



Focus

Service Provider Agreements for Water Pollution Control Facilities

Introduction

The Water Quality Joint Development Act (Chapter RCW 70.150) provides public bodies, such as cities, counties, and municipal or quasi-municipal corporations, with an additional means for financing, developing, and operating water pollution control facilities by securing services from a public or private service provider. A contractual agreement commits both parties to providing a facility-based environmental wastewater treatment service. The statute includes procedural requirements for agreements obligating service providers to design, finance, construct, own, operate, or maintain water pollution control facilities. The public body entering into the agreement with the service provider is responsible for assuring that all procedural and other requirements are met.

Public bodies should consult the statutes and regulations listed below, as well as their legal counsel, to assist them in making sound decisions. This document provides supplementary information regarding contracting for wastewater services, financial assistance, and the scope of the Department of Ecology's (Ecology) review of these agreements.

Statutory Basis

- Chapter 70.150 RCW Water Quality Joint Development Act
- Chapter 90.48 RCW Water Pollution Control Act
- Chapter 173-240 WAC Submission of Plans and Reports for Construction of Wastewater Facilities

Why Consider a Service Provider

Wastewater utilities seek the most efficient and effective ways to provide services, minimize debt, manage cash flow, reduce rates, and improve the reliability of operation. Public utilities often cooperate with neighboring local governments to meet these common needs and goals. Many types of public/private partnership options are also available. Options should be viewed as a continuum that ranges from contracting out for a single, specific service such as building maintenance – to full-scale, privately financed, design, build and operation services. The most commonly contracted services include treatment plant operation and biosolids management.

Every type of arrangement supports owner priorities and project goals differently. Some utilities may seek highly skilled operators or have particularly challenging permit requirements. Others may be undergoing expansion or need rehabilitation of their treatment system. The most successful partnership involves mutual benefits with both parties giving and getting value. A successful partnership cannot be disproportionately in favor of either party.

In a public/private partnership, the public body should be able to capitalize on a number of private sector resources that would not otherwise be available. For example, if private financing is used the burden on the public debt capacity can be reduced. Private sector procurement and construction methods generally are faster and may provide significant savings. Contracted operations and maintenance and facilities management may provide efficiencies of scale. Access to a company's sophisticated technologies and specialized expertise may provide higher quality services. By fully evaluating the opportunities that are offered by various types of partnerships, the utility is likely to achieve the best value for their particular situation.



Although treatment of wastes for environmental and public health protection is the most obvious of the services performed, utilities usually provide a much broader variety of services. Many utilities offer technical assistance on pollution prevention and wastewater treatment to industrial customers. They participate with other local, state, and federal agencies on issues of policy and rule-making. Other services include ambient, groundwater, and sediment quality monitoring, emergency preparedness and response services, reclaimed water supplies, public education, and a wide variety of community outreach programs. When deciding whether it is beneficial to contract for particular services, these other functions should also be considered. If the same employees and equipment are still needed to provide these other functions, the service agreement may not provide the desired cost efficiencies. If reduction in staff is part of the projected cost savings, then the cost of mitigating job loss impacts on existing employees should also be carefully considered.



Although an increasing number of utilities are entering into various public/private partnership service agreements, more than 98 percent of our nation's wastewater infrastructure remains publicly owned. The most frequently cited reasons to maintain public ownership are control of environmental and public health protection and retaining connectivity with related government services such as economic growth and development, and special services to disadvantaged clients. Another consideration for retaining public ownership has been the federal domestic sewage exclusion which allows public wastewater utilities to treat hazardous waste without becoming subject to expensive oversight and reporting requirements under the federal Resource Conservation and Recovery Act (RCRA).

Scope of Ecology Review

RCW 70.150.040(9) requires Ecology to review and approve service agreements before they are finalized to assure that they are consistent with Chapter 90.48 RCW, Water Pollution Control. Ecology review is limited to what is necessary to comply with this requirement

The purpose of Chapter 173-240 WAC is to implement RCW 90.48.110. Under this regulation Ecology reviews and approves all engineering reports, plans, and specifications for new construction, improvements, extensions and proposed operation and maintenance of sewerage systems, and wastewater treatment and reclamation facilities. Ecology must be satisfied that these submittals are adequate to protect water quality before approval is given. Therefore, the facility plan or engineering report must be completed and approved before Ecology can evaluate the adequacy of the service agreement to protect water quality as required by RCW 70.150.040(9).

WAC 173-240-104 also provides that domestic sewage facilities must be publicly owned unless they meet certain conditions that are included in an enforceable contract between the two parties. Prior to Ecology approval of the service agreement, the public entity must have an Ecology approved general sewer plan or a combined general sewer/facility plan. The service contract in which the nonpublic entity will own the facility must also assure that the public entity will assume the system if treatment efficiency is unsatisfactory, either as a result of plant capacity or physical operation. It is Ecology's belief that these provisions are consistent with the requirement for Ecology review of service agreements under Chapter 70.150 RCW.

Financial Assistance



Chapter 70.150 RCW states that public bodies entering into service agreements are eligible for loans or grants to the extent permitted by law or regulation as if the entire portion of the facility were publicly owned. The statute also provides that loans and grants shall be made to, and shall benefit the public body rather than the service provider."

Ecology provides financial assistance for planning, designing, and constructing water pollution control facilities through the Centennial Clean Water Fund (CCWF) and the State Revolving Fund (SRF). Informational workshops are conducted in January of each year. Applications must be submitted by the end of February to compete for available funding. Visit our webpage at www.ecy.wa.gov/programs/wq/funding for additional information. Funding sources other than from Ecology may also be available.

Additional Sources of Information

The Association of Metropolitan Sewerage Agencies (AMSA) provides a comprehensive publication entitled "Evaluating Privatization: An AMSA Checklist." For a copy of this document contact the association at (202) 833-2672 or order from the AMSA website at www.amsa-cleanwater.org/pubs/publist.htm

The Water Environment Federation has published several detailed articles on various aspects of public/private partnerships in recent issues of Water Environment and Technology. Documents may be obtained by searching the federation's library online at www.wef.org or calling 1-800-666-0206.



For Further Assistance

Please contact the Water Quality Municipal Facilities Manager at the Department of Ecology Regional Office listed below:

Central Regional Office
15 W. Yakima Ave., Suite 200
(509) 575-2597

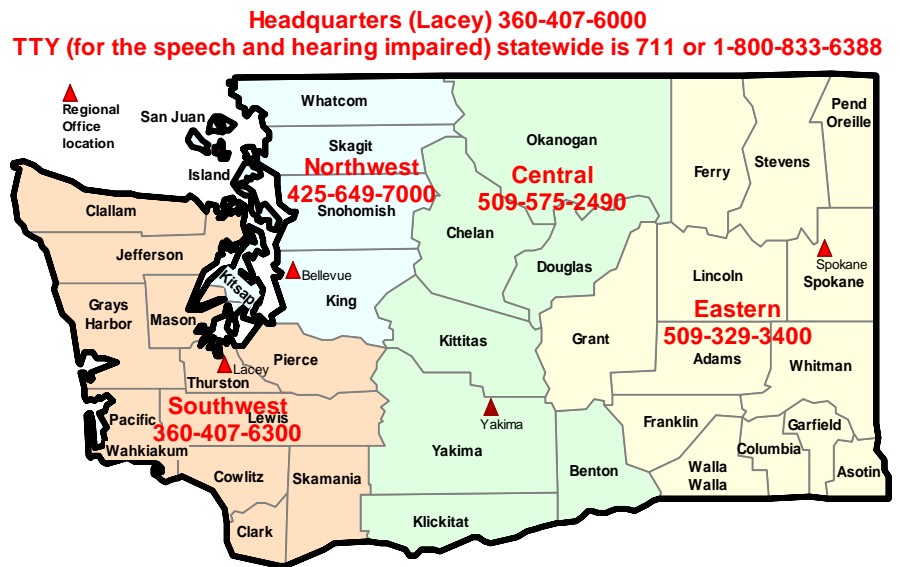
Eastern Regional Office
N. 4601 Monroe, Spokane
(509) 329-3400

Northwest Regional Office
3190-160th Avenue SE,
Bellevue
(425) 649-7000

Southwest Regional Office
300 Desmond Drive, Lacey
(360) 407-6300

Vancouver Field Office
2108 Grand Boulevard, Vancouver
(360) 690-7171

Nooksack Field Office
1204 Railroad Ave., Suite 200, Bellingham
(360) 738-6250



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