does not enforce Ecology's similar noise regulations (WAC Chapter 173-60).

The Kitsap County noise ordinance could apply to construction activities and to operation of noise-generating sources adjacent to sensitive land uses, while vehicle noise from public roadways is exempt. Potential noise sources could include generators, air compressors, ventilation equipment, centrifuges, blowers, and pumps. The design of treatment facilities, pump stations, and related pipelines should consider construction techniques and mitigation measures to reduce noise levels at sensitive land uses.

#### 5.3.7 SEPA Regulations

SEPA provides a way to identify possible environmental impacts that may result from governmental actions. These decisions may be related to issuing permits for private projects, constructing public facilities, or

adopting regulations, policies, or plans. SEPA review is not a permit; it is a process that helps agency decision-makers, applicants, and the public understand how a proposal would affect the environment. This information can be used to change a proposal to reduce potential impacts or to condition or deny a proposal when adverse environmental impacts are identified.

SEPA applies to all levels of state and local government. Kitsap County has adopted its own SEPA regulations in Chapter 18.04 of the Kitsap County Code, which generally follows the Ecology SEPA regulations in WAC 197-11. For most projects proposed by the County under the Facility Plan, Kitsap County would be the lead agency under SEPA and would be responsible for completing SEPA review under the County SEPA policies and regulations.

Any proposal that requires a local agency to license, fund, or undertake a project, or the proposed adoption of a policy, plan, or program, could trigger environmental review under SEPA. A proposal with potential significant adverse environmental impacts could require an EIS. Proposals without significant impacts likely would require a determination of nonsignificance (DNS) and accompanying environmental checklist. SEPA review includes both preparing environmental documents and public review, the extent of which depends on the location, magnitude, and potential impacts of the proposal. The overall SEPA process is similar to environmental review under NEPA.

Adoption of the Facility Plan itself will require SEPA review by Kitsap County prior to its approval by Ecology. The plan would be a non-project action under SEPA, and a non-project or programmatic SEPA document will be prepared concurrently with the plan. Individual capital improvement projects prescribed in the plan would undergo SEPA review at the time they are designed and permitted. If federal funding or permits were required, review under NEPA also may be required.

All projects financed through the federal CWA SRF program administered by Ecology are subject to the State Environmental Review Process (SERP). Ecology has developed a SERP process for the State of Washington that has been approved by EPA. Both NEPA and SEPA are satisfied for SRF projects if a project proponent meets the requirements of SERP.