

**WAC 173-360A-0130 Approval of more stringent local requirements.**

A city, town, or county may adopt ordinances or resolutions establishing requirements for UST systems within an environmentally sensitive area that are more stringent than the statewide requirements of this chapter, if approved by the department under this section. Designation of an environmentally sensitive area under this section is solely for the purposes of implementing chapter 90.76 RCW.

(1) **Application.** Any city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may also submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

(a) **Required information.** The application for designation of an environmentally sensitive area and approval of more stringent UST system requirements must consist of a concise, factual report that provides sufficient information for the department to make a determination. The application must include the following:

(i) A description and map of the area to be designated and where within the area the more stringent UST system requirements would apply;

(ii) A description of the physical characteristics of the area, including any available maps of underground water resources and recharge areas, and an explanation of why those characteristics make it especially vulnerable to the threats posed by releases from UST systems, considering the criteria in subsection (2) of this section;

(iii) A description of the more stringent requirements that would apply to UST systems in the area, and an explanation of why more stringent requirements are necessary to protect the area, considering:

(A) The possible impacts of contaminated groundwater on human health and the environment;

(B) Whether the statewide requirements of this chapter are sufficient to prevent releases that may contaminate the groundwater; and

(C) A description of any other measures in place or considered to protect groundwater or surface water from environmental threats;

(iv) Any written comments submitted by the public on the proposed designation under subsection (3) of this section, and an explanation of how those comments were addressed; and

(v) Documentation of coordination with affected state and local agencies and water user groups under subsection (3) of this section.

(b) **Additional information.** The department may require additional information from the applicant if necessary to adequately evaluate the proposal. This information may include the following:

(i) The geographic limits of the groundwater recharge zone;

(ii) The geographic limits of the underground water resource;

(iii) The geology within both the recharge zone and the underground water resource;

(iv) The location, yield, well depth, and present use of wells within the limits of the threatened underground water resource;

(v) The estimated capacity of the underground water resource;

(vi) The location, type, and number of UST systems in the area; and

(vii) Such other information the department deems necessary.

(2) **Designation criteria.** When applying to the department to designate an environmentally sensitive area, the applicant must demonstrate that the physical characteristics of the area make it especially vulnerable to the threats posed by releases from UST systems and

that more stringent requirements for UST systems are necessary to protect the area. To do this, the applicant must demonstrate either:

(a) That the area is designated as a sensitive area for the purposes of protecting groundwater or surface water from pollution under another statute or regulation. If this demonstration is made, then the department must approve its designation as an environmentally sensitive area. Those areas include the following:

(i) An aquifer identified as the primary source of supply for public water supply systems;

(ii) An aquifer underlying a critical water supply service area where the coordinated water system plan established pursuant to chapter 70.116 RCW has identified a need for a groundwater management program;

(iii) An aquifer designated as a sole source aquifer by the U.S. Environmental Protection Agency;

(iv) An area designated as a certified groundwater management area under chapter 173-100 WAC; and

(v) An area designated as an aquifer protection area under chapter 36.36 RCW; or

(b) That the area meets one or more of the following criteria. If this demonstration is made, then the department must evaluate the application based on the overall sensitivity of the environment and the need for more stringent requirements:

(i) The groundwater underlying the area is vulnerable to releases from UST systems based on the hydrogeological characteristics of the area, including the following:

(A) Whether the area is a recharge area for underlying groundwater;

(B) The depth to groundwater;

(C) The permeability of the soils;

(D) The amount of precipitation;

(E) The direction and quantity of groundwater flow; and

(F) The presence of aquitards;

(ii) Proximity of the area to surface water that is hydrogeologically connected to groundwater if releases from an UST system may reasonably reach such groundwater based on the hydrogeological characteristics of the area;

(iii) Proximity of the area to surface water and wetlands;

(iv) The area is located within a one hundred-year flood plain;

or

(v) Other criteria published by the department.

(3) **Public involvement.** Before submitting an application for designation and approval of more stringent UST system requirements under subsection (1) of this section, the applicant must:

(a) Provide the public, affected local, state, and tribal agencies, and affected water user groups adequate notice and opportunity to comment on the application; and

(b) Hold at least one public hearing for the purpose of receiving comments on the application from such persons.

(4) **Review and approval.**

(a) **Completeness.** Within thirty days of receiving an application, the department must review the application for completeness and request any additional information needed in order for the application to be complete.

(b) **Public hearing.** Before approving or disapproving the application, the department may, at its discretion, hold an additional public

hearing in the jurisdiction where the environmentally sensitive area is proposed.

(c) **Determination.** The department must approve or disapprove the application. The department's determination must be based on:

(i) Review of the application and any comments received;

(ii) Whether the area to be designated meets the definition of an environmentally sensitive area, based on the criteria specified in this section; and

(iii) Whether the proposed more stringent UST system requirements are necessary and reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.

(d) **Resubmittal.** Applications disapproved by the department may be modified by the local government and resubmitted to the department for approval.

(5) **Applicability of approved programs.** Proposed local ordinances and resolutions become effective when approved by the department. An approved local ordinance or resolution may only apply to UST systems installed after the effective date of the ordinance or resolution.

(6) **Local tank fees.** A city, town, or county with an approved ordinance or resolution under this section may establish an annual local tank fee in the environmentally sensitive area, subject to the approval of the department. To be approved, the annual local tank fee must not exceed fifty percent of the annual state tank fee, and must be demonstrated to be necessary for enhanced program administration and enforcement. Annual local tank fees authorized and collected under this section must be deposited in the state underground storage tank account, established under RCW 90.76.100.

[Statutory Authority: Chapter 90.76 RCW. WSR 18-15-083 (Order 16-02), § 173-360A-0130, filed 7/18/18, effective 10/1/18.]