



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH

PO Box 47990 • Olympia, Washington 98504-7990

April 24, 2014

Stevens County Commissioners and
Northeast Tri-County Board of Health
215 S Oak St
Colville, WA 99114

Dear Commissioners and Board of Health Members:

This letter is to inform you that the State Board of Health denied your requests for rule-making at its April 9, 2014 meeting in Tumwater. The petitions, dated March 11, 2014 requested that the Secretary of Health, John Wiesman, revise chapter 246-291 WAC, Group B Public Water Systems. The denial also applies to the verbal and written requests made by Commissioner Wes McCart directly to the Board on April 9, 2014. The Board handled your requests as a petition for rule making under RCW 34.05.330. Subsection (3) of RCW 34.05.330 allows an agency's denial of a petition be appealed to the Governor within 30 days of notice of the denial.

The Board understood your requests as consisting of five things. The first asked for a revision of chapter 246-291 WAC to allow the Department of Health to approve treatment of water sources that exceed primary maximum contaminant levels (MCL). The second request was that this revision be expedited by emergency rule-making. The third request, received April 9, was that the Board change the rules to not require "simple systems" be engineered when consisting of just a pump and pressure tank with or without treatment, particularly for systems with four or fewer connections. The fourth request, received April 9, appears to ask for clarification of how waivers could be given by local jurisdictions without being considered less stringent than the state rules. The fifth request was for the Board to consider all petitioners stakeholders in drafting new rule language.

The Board last adopted revisions to these rules in October 2012, under the authority of RCW 43.20.050 and chapter 70.119A RCW. All local health jurisdictions were considered stakeholders in that process. The Board considers all recent petitioners to be stakeholders for these rules. The Board does not consider the rules to be inconsistent with the statutes. The Board thoroughly reviewed the rules before adopting the 2012 revisions and does not consider the changes requested are needed on an emergency basis to protect public health. The Board considers public health to be protected by the rule's general provision of not allowing new water sources that have contaminants that exceed primary MCLs unless a local health jurisdiction is able to properly monitor ongoing treatment.

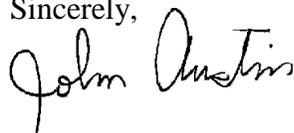
Chapter 246-291-060 WAC currently allows a local health jurisdiction to give waivers to Group B systems on a case-by-case basis to allow such treatment without adopting local rules if the local jurisdiction has accepted primary responsibility for enforcing the rules under a joint plan of responsibility (JPR). The Board rule details the requirements for a local jurisdiction to give such a waiver, which must be conditioned with ongoing oversight of monitoring to assure that the treatment is working. The conditions are part of the Board's rule, so allowing them is not less stringent than the rule. The Board understands it can be difficult for local jurisdictions to accept primary responsibility for these activities. The rules allow the option without mandating a local program.

The Board understood the limitations of the rules when it revised them in 2012. It understood treatment devices can be unreliable and require monitoring. It also understood that the Department of Health had lost all general funds for implementing the Group B rules in 2009 and had existing fee schedules to allow charging fees only for review of plans for new or expanding systems and not for ongoing monitoring oversight activities. For the Department of Health to charge a new fee for ongoing monitoring activities would require legislative approval per Initiative 960. Therefore, the Board decided in 2012 that public health would best be protected by not allowing treatment to meet a primary MCL that would require ongoing oversight by the Department of Health. The Department of Health's funding situation for monitoring Group B systems has not changed since then.

Chapter 246-291-120 WAC currently allows a local health jurisdiction to approve certain kinds of simple Group B systems not designed by an engineer if the local jurisdiction has accepted primary responsibility for enforcing the rules under a JPR and has adopted local rules. The Board's rule does not consider any kind of treatment to meet the simple system criteria. This is because the Department and local health jurisdictions have frequently found treatment systems to be prone to be designed or installed poorly because of the variability of system conditions. In addition, chapter 18.43 RCW specifies the scope of duties requiring licensing as a professional engineer.

The Board expresses its appreciation to Commissioner McCart for attending its April 9 meeting in Tumwater to explain the concerns of Stevens County and the Northeast Tri-County Board of Health regarding the Group B public water system rules related to the difficult situation of funding for local health jurisdictions. Staff of the Department of Health's Office of Drinking Water is available to provide technical assistance to local health jurisdictions to develop ordinances and/or joint plans of responsibility and to implement local Group B programs.

Sincerely,

A handwritten signature in black ink that reads "John Austin". The signature is written in a cursive style with a large initial "J".

John Austin, Chair
Washington State Board of Health

cc: John Wiesman