

WASHINGTON STATE BOARD OF HEALTH

Date: June 8, 2022

To: Washington State Board of Health Members

From: Tao Sheng Kwan-Gett, MD, Chief Science Officer, Department of Health

Subject: Emergency Rulemaking Request from Washington Department of Health for On-Site Sewage Systems, Chapter 246-272A WAC—Proprietary Products and Supply Chain Shortage

Background and Summary:

The State Board of Health (Board) has rulemaking authority for on-site sewage systems with design flows less than three thousand five hundred gallons per day. Chapter 246-272A WAC, On-Site Sewage Systems, sets standards for the siting, design, installation, use, care, and management of these small on-site sewage systems. The Washington Department of Health (Department) and local health jurisdictions jointly administer the rules. The Department is asking the Board to adopt an emergency rule to address ongoing supply chain shortages affecting on-site sewage systems in order to avoid public health risks associated with poor system performance.

Under RCW 34.05.350, the Board may adopt emergency rules when it finds that emergency adoption of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Emergency rules are effective for 120 days.

In 2018, the Board filed a CR-101, Preproposal Statement of Inquiry, WSR 18-06-082, to initiate permanent rulemaking and update the on-site sewage system rules. That rulemaking is still underway and is expected to conclude in 2023.

The on-site sewage system rules require installation of systems that are approved by the Department for use in Washington and that are designed to provide adequate treatment of sewage on the properties they serve. This includes the use of proprietary or trademarked technologies that are properly tested, approved, and registered for use in the state based on Board rules.

Homeowners, service providers, and regulators are experiencing supply chain shortages that are affecting the maintenance and repair of proprietary systems currently in use as well as the installation of new systems. This is due mainly to the shortage of a specific product used in many proprietary systems—a disinfecting ultraviolet light manufactured by Salcor Inc.—as well as other parts and components that are increasingly in short supply and are integral to the performance of these on-site sewage systems.

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The shortage of replacement parts and components threatens system maintenance and public health and safety due to poor system performance. Failure to maintain on-site sewage systems easily and properly can also impede system inspections associated with property-transfer transactions.

There are thousands of on-site sewage systems in Washington that use the Salcor disinfecting ultraviolet light and many other types of proprietary products that serve properties with challenging site conditions such as small lots, poor soils, and proximity to surface waters that compound the public health risks associated with this supply chain shortage.

Today, Jeremy Simmons, Manager of the Department's On-Site Wastewater Management Program, will join us to explain the Department's request to file an emergency rule to allow manufacturers to make written request to the Department to propose retrofits to components of proprietary treatment products that will allow systems to continue to function properly without negatively impacting their treatment, operation, or maintenance during supply chain shortages. Given the possibility of continuing or future shortages, the Department is also requesting that the Board consider the proposed emergency changes in the permanent on-site sewage system rulemaking.

Recommended Board Actions:

The Board may wish to consider and amend, if necessary, the following motion:

The Board finds that in order to protect public health, safety, and welfare, it is necessary to adopt an emergency rule to amend chapter 246-272A WAC to allow the Department to consider written requests from manufacturers of proprietary treatment products for retrofits to proprietary treatment product components that will allow systems to continue to function properly without negatively impacting treatment, operation, or maintenance during supply chain shortages. The Board directs staff to file a CR-103E, Emergency Rulemaking Order, to amend WAC 246-272A-0110 within chapter 246-272A WAC, which will become effective immediately upon filing with the code reviser. The Board further directs staff to consider the emergency changes in the permanent on-site sewage system rulemaking.

Staff

Stuart Glasoe

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