

DATE: January 11, 2012

TO: Washington State Board of Health Members

FROM: Keith Grellner, SBOH Environmental Health Committee Chair

SUBJECT: REQUEST FOR RULE DELEGATION – CHAPTERS 246-260 WAC, WATER RECREATION FACILITIES, AND 246-262, RECREATIONAL WATER CONTACT FACILITIES

Background and Summary:

The State Board of Health has responsibility under RCW 70.90.120 and RCW 43.20.050(2)(d) to adopt rules regarding the safety and sanitation of public pools, spas, and other types of water recreation facilities. The Board has adopted such rules as chapter 246-260 WAC, Water Recreation Facilities, and chapter 246-262 WAC, Recreational Water Contact Facilities. In December 2008, a federal law known as the Virginia Graeme Baker Pool & Spa Safety Act became effective. The federal law requires public pools to have approved, safe drain covers and anti-suction design. The Consumer Product Safety Commission (CPSC) referenced an ASME standard for approval of such designs.

The Department of Health (department) updated the Board's rules in October 2010, under delegation from the Board, including referencing the CPSC-accepted design standards. In September 2011, CPSC changed its requirements by referencing another industry design standard: ANSI/APSP – 16 2011. The department is now recommending revising the Board's rules to reference the new design standard. To do this, the department is requesting delegation to revise multiple sections of the Board's rules to reference the new standard without otherwise modifying the Board's rules.

Delegation to the department for this rule change meets the Board's policy adopted in 2000: (1) some editing of the Board's rules would be done to improve clarity while referencing the federally-accepted design standard; (2) the state has limited discretion in this rule making; (3) the regulated community supports state adoption of the federal requirements to avoid confusion; (4) policy changes would be limited to federal requirements; and (5) these rule changes would not benefit from the Board's role in increasing stakeholder involvement. This rulemaking would meet criteria for an exemption from Executive Order 11-03, Rules Moratorium Extension, because it is necessary to remain consistent with federal law.

Nancy Napolilli, Director of the Office of Environmental Health, Safety and Toxicology, is here today to explain the request for delegation of rulemaking for the specific purpose of adopting the new CPSC provisions. Please see materials behind Tab 11 of your packets.

Recommended Board Action:

The Board may wish to consider the following motion:

The Board delegates authority to the Department of Health to adopt revisions to chapters 246-260 WAC and 246-262 WAC, regarding water recreation facilities and recreational water contact facilities, to incorporate Consumer Product Safety Commission requirements that pool and spa designs meet the ANSI/APSP – 16 2011 design standard and to do editing for clarity.
