

WASHINGTON STATE BOARD OF HEALTH

Date: August 11, 2021

To: Washington State Board of Health Members

From: Keith Grellner, Environmental Health Committee

Subject: Rulemaking Petition to Amend Chapter 246-272A, On-site Sewage Systems

Background and Summary:

The Administrative Procedures Act (RCW 34.05.330) allows any person to petition a state agency to request adoption, amendment, or repeal of any rule. Upon receipt of a petition, the agency has sixty days to either (1) deny the petition in writing stating the reasons why and, as appropriate, offer other means for addressing the concerns raised by the petitioner, or (2) accept the petition and initiate rulemaking.

On July 4, 2021, the State Board of Health (Board) received a petition from George Danilov pertaining to chapter 246-272A WAC, On-site Sewage Systems, requesting revisions to the structure and content of the rules. Mr. Danilov's views and requests are outlined in the rulemaking petition and in an accompanying PowerPoint presentation provided to staff.

On August 4, 2021, Mr. Danilov again followed up with Board staff with further remarks on the code that are also included in your packet. His email said, "Please take into account that the goal of my petition is safety of the environment, which is impossible without efficient processing of human wastes. A concise transparent OSS Code plays crucial role in achieving this goal, but regrettably the current state of OSS regulation is unsatisfactory to my mind and requires remarkable changes. The major change needed is turning the property owners from donors of money into active participant of the OSS construction process. Public involvement is the very important and efficient tool of true democracy."

Staff from the Board and Washington Department of Health (Department) met twice with Mr. Danilov in an effort to better understand the petition. Based on these discussions and his material, among other ideas Mr. Danilov is petitioning the Board to revise the rules to:

- Better consider and mirror the U.S Environmental Protection Agency's 2002 Onsite Wastewater Treatment Systems Manual;
- Focus the rules more narrowly on treatment of black water (sewage from toilets) and encourage recycling of graywater (wastewater from sinks, dishwashers, etc.);
- Allow property owners to be more autonomous and participatory in the administration of the rules including authority to design and install their own systems; and

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- Transition the rules from a prescriptive approach (e.g., designer requirements, setbacks, approved types of treatment systems) to rules that are performance-based and that rely on inspection of systems constructed by property owners based on the science and technologies established in the rules.

We discussed the petition at the Environmental Health Committee meeting on July 19, 2021. In addition, I have met with Board and Department staff to discuss the petition. For many reasons, including the following, I recommend denying the petition.

- The ideas and approaches of the petition would upend the on-site sewage system rules in ways that conflict with longstanding legal structure of these and other Board rules and conformance of the rules with related laws and rules;
- Implementation and enforcement of a performance-based regulatory approach that relies on do-it-yourself design and construction of on-site sewage systems coupled with inspection of systems by public health staff to determine adequate sewage treatment would be cost prohibitive and likely hazardous to public health; and
- Rulemaking to update the state's On-site Sewage System code has been underway since March 2018 and is nearing completion. Like other people and diverse interests, the petitioner can continue to express his opinions and give input to the ongoing rulemaking as we work to determine how best to update these statewide rules. Staff members are taking all stakeholder input into consideration, have leaned on the ad hoc On-Site Rule Revision Committee for advice and recommendations throughout the rulemaking, and will circulate the rules for further public review and comment as the process moves forward.

Jeremy Simmons, Manager of the Department's On-Site Wastewater Management Program, will be available during the discussion to help answer questions about the on-site sewage system rules, their administration by the Department and local health jurisdictions, and the rulemaking that is currently underway to revise the rules.

Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt one of the following motions:

The Board denies the petition for rulemaking to amend chapter 246-272A WAC, On-site Sewage Systems for the reasons articulated by the Board. The Board directs staff to notify the petitioner of its decision.

OR

The Board denies the petition for rulemaking to amend chapter 246-272A WAC, On-site Sewage Systems, for the reasons articulated by the Board and directs staff to consider the petitioner's concerns in the currently open rulemaking for this chapter as additional stakeholder input. The Board directs staff to notify the petitioner of its decision.

OR

The Board accepts the petition for rulemaking to amend chapter 246-272A WAC, On-site Sewage Systems, and directs staff to file a CR-101, Preproposal Statement of Inquiry, to further evaluate the request and possible rule change.

Staff

Stuart Glasoe

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