

Skagit County Hearing Examiner

RE: APPEAL OF NOTICE OF
VIOLATION DECISION BY
SKAGIT COUNTY PUBLIC
HEALTH ON 2/26/25 BY TULIP
TIME, LLC

No.: Health APL 25-0001

RESPONSIVE BRIEF

The July 10, 2026 hearing on this appeal is from the Health Officer's correct determination upholding the notice of violation that Tulip Time modified its on-Site Sewage System ("OSS") without a permit as required by Skagit County Code and Washington State Law.

STANDARD OF REVIEW

The decision upholding the Notice of Violation is reviewed upon the whole record for whether it was clearly erroneous. A decision is "'clearly erroneous' 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Norway Hill Pres and Prot. Assn v. King County Council* , 87 Wn. 2d 267, 274, 552 P.2d 674 (1976) *citing and quoting United States v. United States Gypsum Co*, 333 US. 364, 395, 68 S.Ct 525, 542, 92 Led 746, 766 (1948). Tulip Time must prove this by a preponderance.

BACKGROUND

The OSS owned by Tulip Time is located at 12637 Pulver Road Burlington, WA.

In May of 2024 Johnny's Septic System, a certified pumper in Skagit County, was called to Tulip Time's OSS pumping out the tank. The report from the service of May 21, 2024, indicated: The tank size is 750 gallons. 800 gallons were pumped from the tank which was found to be flooded. Johnny's report found deficiencies in the effluent

level, the tank condition and the baffles. It was noted "Homeowner to reach out to local designer." A Notice of Deficiency was issued on July 30, 2024. Exhibit 2. On August 20, 2024, Johnny's was again called to the system, and it was in worse condition. The tank was flooded and 830 gallons were pumped from the 750-gallon tank. Effluent was surfacing and returning to the tank. Cracks and root infiltration to the tank were noted. The lack of baffles was noted and that there were 5 – 6 inlets into the tank. Again, it was noted "Homeowner to contact local designer." The OSS system was in failure. See WA 246-272A-0010 (31).

After this, on September 10, 2024, a second Notification of Failure was issued. Exhibit 4.

The inspection of October 24, 2024, indicated that "The property owner has added a pump tank of unknown size and has pumped discharge of pump tank back into existing drainfield to mitigate/ surfacing/ backing up." The work was not permitted and resulted in the second Notification of Violation that is the subject of this appeal.

ARGUMENT

While Tulip Time's OSS was previously functioning properly Skagit County Health was not involved in its design. In that sense it was "grandfathered." When the system was in failure, as it was in May and August of 2024, the County became involved beyond receiving reports from work done on On-Site Septic Systems and Tulip Time had legal obligations.

"The construction, operation, and maintenance of a system of sewerage and water is a county purpose." RCW 36.94.020. When septage is removed from an OSS,

a report is required within 30 days, by a certified pumper. SCC 12.50.200. Compliance with this requirement resulted in Johnnys reports which are exhibits in this matter.

When the system failed Tulip Time was required to “notify the local health officer” of the “failure and indicate which methods will be used to address the failure.” WAC 246-272A-080(3). Tulp Time needed “develop and submit information and obtain a permit as required under WAC 246-272A-0200 prior to any repair or replacement of an OSS ...” and yet it did not do so.

WAC 246-272A-280 governs repair of failures. SCC 12.05.170.¹ The scheme contemplates an OSS owner working with the local health officer to address the failure. The local health officer is involved in evaluating permits for repairs, considering their efficacy, “allowing the installation of a conforming OSS or component.”

Tulip Time correctly notes that a “minor repair” does not require a permit under WAC 246-272A-200. Regardless, “the local health officer may require the owner to submit information regarding any activities defined as a minor repair for recordkeeping purposes.” WAC 246-272A-200.

What Tulip Time did was install a pump tank and line to an existing drainfield or it installed a pump and a new drainfield.² Neither of these are minor repairs. Tulip Time did not get Health Department approval for the work on the OSS.

¹ SCC 12.05.170 Repair of Failures: (1) See WAC 246-272-272A-280 as adopted in SCC 12.05.025 and RCW 43.20.065. (2) Upon application for a repair permit, if the existing septic or pump tank are undersized or structurally deficient, the Department may required that the tank be replaced with a tank that meets current sizing code.

² The Health Department thought that the record is clear that a pump tank and a line were installed as related in the October 2024 report of Johnny's listed as Exhibit #5 in this matter. Tulip Time's Hearing Brief indicates that “This resulted in the installation of a pump next to the tank and development of a second drain field for overflows from the system. The drain field is approximately 40 feet long with three sections that are each approximately 30 feet long. The drain field has rock and drain lines.” As this is an open record appeal, information unavailable to the Health Officer is admissible. However, the source of this information is unknown and does not appear to be in the record and exhibits thus far

WAC 246-272A-0010 (54) provides:
“Minor Repair” means the repair or replacement of any of the following existing damages or malfunctioning OSS components except that the repair or replacement of a sewage tank, treatment component, or soil dispersal component is not considered a minor repair:

- (a) Control panels;
- (b) Building sewers ;
- (c) Any other portions of tightline in the OSS;
- (d) Risers and riser lids;
- (e) Sewage tank baffles;
- (f) Effluent filters;
- (g) Sewage tank pumps and lids;
- (h) Pump control floats; and
- (i) OSS inspection boxes and ports.

The installation of a pump tank and a line to a drainfield are not a minor repair and are a modification of the existing system.³

A new drainfield is a “Treatment Component” and not a minor repair.⁴ A pump beside the existing system would require a “pump tank” and would also not be a minor repair.

³ WAC 246-272A-0233 provides:

Design Requirements – Pump chambers.

- (1) All pump chambers, except pump basins, must be designed to meet the following requirements:
 - (a) Have a minimum volume of 1,000 gallons;
 - (b) Provide an internal volume to account for the design flow, full time pump submergence, space for sludge accumulation below the pump inlet and emergency storage volume of at least 75 percent of the design flow;
 - (c) Follow any applicable DS & G or proprietary design manual for all OSS components included in the pump chamber; and
 - (d) Comply with chapter 246-272 C WAC
- (2) For the purposes of this section, “pump basin” means a watertight receptacle that contains a pump to convey sewage from a limited use area that is separate from the main wastewater sewage pipe leaving a structure, to the main treatment component of an OSS; typically much smaller than the pump chamber and separate from the main sewer pipe due to elevation restrictions. Pump basins are intended for limited, specialized uses, and not intended as a replacement or substitute for a pump chamber. Pump basins must be in compliance with chapter 246-272C WAC.

⁴ WAC 246-272A-0010 (104) provides: “Treatment Component” means a technology that treats sewage for further treatment or dispersal into the soil environment; Some treatment components, such as mound systems, incorporate a soil dispersal component in lieu of separate treatment and soil dispersal components.

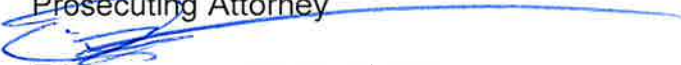
When the repair was not a "minor repair" the evaluation of the system and the component used is not limited to the additional components but may extend to other components. SCC 12.05.170(2) ("Upon application for a repair permit, if the existing septic or pump tank are undersized or structurally deficient, the Department may required that the tank be replaced with a tank that meets current sizing code.").

CONCLUSION

Tulip Time did work in response to the failure of its OSS that required permits to be obtained before the repair, and modification work began. This was not done. The Notice of Violation was correctly decided and not clearly erroneous.

Dated this 25 day of June 2026.

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