



**Final Minutes of the State Board of Health
April 9, 2014**

Department of Health, Point Plaza East, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98501

State Board of Health members present:

The Honorable John Austin, PhD, Chair
Keith Grellner, RS, Vice-Chair
Stephen Kutz, BSN, MPH

Thomas Pendergrass, MD, MSPH
Dennis Worsham, Secretary's Designee
Diana T. Yu, MD, MSPH

State Board of Health members participating by phone:

Fran Bessermin
James Sledge, DDS, FACD, FICD
The Honorable Donna Wright

State Board of Health members absent:

Donald Oliver

State Board of Health staff present:

Michelle Davis, Executive Director
Desiree Robinson, Executive Assistant
Timothy Grisham, Communications Consultant
Christy Curwick Hoff, Health Policy Analyst

Ned Therien, Health Policy Analyst
Tara Wolff, Health Policy Analyst
Lilia Lopez, Assistant Attorney General

Guests and other participants:

Dan Alexanian, Department of Health
Vicki Bouvier, Department of Health
Theresa Phillips, Department of Health
Tami Thompson, Department of Health
Scott Torpie, Department of Health

Kim Zabel, Department of Health
Wes McCart, Stevens County Commissioner
Karen McDonell, Washington Workers
Bradford Zakes, Zakes Foundation

John Austin, Board Chair, called the public meeting to order at 10:04 a.m. and read from a prepared statement (on file).

1. APPROVAL OF AGENDA

Motion: Approve April 9, 2014 agenda

Motion/Second: Pendergrass/Grellner. Approved unanimously.

2. ADOPTION OF MARCH 12, 2014 MEETING MINUTES

Motion: Approve the March 12, 2014 minutes

Motion/Second: Kutz/Pendergrass. Approved with Deputy Secretary Worsham abstaining.

3. PUBLIC TESTIMONY

Karen McDonell, Washington Workers, testified she developed chemical sensitivity 25 years ago during the remodeling of her workplace building. She has been participating in air quality advocacy activities since then. She provided the Board with copies of CDC's Indoor Air Quality Policy. She asked the Board to adopt policies to prohibit use of air fresheners in work places and to encourage

work places be fragrance free, starting with State offices. She asked the Board to adopt such policies for schools and hospitals and eventually adopt measures to implement all of CDC's Indoor Air Quality Policy. She provided her testimony in writing.

Bradford Zakes, Zakes Foundation, testified he lost a son to adrenoleukodystrophy (ALD) in 2011 at the age of 10. He said children, mostly boys, with this genetic condition appear normal at birth. They slowly develop symptoms that are difficult to diagnose, including eventually devastating neurological involvement. He said stem cell transplant therapy can cure the disease if done when a child is very young, before symptoms begin. There is a newborn screening test to detect the condition. He said New York State was the first state to adopt newborn testing requirements for ALD and other states are following. He asked the Board to assemble an expert advisory group to consider adding ALD to the panel of newborn screening tests in Washington. He provided written testimony.

Wes McCart, Stevens County Commissioner and Northeast Tri-County Health District Board of Health Vice-Chair, testified that without local rules in place small public drinking water supplies cannot be treated to make them usable. He said this restriction amounts to an unfunded mandate for local health jurisdictions to develop rules to allow treatment of some supplies. He said the Board's rule has created a need for emergency rule making to allow all people to treat unsafe water sources. He said this could alleviate the situation of people using water supplies that should be treated but who are not notifying a health agency because they do not want to be identified. He also requested the Board to consider normal rule-making to allow simple well systems to receive treatment without requiring engineer design and to allow local boards of health to adopt ordinances that are less stringent than the Board's Group B rule. He said allowing local health to grant waivers for treatment or engineering appears to be allowing local provisions to be less stringent than the rule. This has been confusing to his local agencies. He also asked that all those who have asked the Board to consider changes to the Group B rules be granted stakeholder status during rule-making. He provided a letter explaining his agencies' requests.

4. PETITION FOR RULE-MAKING –CHAPTER 246-291 WAC, GROUP B WATER SYSTEMS – TREATMENT

Keith Grellner, Vice Chair introduced Ned Therien, Board staff, and Scott Torpie, Department of Health Drinking Water Program. Mr. Therien referred members to the materials under Tab 4 in their packets. He said the Board has adopted rules for Group B water systems, which for design purposes means new systems with 3-9 connections. He said the Department and Board were in the process of considering revising the Group B rules when, in 2009, the Legislature eliminated the Departments' funding for monitoring Group B systems. The rule-making discussion then changed to recognize the need to reduce the burden to the Department for monitoring these systems. The Department has fee authority to charge for new system design review and approval but not for ongoing monitoring. Mr. Torpie then gave his presentation. He shared the Drinking Water Program's mission statement, which guides the program's policy decisions. He provided history of the Group B program, explained the major changes in the rules adopted by the Board in 2012, listed options for local health jurisdictions, shared the program's goals and core functions, provided information on the petitions, and outlined the Department's recommendations. He said 2009 legislation changed requirements for the Board's rules, no longer requiring ongoing monitoring of Group B systems. He said the revised rules rely on safe sources, drilled wells not requiring treatment, to best assure new Group B water systems will supply safe water without ongoing monitoring by the Department of Health. In summary, the Department implements the rule wherever a local health jurisdiction does not. The local health jurisdictions have flexibility to adopt

their own rules as long as they are no less stringent than the Board's. The Department does not review local ordinances. He said the Department is committed to train and support local health jurisdictions within resource limits. He commented on Secretary Wiesman having asked staff to brief him on the history of the rule when he received the petitions and re-look for ways to try to meet the requests. The Department's recommendation is that the revised rules have been in effect for only three months and they should continue without change at this time.

Thomas Pendergrass, Board Member, asked for clarification whether some of the larger counties do not regulate the Group B water systems. Mr. Torpie said that was the case, including King, Snohomish, and Spokane. He said Pierce County has a model program. Diana Yu, Board Member, asked for clarification about exactly what was being asked for in the petitions. Mr. Torpie said they include requests for the Board to change the Group B water system rules to enable the Department to approve water supplies needing treatment for primary contaminants. He said the Department currently cannot approve such water sources under the Board's rules due to the Department's lack of resources to monitor treatment. He said that based on the Department's experience, even with larger Group A systems, that treatment frequently does not work because of poor design and operation for field conditions. A local jurisdiction, like Pierce County, with a robust Group B program is able to do ongoing monitoring of treatment. He said, secondarily, he heard today a request to allow local health agencies to approve simple designs submitted by designers who are not licensed engineers. Member Yu re-phrased his response to mean the Board structured the rules to have the Department approve simple systems that are likely to remain safe without monitoring. Stephen Kutz, Board Member, asked what is going on with systems that existed prior to the rule changes that went into effect this year. Mr. Torpie said the Department has communicated to the existing 13,000 Group B systems, for which it has e-mail addresses, the scope of the rule changes, recommended they continue monitoring, and recommended those exceeding standards to notify their consumers. He also mentioned the new rule reduced the arsenic level allowed, based on federal standards. Mr. Therien said he also heard today in the verbal request from Commissioner McCart for the Board to allow local ordinances to be less stringent than the Board's rules. He said he knew of no other Board rules that allow local rules to be less stringent. He said the Group B rules provide an option for local health jurisdictions to give waivers under a joint plan of operations without adopting their own Group B rules, but they probably would need their own general fee rule to be able to do the work. He said the waiver section of the Board's rules spells out what the local jurisdiction must require to allow a waiver.

Member Yu asked, for the counties that don't have their own Group B programs, is the Department able to review those systems. Mr. Torpie said the Department is doing so for new systems and is able to charge a fee for design reviews. Member Yu said fulfilling the mission to protect the health of the community is not only done by regulation, it is also done by education, information, and guidance. She added that regulations without enforcement are not good for anyone. Chair Austin asked about current capacity within the Department to support local health jurisdictions in developing local ordinances or joint plans of responsibility. Mr. Torpie said the Department sees it as being to its interest to provide technical support to local health when requested, and it did so recently while Northeast Tri-County Health District was considering adopting an ordinance. Mr. Torpie said a local jurisdiction could have a Members Yu and Grellner asked about fees. Mr. Torpie said the Department has a rule allowing it to charge fees to review designs for new systems but cannot pass through that authority to locals. He said raising or establishing new Department fees would require legislative approval, which the Department has not tried to get. He said the minimum fee for the Department to approve a Group B water system is \$624. Member Kutz asked if any counties with local ordinances in place or operating under a joint plan of responsibility allow

treatment with monitoring. Mr. Torpie said he couldn't name where it has been done, but all the local programs would be able to grant waivers. Chair Austin asked if local health jurisdictions assess a fee. Mr. Torpie said local programs do have fees. Member Grellner asked if there was anything in Board rules to preclude other options a local jurisdiction could take, such as making zoning changes to require larger lot sizes to encourage use of individual exempt wells or increasing lot density to support Group A systems. Mr. Torpie said he could not think of anything to preclude such actions. Chair Austin asked if members on the phone had any questions. Fran Bessermin, Board Member, said she was still confused about the specifics in the petitions. Mr. Therien responded the petitions received in writing asked to open rule-making to allow the Department to approve Group B systems needing treatment to meet the maximum contaminant levels, which it cannot do under the Board's current rules.

Member Kutz made a motion (see below). Chair Austin called for discussion. Member Pendergrass said in the era of limited resources we need some means to assure disclosure -- if you're buying a property you should know if the water system is not in compliance. Mr. Torpie said an ongoing requirement for public notice no longer exists; however, the Department's guidelines provide a template of what should be disclosed. Member Pendergrass expressed concern annual notification is not a requirement for Group B systems. Member Grellner said he agreed with Commissioner McCart that the need for treatment now and in the future will become important, but as a local health representative, he knows firsthand that without the proper oversight of treatment systems (maintenance and expertise to correctly operate), the systems do not usually work for very long, if at all. When they break, there is no one there to fix them. He said he cannot in good conscience agree to change a rule to allow treatment without oversight because it will not be able to provide the public health protection that is so important. He said when the Board revised the rule in 2012 it was a difficult decision that most members did not like, but they considered it the best that could be done with what the Legislature provided. He said he hoped state and local public health is better funded someday to allow the Board to revisit its decision.

***Motion:** The Board denies the petitions to open rule-making to consider revising chapter 246-291 WAC to allow the Department of Health to grant waivers for water sources needing treatment to meet the primary MCLs.*

***Motion/Second:** Kutz/Grellner. Approved with Members Bessermin and Pendergrass abstaining.*

5. BOARD ANNOUNCEMENTS AND MEMBER COMMENTS

Michelle Davis, Board Executive Director, announced this was Desiree Robinson's last Board meeting because she was leaving her job to pursue a real estate career. She said Ned Therien would be retiring in June. She said interviews were held last week for Mr. Therien's position and hopes to hire someone by May 1 to allow some overlap. She said she was recruiting a temporary replacement for Ms. Robinson and hoped for some overlap before Ms. Robinson's last day. She also said Chair Austin has announced he will not be seeking re-election this year and, therefore, will be leaving the Board this December 31. Ms. Davis said this is the year to send a biannual State Health Report to the Governor in July. She said the report would include discussion of the Board's oral health recommendations and health impact reviews. She asked members to send her recommendations of things to include.

Ms. Davis commented about the devastating mudslide that hit Oso on March 22. She said Governor Inslee has declared an emergency and has sought federal relief. President Obama is planning to visit the area. Dennis Worsham, Deputy Secretary of the Department of Health, reported the Department opened its emergency response center to support the efforts of Snohomish County and first responders dealing with the Oso recovery efforts. He said this has also included trying to help

members of the tribal community who became cut off from normal access to their medical providers. Donna Wright, Board Member, reported the Snohomish Health District has been involved with such things as food safety and waste disposal issues for the Oso community and the first responders.

Ms. Davis reported on additional correspondence from Karen Nold expressing concern about electromagnetic radiation from personal wireless equipment, including wi-fi, in and around school facilities. She also mentioned receiving a notice through former Secretary Mary Selecky that former Board member Mel Tonasket is back on the Colville tribal council.

Ms. Davis said there might be a need for the Board to meet in May to consider the ALD request heard in testimony today. This is based on the written testimony Mr. Zakes submitted today. There was discussion about whether Mr. Zakes had requested rule making today. Member Yu said the verbal request heard today was to put a workgroup together. Therefore, she wondered if it was premature to open rule-making. Mr. Zakes returned to the testimony table and clarified that, at this time, he was requesting the Board establish an advisory committee. Member Yu thanked him for the clarification and for doing the background work. The Board accepted Mr. Zakes' request to convene the advisory committee.

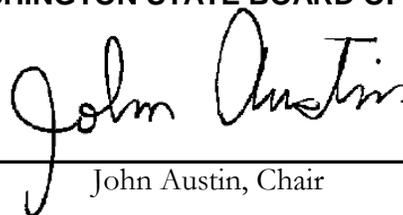
Ms. Davis announced the June Board meeting will be held in conjunction with the WSALPHO meeting in Tacoma. She apologized to Board members who were looking forward to the possibility of the June meeting being in Spokane. She promised to hold a future meeting in Spokane.

Member Yu commented that it was National Public Health Week. She also encouraged everyone not vaccinated against measles to get vaccinated.

ADJOURNMENT

John Austin, Board Chair, adjourned the meeting at 12:01 p.m.

WASHINGTON STATE BOARD OF HEALTH



John Austin, Chair