

# WASHINGTON STATE BOARD OF HEALTH

## Final Minutes of the State Board of Health

June 8, 2022

Electronic meeting via ZOOM Webinar

### State Board of Health members present:

Keith Grellner, RS, Chair  
Bob Lutz, MD, MPH  
Elisabeth Crawford  
Temple Lentz, MOL  
Stephen Kutz, BSN, MPH  
Patty Hayes, RN MN  
Umair A. Shah, MD, MPH  
Kelly Oshiro, JD  
Melinda Flores  
Socia Love-Thurman, MD  
Tao Sheng Kwan-Gett, MD, MPH, Secretary's Designee

### State Board of Health members absent:

### State Board of Health staff present:

Michelle Davis, Executive Director	Nathaniel Thai, Communications Coordinator
Melanie Hisaw, Executive Assistant	Cait Lang, Health Policy Analyst
Kelie Kahler, Communication Manager	Tracy Schreiber, Health Policy Analyst
Stuart Glasoe, Health Policy Advisor	LinhPhung Huynh, Department of Health
Samantha Pskowski, Health Policy Advisor	Lilia Lopez, Assistant Attorney General
Kaitlyn Donahoe, Health Policy Advisor	

### Guests and other participants:

Jeremy Simmons, Department of Health

Keith Grellner, Board Chair, called the public meeting to order at 9:31 a.m. and read from a prepared statement (on file). He then detailed operating procedure and ground rules for conducting a virtual meeting, and asked board members to introduce themselves.

### 1. APPROVAL OF AGENDA

**Motion:** Approve June 8, 2022 agenda

**Motion/Second:** Member Hayes/Member Crawford. Approved unanimously

### 2. ADOPTION OF APRIL 13, 2022 MEETING MINUTES AND ADOPTION OF MAY 27, 2022 MEETING MINUTES

**Motion:** Approve the April 13, 2022 minutes, as amended by Member Lutz

**Motion/Second:** Member Kutz/Member Crawford. Approved unanimously

**Motion:** Approve the May 27, 2022 minutes

**Motion/Second:** Member Crawford/Member Kutz. Approved unanimously

### 3. **BOARD ANNOUNCEMENTS AND OTHER BUSINESS**

Michelle Davis, Board Executive Director greeted the Board and directed Board members to materials in their packets on page 25. Ms. Davis noted the biographies of the newest Board members who were appointed on April 19, and welcomed the new members. She said that Mindy fills the consumer position formerly held by Fran, Socia fills the health and sanitation position formerly filled by Tom, and Kelly fills the consumer position formerly held by Vazaskia.

Ms. Davis provided updates regarding Board staff. She announced the selection of a new policy intern, Mikayla, who is working with Hannah Haag, the Board's outreach coordinator. She shared Mikayla's background and said she would be with the Board through at least July.

Ms. Davis said Tracy Schreiber, health impact review analyst, has taken a position with the Department of Children, Youth and Family, and Thursday, and that June 9 is her last full day. She said Tracy joined the Board in October 2021 and worked with the HIR team to produce six reports for the Legislature on a broad range of topics. She described the work Tracy would be doing at DCYF and congratulated Tracy.

Ms. Davis announced that Sam Pskowski, policy advisor, will be taking a position on the Governor's policy staff. She said Sam's portfolio will include public health. She said Sam has served as a policy advisor for the Board since March 2020, and identified the numerous rules, projects and initiatives that Sam had brought to completion during her time with the Board. She said Sam's appointment to the Governor's policy staff is well-deserved and that she would be missed.

Ms. Davis described the remaining documents under announcements, including a letter from the Office of Equity that the Board onto along with seven other agencies. The letter is focused on the proposed Council on Environmental Quality's beta Climate and Economic Justice Screening Tool. She said the letter expresses concern that the tool fails to include race or ethnicity as indicators to identify "disadvantaged communities," and that information regarding the tool is limited to English.

Ms. Davis noted that staff have drafted a letter commenting and providing support for the FDA's May 4<sup>th</sup>, 2022 proposed rule which would establish a new tobacco product standard prohibiting the use of menthol as a characterizing flavor. She said the comment letter supports of the proposed rule, shares findings from past Health Impact Reviews detailing the health impacts of flavored tobacco products. She noted the letter wasn't finalized in time for the materials posting deadline, but staff would forward it to Board members after today's meeting.

Ms. Davis indicated the packet also included response letters to the petitions for rulemaking that the Board considered at its April meeting, as well as recent rule filings for the emergency rule regarding COVID 19 reporting, and the order of adoption for the Local Board of Health composition rules. She noted that staff continue to receive inquiries regarding the LBOH rules, and are updating the Frequently Asked Questions documents. Ms. Davis indicated that the materials also include the concurrence letter to OFM regarding foundational public health services funding for the 2021-2023 biennium, followed by the detail for the spending of those funds.

Ms. Davis indicated the last item under announcements are the EH committee meeting notes. She said the committee received general rule updates and helped prepare staff for today's meeting.

Tao Sheng Kwan-Gett, Board member and Secretary's designee, congratulated Ms. Pskowski on her new position. He said had the privilege of working with her on the TAG, which was very controversial. He said Sam was always professional and a pleasure to work with.

Patty Hayes, Board member commended Michelle on all the work happening and commended staff moving to new positions.

Elisabeth Crawford, Board member, echoed previous comments and congratulated Sam, especially with all her help in onboarding.

Keith Grellner, Board Chair commented when staff does such a great job and get offered other jobs and promotions.

Steve Kutz, Board Member commented on the volume and value of background work by staff, and the significant time required to do the work.

#### **4. DEPARTMENT OF HEALTH UPDATE**

Tao Sheng Kwan-Gett, Chief Science Officer and Secretary's Designee, discussed the current state of COVID-19 worldwide and in the United States. He shared information on case rates in Washington State, noting the post-peak trends of the Omicron variant. Dr. Kwan-Gett shared that case rates are significantly undercounted as are based on reported cases and don't include the vast majority of home tests. He shared information on hospitalizations in Washington and other factors influencing hospital capacity. Dr. Kwan-Gett noted the mortality rate has not risen at the rate as hospitalizations, potentially due to the spread of the current variant. He then shared an update on COVID-19 vaccination rates and noted that uptake in younger age groups is not what the Department would like to see. Dr. Kwan-Gett also shared concerns around recent data on childhood immunization rates for routine vaccine preventable diseases.

Umair A. Shah, Secretary of Health, discussed key public health challenges and measures to protect against COVID-19. Secretary Shah shared that the Department is working on developing agency strategic priorities beyond COVID-19 including health and wellness, environmental health, emergency response and resilience, global and

domestic health, and investment in health systems and infrastructure. He also discussed a number of other issues that public health is actively working on and monitoring, such as acute hepatitis in children, avian influenza, the infant formula shortage, and monkeypox. Secretary Shah said the likelihood of sustained transmission of monkeypox is very low. He thanked Chair Grellner for his work as the chair of the Board and public health generally.

Member Kutz thanked the presenters and asked whether we've seen any sustained domestic transmission of monkeypox. Secretary Shah said that the situation is evolving, but for the most part transmission is related to those who have had travel-related exposure. He reiterated that the risk to the public is extremely low at this time. Dr. Kwan-Gett agreed noted that Washington has only one confirmed case of monkeypox, and that individual had a travel history.

Member Kutz asked about the new COVID-19 variants and whether the new variants are less virulent generally or less virulent in the vaccinated and previously ill populations, with the same capacity for severe illness in the unvaccinated population. Dr. Kwan-Gett responded that it's a combination of both and explained some of the differences between the older and newer variants.

Member Kutz commented that the Department's update did not include information about the recent salmonella outbreak in JIF brand peanut butter. He said that he was one of the people to get sick and commented that there needs to be more clarification from the state on what people should do concerning foodborne outbreaks.

Member Love-Thurman commented that one of the biggest issues they are hearing concern from the community is related to gun violence. She asked if there was research or other things that the Board could discuss as it relates to gun violence in the state. Secretary Shah agreed with Member Love-Thurman and discussed public health invisibility and how important it is for public health to be at the table on these issues. He discussed the important role that public health has in injury and violence prevention and public health is often left out of the conversation. Dr Kwan-Gett agreed, just as response to pandemic has been strongest when we leave politics at the door, with gun violence, if we can leave politics at the door and look at evidence to see policies for reducing violence.

Chair Grellner asked Secretary Shah about the current COVID-19 emergency proclamations, noting the current state of emergency is set to expire at end of June. He asked if the Board can anticipate adjusting quickly to in-person meetings. Secretary Shah said the Governor has made it clear that he takes a number of factors into consideration and one of the most important is the health and safety Washingtonians. He shared that he doesn't have insight beyond that but that if the emergency ends there is some risk to federal funding for COVID-19 response.

## **5. PUBLIC COMMENT**

(Note: Public Testimony on Item 10, Keeping of Animals, WAC 246-203-130, will begin at 1:30pm)

Jean Mendoza, asked to speak on KOA rule.

Ken Harp, thanked the board for consideration of Item 13, Rulemaking Petition – Chapter 246-105 WAC, Immunization of Child Care and School Children for Vaccine Preventable Diseases. He provided comments with concern for immunization records, Emergency Use Authorization (EUA), exemptions and waivers.

Chair Grellner, commented that the Technical Advisory Group (TAG) did evaluate COVID as an EUA, and did not approve it for school entry.

Nancy Callihan, agreed with the last public comment by Mr. Harp, saying the COVID vaccine is not safe and provided reasons. She said although the TAG recommendations did not support adding the shot, the Vaccine Advisory Committee (VAC) is still going after this issue strongly.

Denis Kieft, asked to speak on KOA rule.

Lisa Templeton, spoke in support of Mr. Harp's petition, and spoke in opposition to the COVID shot, saying she identifies as an ex-vaxer and she is helping others become risk aware.

Chair Grellner closed public comment at 11:07 a.m.

The Board took a break at 11:07 a.m. and reconvened at 11:22 a.m.

## **6. EFFECTIVE DATE – ENVIRONMENTAL AND SAFETY STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS, CHAPTER 246-366A WAC**

Keith Grellner, Chair, introduced Kaitlyn Donahoe, Board Staff, gave a brief overview of the issue including background information, prior Board action, recent legislative action, and potential future revisions for this chapter. Ms. Donahoe discussed next steps for the Board on this topic and shared that the current effective date of the rules is August 1, 2022. She advised the Board will need to file a new CR-103 to extend the effective date since the legislature has not removed the budget proviso prohibiting implementation of the rules.

Member Hayes asked for clarification about the new budget proviso that requires a report from the University of Washington (UW) on school environmental health and safety and if there is a way for the Board to collaborate with UW on that work.

Member Kwan-Gett agreed that the rule is out of date and should be updated with the latest science.

Member Hayes said that it sounds like the legislature has asked UW to do a scan of the current state of school environmental health and safety but doesn't get to the bottom line of the capacity to implement the Board's rules. She asked how that work can be harmonized with the Board's desire to update and implement these rules.

Ms. Davis asked Ms. Donahoe to present the budget proviso language related to the UW study. She offered to reach out to the Department of Health, who manages the contract for the study, to make sure UW has information about the Board's rules. Ms. Donahoe read the proviso language. Chair Grellner commented that the scope of the UW study is not what they had hoped for but a step in the right direction. Ms. Davis said the recommendations from UW could highlight the need for clearer, modern standards.

Member Hayes said she recognizes the need to extend the effective date of the school rules but wanted to be clear on expectations from the report. She said it will be helpful for the Board to revise rule but does not address main issue of assistance for schools that need help meeting the standards.

Member Lutz reiterated the need to implement these rules and noted that schools don't always have the resources that they need. He referenced a recent Morbidity and Mortality Weekly Report from the Centers for Disease Control and Prevention on ventilation in schools and noted that, not surprisingly, there was an equity issue related to it. Member Lutz said the Board has to continue delaying, but cannot delay indefinitely, that that funding is required. Chair Grellner agreed and commented that his frustration is that there are two issues: aging schools, and newly built schools under old standards, which add to the cost in the long-term and the inventory of schools that will need updating.

Member Crawford reiterated Member Hayes's concerns and noted how disappointing that it has been so many years and the Board can't move forward. She asked Board staff to describe the conversations with OSPI and others, and whether there are feelings of concern or support moving forward. Director Davis shared one of the recommendations staff received is that now is a good time to start conversations with school superintendents about what the Board has learned in the last 10 years. She noted improved relationships at local level between schools and local health, and that COVID has highlighted the importance of good ventilation in schools.

Member Crawford asked how the new proviso for the UW study fits in with the suspended rule. Ms. Davis said the report is due at the end of December, right before legislative session, and anticipate the report would be considered over the course of session. She suggested the Board could ask UW to share their recommendations after the report is submitted.

Member Kutz noted that the Board has had this discussion for many years, and it's getting discouraging. He said we now have the potential for new information to broaden our understanding of the current state of schools and our next steps. He and Chair Grellner discussed the concept of new schools being built under old standards, and the equity issues involved.

**Motion:** The Board directs staff to amend the effective date of new sections of chapter 246-366 WAC and new chapter 246-366A WAC, as filed in WSR 21-14-056, by filing a new CR-103, Order of Adoption, to delay the effective date of the new rules to August 1, 2023. In addition, the Board directs staff to continue communication with OSPI, Department of Health, and the Legislature on the need for these rule revisions, and to

request a presentation from Department of Health and University of Washington after the release of their report in December 2022.

**Motion/Second:** Member Hayes/Member Kutz. Approved unanimously

## 7. **RULEMAKING PETITION – THE BOARD HAS RECEIVED A PETITION TO REVISE FOOD SERVICE, CHAPTER 246-215 WAC**

Patty Hayes, Board Member provided a brief background on the petition the Board received requesting changes to the chapter 246-215 WAC, and introduced Kaitlyn Donahoe, Board Staff. Ms. Donahoe discussed the provisions of the Administrative Procedures Act allowing for petitions, the Board's petition policy, and details on the petition received. She shared that the petitioner requested the Board adopt rules requiring food handlers to wear masks at all times citing the increase of assembly line style food establishments. Ms. Donahoe discussed the Board's authority for regulating food service in chapter 246-215 WAC and shared recommendations from the Department of Health.

Member Kutz thanked staff for the briefing and noted that in the past 40 years working in public health, he has never investigated a foodborne outbreak associated with respiratory illness. He said there may be a public perception of respiratory disease spread this way, but it fortunately does not.

Member Hayes said she thought this petition was a good exercise to begin considering respiratory illness transmission generally, particularly as we're talking about the phasing out of the pandemic. She said she likes the idea of having a briefing about respiratory illness transmission within all indoor spaces not specific to restaurants. Member Hayes said she does not see this as a restaurant-specific issue, but it does give us things to think about as a Board for all indoor spaces. She said she supports the recommendation from the Department of Health to decline the petition and further explore this topic.

Member Kwan-Gett thanked staff and said he understands the motivation of the petitioner but the scientific data supports denying the petition. He said that early in the pandemic there were concerns that COVID-19 could spread through the gastrointestinal tract, with some symptoms, but since then data has not supported a foodborne route for this transmission. Member Kwan-Gett agreed with Member Kutz that foodborne illness is not spread through this route recommends denying the petition.

Member Crawford expressed concurrence with the prior statements. She said she understands where the petition came from, but that is not warranted under this specific WAC. Member Oshiro noted the petition mentions the assembly line style spaces, like a Subway, and that she isn't not sure if the petition is conflating being in close proximity to transmission of bodily fluids. Member Oshiro agreed with Member Crawford on denying the petition.

Member Kutz said that handwashing and wearing gloves is important in food preparation, and people who are wearing masks are constantly adjusting those and touching with bare hands or gloves. He said having food workers wear masks could increase the possibility of transmission. Member Kutz also mentioned the cause of foodborne illness via food preparation in the home.

Member Love-Thurman said she is glad that this was brought forward, and agree with the denial for the reasons everyone has mentioned. She reiterated the importance of handwashing, and stressed the importance of ensuring the public has access to restrooms in food establishments so that they can also wash their hands prior to eating for added protection.

Member Flores agreed with the recommendation to deny the petition and said she empathized with the petitioner's concerns.

**Motion:** The Board declines the petition to initiate rulemaking to adopt a rule to require food service handlers to wear a mask at all times under chapter 246-215 WAC for the reasons articulated by Board members and directs staff to notify the petitioner of the Board's decision. The Board also directs staff to provide an educational briefing at a future meeting regarding current state, local, and tribal health authorities and mitigation strategies to prevent and control the spread of respiratory illnesses in indoor settings.

**Motion/Second:** Member Hayes/Member Kutz. Approved unanimously

## 8. **SELECTION OF BOARD VICE CHAIR**

Michelle Davis, Board Executive Director, said Article II of the Board's bylaws describe Board officer positions. She noted that the Chair is selected by the Governor. The Vice Chair is selected by the Board, and committee chairs are selected by the committees.

She commented on the need for the Board to select a Vice chair, and said the bylaws stipulate that a vice chair must be selected from the 8 remaining Governor appointees. She noted that the Secretary and their designee are not eligible for these positions. She said Tom Pendergrass was the Board's last vice chair, and his term with the Board ended April 18. Ms. Davis described the Vice Chair role and indicated that she had asked Board members about their interest in this role. She said that Kelly Oshiro expressed interest specifically in the Vice Chair position. She also said that that Steve Kutz and Patty Hayes had expressed an interest in serving as either vice chair or chair.

Chair Grellner said that two committees need leadership. He said that he has filled the EH Committee Chair position and Tom served as HP Committee Chair.

Member Kutz moved appointment of Patty Hayes as Vice Chair. Member Hayes confirmed her willingness to step into the Chair role after Keith's time is done. She noted this depends on the Governor, and she would go with the will of the board.

Member Crawford asked Member Hayes if the Board waits for the Governor's decision, if she would be ok with revisiting the decision? Member Hayes said yes, and she'd support the board in whatever decision. She said she was willing to serve and see what the Governor does, or elect a Vice Chair today.

Member Kutz asked for clarification and Ms. Davis confirmed the Governor selects the Chair, and the Board selects the Vice Chair.

Member Crawford said she is willing to serve as Vice Chair when the timing is right.

Chair Grellner said he did not apply for reappointment, but he offered to continue as Chair through the end of the year. He talked about his position and said it is time to let someone else have a chance, he's been on the board since 2011 and Chair since 2014. He said it may be beneficial for the Board to think about the Vice Chair so that there isn't a need to reappoint the position in August.

Member Crawford inquired about the motion, and Member Kutz withdrew his motion.

**Motion:** The Board selects Member Oshiro to serve as the Board Vice Chair.

**Motion/Second:** Member Crawford/Member Hayes. Approved unanimously

## 9. DISCUSSION OF 2022 MEETING SCHEDULE AND POSSIBLE JULY MEETING CANCELLATION

Michelle Davis, Board Executive Director, referred the Board meeting schedule (see materials on file) and said that the Board typically reserves a tentative July meeting slot on its schedule. She recommended the Board cancel the meeting to afford staff greater time to prepare for the August Board meeting.

**Motion:** The Board approves the cancellation of the July 13 meeting.

**Motion/Second:** Member Kutz/Member Crawford. Approved unanimously.

The Board recessed for lunch at 12:39 p.m. and reconvened at 1:30 p.m.

## 10. RULES HEARING – [KEEPING OF ANIMALS](#), WAC 246-203-130

Stuart Glasoe, Board Staff introduced the agenda item, drawing attention to key documents in the meeting material packet and noting that the presentation included two recommended amendments added to the presentation after posting material the previous week. He mentioned the Board's authority and duty to adopt rules to prevent, abate, and control nuisance and health hazards regulating human and animal excreta and human and animal remains in RCW 43.20.050. He said the cover memo listed four optional motions for Board consideration at the hearing's conclusion. Mr. Glasoe then gave a presentation (on file) on the Keeping of Animals rulemaking, covering the project history, highlights of the 2018 background report, features and content of the proposed rule, public comment where staff did not recommend amendments, and public comment

where staff recommended amendments to rule language and the supporting rule analyses. Mr. Glasoe asked if Board members had any clarifying questions.

Member Kutz asked for clarification of the mistake in the supporting rule analyses. Mr. Glasoe explained that staff incorrectly exempted the proposed standard for odor/ pest control from the analyses, believing that it was an existing rule standard for waste piles in the solid waste rules, when in fact it is a permit condition in that part of the solid waste rules. If adopted, the rule analyses would be corrected to include and address the amended standard, intended to serve as a less rigid performance standard and better fit Right to Farm laws.

Chair Grellner read a statement and opened the hearing for public testimony at 2:04 p.m., allowing two minutes per person. People testified via Zoom Webinar and microphones were muted after the allotted time expired. The Board also accepted written comment throughout the rulemaking.

Lynette Borcharding requested that the rulemaking be withdrawn, citing concerns with health officials inspecting property. She said she wants privacy respected and would not welcome inspection of her small farm. People that raise animals are very respectful of the land where they live and raise food. It's overreaching, we don't want more regulation, and we can be responsible without the guidance of the Board of Health.

Jean Mendoza said the definition of stockpiling exempts manure lagoons and composting and asked the Board to remove the exemption. She said rules such as this are not relevant for 99 percent of the population. There is a law that says don't kill someone—99 percent of us don't need that law to know that it's wrong. Laws are written for the small percentage of people who are disrespectful, don't know human decency, and abuse their neighbors. In the Yakima Valley there is a nice rural home with a swimming pool for the grandchildren. A confined animal feeding operation (CAFO), a large dairy, bought land next to this home and they stacked manure next to the pool. The pool is gone. Nobody is going to go swimming in a pool next to a stack of manure. As currently written, this rule allows CAFOs to place a million-gallon manure lagoon or a 20-acre composting area right next to a family home. Laws are written to allow efficient and effective enforcement. If this rule is passed, when a person comes to a local health district with a legitimate complaint over something like this.

Mary Schactler said there is no open range in western Washington and asked if you are pasturing animals on ten-acre pastures and moving them around, is that all under the rule and not open grazing? I have a problem with that. Domestic animal waste is not the only source of hazardous waste. In the past two decades hundreds of acres of farmland have been put back into nature for the preservation of water quality for salmon, but invasive reed canary grass has gone unchecked that serves as a source of excess nutrients and refugia for rodents that have more dangerous fecal pathogens than domestic livestock. If preventing contamination by animal waste is in your steering house, how does this proposal correct this dangerous issue? The population of cats is .3 cats per person. Washington has an estimated population of 7.76 million people in 2022 and is increasing. The estimated number of cats is approximately 2.28 million—cattle a tenth of that, horses also a tenth. Domestic cat populations are greater in areas with non-porous surfaces and higher economic neighborhoods. Cattle and horse

manure is compostable, used with bark, and widely used in the nursery industry. At .3 cats per person the typical farm has 1-3 cats and in the country cat populations are kept in check by wild animals. Cats are usually working animals on a farm especially if there is hay or feed storage. How will you implement this rule in suburbia?

Cindy Alia, Citizen's Alliance for Property Rights (CAPR), said she agreed with some of the exceptions in the rule and suggested amending subsection four to say the public agent must coordinate with, not just try to talk to, the property owner and referred the Board to more information on the CAPR website. She said we cannot stand the idea that our privacy, proprietary situations, and safety for public agents to come onto private land because they are curious about the possibility of a problem when really what they should be doing is communicating directly with and getting authority from the property owner, even just for nothing else than their own safety. You cannot just walk onto a person's property, especially when there is livestock and other kinds of animals on the property. It would be unconscionable for the state to direct a local health officer to do such a thing. Secondly, I'd like to see the state address the elk problem, especially where elk have become protected herds so they are essentially domesticated and yet this rule does not address that whatsoever. Elk carry dangerous tapeworm, hoof rot, wasting disease, and other pathogens that they carry with them.

Ron Wesen said he's a fourth-generation dairy farmer and dairy nutrient management plans are required for dairy systems. This rule is not necessary and will create conflict and potential lawsuits involving neighbors. I've had EPA come onto our property and do inspections and one of the things that is really not helpful is not being able to say exactly what they are looking for ahead of time. What is the water quality problem you are trying to improve with these rules, what is the human health issue you are trying to save? As mentioned earlier with the elk herd, here in Skagit County we have over 12-15 hundred head of elk that are managed by the state yet they are allowed to wander all over the place. Who's responsible for that issue? The other thing is code enforcement. I don't want to see our health departments having to come in and deal with neighbor conflicts. A lot of time what happens is neighbors move into an area not realizing they are in an agricultural area and they want to make it look like a non-agricultural area. This is one way they can come in and use the health department regulations to try to close down the neighbor. If the neighbor is polluting the water the counties have authority to make sure the water quality/stormwater runoff is clean. Skagit County has the Clean Samish Initiative. We are doing a lot of water sampling, making sure we don't have pollution in the water. So I don't believe this proposal is needed. There are other regulations in place. I'll mention some other things. Right to Farm, you keep putting these rules in place you make it more difficult for people to keep the open space that everybody says they enjoy, but they don't want to hear the agricultural noise or the smells associated with that. They want to be able to drive through the beautiful park that the agricultural community provides.

Dan Wood, Washington State Dairy Federation, said all dairies are required to have nutrient management plans and are regulated under the Dairy Nutrient Management Act, some have CAFO permits, and some are involved in air emission programs with state or local agencies. We generally don't believe that a new rule is necessary. However, if there is adoption of a new rule by the Board of Health, it is very very important to be clear what we mean by more stringent standards in federal, state, or

municipal law. We appreciate the expanded language that Stuart has provided to the Board to clarify that in subsection 3 and would encourage you to include that if you do adopt rules.

Henry Benthem said he is a dairy farmer in eastern Washington and opposes the rule. We have to follow the Dairy Nutrient Management Act which covers everything you guys are trying to do. We don't want to have multiple agencies checking on each other and paying for stuff and coming on our property while we are doing our business. We already have rules for all the stockpiling and odor controls. We get inspected every other year. For our manure management we have to take samples of nutrients in the ground, nutrients we are putting on, so I think this is all double the work and we don't need it at all. The more people that get involve the only way we can get things fixed is by lawsuits, and we always have to pay for those. They are costly. I really don't think any of this is necessary.

Jodi Dotson said she is a domestic animal raiser and a concerned citizen that the Board of Health would get into deciding what we can and can't do with our own property. I too agree with the lady who suggested that it is probably not a safe thing if people who are unknown just come walking on your property without any notice to property owners deciding when and what is OK for you to do. I mean I understand if there is a visible problem that somebody needs to go and there's massive manure everywhere. I don't agree with the cats to the birds to the ducks to the goats to every animal known to man. How about if we work on all the pee and the poop that human beings lay all over our city streets that people have to walk in? I'm very concerned that nothing has been done about that. What about all the seagulls that poop everywhere? You guys are opening such nonsense. I can see to a point some rules but this is over the top. I think you need to step back and look at exactly where you are going with this and what your goal is. Is it to control people? Is it to tell people what they can and cannot do with their own property? If that's your goal then I'm really sad to say that is not a fair thing for one group of people to tell the whole state what they can and cannot do with their private property.

Mark Herke, Yakima/Klickitat County Farm Bureau, said he opposes the regulation and believes it is completely unwarranted. It is a third bureaucracy coming over the top of two other existing bureaucracies that are already closely regulating farming operations. This is completely unneeded. The Department of Health is untooled and unprepared to dive into this realm. It's never been in a rural setting and it should stay out of it. A little historical perspective, the Department of Health regulated manure and animal issues in urban settings while animals were still housed there prior to the industrial revolution, where they were used for transportation, people, and freight. In the cities, not in the country. The Department of Health has never been involved in rural or farm settings. Again, I repeat, farm and ranch confined operations are closely regulated over manure issues by Department of Ecology and WSDA. This is unwarranted and unneeded. The Department of Health entering into this area of regulation will only complicate an ag producer's ability to comply with pertinent laws. And I echo the lady's prior comments about the open range versus irrigated pastures. We need to be really careful that we're not setting ourselves up for thousand-acre ranges and then still coming back and regulating pastures. We need to be able to exempt pastures.

Denis Kieft said he lives in unincorporated Clark County with his wife and two kids. Our neighbors created a horse sacrifice area seven feet from our drinking water well. Recommendations say these areas need to be as far away from wells as possible. The well was present before the neighbors designed their fields. These neighbors run an illegal horse boarding business—about a dozen horses kept on less than three acres. The well existed before the neighbors designed their fields. Clark County codes and regulations have been in limbo for ten years because of strong pushback by the local equestrian community. We cannot rely on local health authorities in Clark County. They don't do any enforcement. They sent our neighbors an informational brochure which they ignored. After talking with the neighbors and after letters were sent by lawyers, they have chosen to ignore common sense rules. To spite us they left a horse on the sacrifice area closest to our well 24 hours a day for nearly three months. They have threatened to put pigs on our well. We have endured bullying by our neighbors and their boarding customers and have suffered online attacks on our reputation in the community. They attempted to file a harassment order against us. We spoke to local and state agencies, and while it's a bad situation there is no enforcement. We test our water three times a year and hope it stays clean. Two neighboring wells are contaminated with nitrates and coliform bacteria. Our youngest child has GI issues and is under the care of specialists. Clear common-sense rules need to be in place because it should not left to livestock owners to do the right thing or follow best practices. No animal should be within 100 feet of a drinking water wellhead, ever. The current situation should not be grandfathered in, otherwise more than half the state will still be stuck in 1920. Workgroups only cause delays. Wellheads and drinking water need to take precedence over a neighbor's hobby or, in this case, an illegal business, and should not infringe on a basic human right such as water.

Joe Marceau said there were many good things mentioned previously. In your role it doesn't say much about education. I live in Jefferson County and I think it is real necessary to encourage good behavior by education. In our county we have a conservation district, like many counties in Washington, and I just encourage that education is key in providing a good environment for our livestock and so on. And I wanted to ask all you guys on here, what makes you think you can do a better job than, say, the Environmental Protection Agency and on and on and on? There are other agencies and departments that are already doing this? So what makes you think you are going to do a better job?

Chair Grellner closed the public testimony portion of the rules hearing directed it back to Board members for questions and for discussion after a motion and second are on the table.

Member Kutz pointed out to staff that a slide still used the amended term "free-range" grazing and asked how to differentiate open range grazing from pasture grazing when problems can happen in all areas. To the first point, Mr. Glasoe clarified that slides showing edited language for the recommended amendments is embedded in proposed rule language, so slides with overlapping language could show proposed rule language involving a recommended amendment on another slide. To the second point, Mr. Glasoe said the matter is addressed in the response to comments and clarified that open-range grazing generally serves as an example of low density grazing and a diffuse source while pasture grazing can range significantly from large acreage, low density

grazing to much smaller lots with higher concentrations of animals and accumulations of waste that can be a problem.

Member Kutz wanted to clarify that the rule does not include regular inspections like some other rules/programs. Mr. Glasoe said Board material has tried to make it clear that the rule does not involve operational functions such as inspections, record keeping, and permitting of any facilities. He said an inspection would occur only in situations where there is evidence of a bad problem and staff would follow standard procedures and laws to contact and work with the property owner. The rule would not be implemented on an ongoing basis and instead is intended to serve as a backstop for bad actors, bad problems.

Member Kutz said he understood the many concerns and issues and said it's a balancing act figuring out how to balance and fit this rule with other existing regulations. He added that nothing is odor free in farming country and asked how a complaint would be handled for an operation that's following another regulation. Mr. Glasoe said he didn't see anything here that would change what's happening on a regulated operation and said that is largely the intent of the recommended amendment to give examples of other superseding laws and programs in the rule. Member Kutz said we have an existing regulation on the books no matter what. It needs to be clarified for local health to have the tools they need. He thanked staff for the years of work and listening to people, and said it is a rule that will never satisfy everybody.

Member Lutz thanked staff and reflected on the complexity of the issue and use of the terms "patchwork" and "piecemeal" in the presentation regarding the regulatory structure and the challenges of enforcement. He noted the example of the planning requirements of the Dairy Nutrient Management Act but said they may not be enforced. He mentioned the reactive nature of CAFO permits needing to prove discharges to waters. And he mentioned pollution problems of Hangman/Latah Creek near Spokane where 68 percent of dissolved inorganic nutrients come from groundwater and diverse pollution sources. He acknowledged the concerns expressed in the hearing. He said the rule gives local health the authority they need, said enforcement is difficult, agreed that local health would rely on other agencies to address problems where they can, and said it's a no-win situation all the way around.

Member Hayes also acknowledged the complexity of the issues and the challenge working across agencies. She said, as a complaint-driven process it occurs locally and as problems surface there need to be updated standards so, as much as possible, there's consistency across the state and local health has the guidance it needs. She emphasized that this is not a regulatory program where local health is going out doing inspections, but rather is a program where there are standards for response and how the agencies and statutes should work together. She also noted for the record follow-up from the Department of Agriculture clarifying its initial comment letter, saying that it is not opposed to the rule and wants to continue working together. She closed saying the rule sets a statewide framework that helps local health approach the work.

Chair Grellner said that he also supports the rule and addressed some comments and issues. He said the Board has authority and duty to address this issue in RCW 43.20.050. He said there is an existing rule, this is not new, this is a modernized rule.

The existing rule is vague and does not effectively serve parties on either end of the spectrum when addressing issues. This rule does not give government or local health jurisdictions any additional authority to trespass on private property. Local health has enforcement authority that follows established law and this rule adds nothing new. He said there are hundreds of examples of animal owners not meeting expectations properly caring for animals and animal waste across the state and used his county's efforts fighting shellfish downgrades and water quality violations to illustrate the point. People don't always take care of their neighbors and nobody has the right to cause problems for their neighbors. The rule sets clear expectations for animal owners and neighbors so it's easier to resolve issues. He closed by referencing support from statewide environmental health directors and noted that we are getting pressure from people on both ends of the spectrum saying we are not doing enough or saying we are doing too much—evidence that we are about as close as we can get. He called the question and thanked staff for their work.

**Motion:** The Board adopts the proposed revisions to WAC 246-203-130, Keeping of Animals, as published in WSR 22-08-003, with any revisions agreed upon at today's meeting. The Board directs staff to file a CR-103, Order of Adoption, and establish an effective date.

**Motion/Second:** Member Kutz/Member Hayes. Approved unanimously

#### 11. STATE HEALTH REPORT

Chair Grellner, introduced Kaitlyn Donahoe, Board staff, who provided a brief overview of the statutory requirement for the Board to produce a State Health Report, described the topics in the most recent report, as well as the work done so far to compile the 2022 report. Ms. Donahoe shared the recommendations included in the draft distributed for Board review (see materials on file) and recommendations for next steps. She shared information regarding community and public health partner engagement to draft the report and asked the Board to allow staff additional time to complete the report for the Board's consideration at its August meeting.

**Motion:** The Board directs staff to continue to develop the 2022 State Health Report, in consultation Board members, public health partners, and community groups, and present a final draft for the Board's consideration at its August 2022 meeting.

**Motion/Second:** Member Hayes/Member Crawford. Approved unanimously

#### 12. REVIEW OF BOARD COMPLAINT POLICY, 2015-001

Chair Grellner, introduced Sam Pskowski, Board Staff, who provided background on the Board's authority to receive complaints regarding certain local health officials. She said the Board's current complaint policy was last updated in 2015, and recommended revisions based on the Board's experience with recent complaints received. Ms. Pskowski explained that proposed revisions are intended to improve clarity and transparency in the process.

Member Oshiro provided additional proposed revisions for clarity and useability. She recommended including information regarding how individuals may appeal decisions made by an Administrative Law Judge.

Member Kutz asked how long it would take if the Board wanted to develop procedural rules for hearings conducted by the Board, and whether the Lilia Lopez, Assistant Attorney General, would recommend developing those rules. Ms. Lopez said it would be a good idea to have its own procedural rules for these types of complaints and adjudicative procedures. Ms. Pskowski stated that it may take one year to develop and implement such rules.

Ms. Lopez told Member Oshiro that the Board could include language in the policy about judicial review and appeal. She also said the appeal process would likely be described in the order from the presiding officer of the hearing. Member Flores asked clarification regarding Board members designated as a consultant or subject matter expert. Ms. Pskowski said the proposed language is related to Board member sponsorship to act as a consultant to staff for the project. Member Kutz expressed support of the proposed revisions and said the policy could be updated relatively quickly if the Board finds issues in the future. Member Hayes weighed the need to actively change policy as the Board learns with not feeling a huge sense of urgency to make changes right now. She said she likes these changes but thinks items like Board sponsorship and what it means needs to be formalized a little better. Member Flores and Member Love-Thurman agreed.

Member Kutz suggested tabling this item until the next Board meeting or until there is time for staff to work with Board members on additional revisions. Member Hayes expressed her willingness to sponsor this work and asked how to complete this work procedurally. Chair Grellner suggested standing up an ad hoc subcommittee.

Executive Director Davis described the process for establishing an ad hoc subcommittee for this work and mentioned the Board may want to consider taking a look at its bylaws to provide clarity regarding Board member sponsorship. Member Kutz added additional context regarding sponsorship relating to the Keeping of Animals rule. He and Member Flores volunteered to help draft additional revisions to the Board's complaint policy.

**Motion:** The Board directs staff to make additional revisions based on the discussion today by members and return with recommended revisions at a future meeting.

**Motion/Second:** Member Kutz/Member Hayes. Approved unanimously

The Board took a break at 3:10 p.m. and reconvened at 3:20 p.m.

- 13. RULEMAKING PETITION – THE BOARD HAS RECEIVED A REQUEST TO AMEND WAC 246-105-070, DUTIES OF HEALTH CARE PROVIDERS OR ORGANIZATIONS**  
Keith Grellner, Board Chair, introduced Samantha Pskowski, Board Staff. Ms. Pskowski introduced the topic, reviewed the Board's authority related to immunization

requirements for school entry, and described the petition for rulemaking. She said the petition requests specific changes to the Board's immunization rules to require providers to ensure informed consent is obtained when administering vaccines. Ms. Pskowski explained that the Board's rules do not extend to the practice of medicine, and that federal and state requirements already address consent for medical intervention.

Tao Sheng Kwan-Gett, Secretary's Designee, said that he understands and respects the intent of the petitioner regarding informed consent; however, the requirements the petitioner is seeking are not within the domain of this chapter of rule. He recommended denying the petition.

Member Kutz said that any school vaccinations given by a provider are already required to provide information about the vaccine. He said requiring information other information like what the petitioner suggests is not available to physicians, and that providers already have the appropriate information regarding the vaccines that are given routinely with each vaccination.

Member Love-Thurman agreed that informed consent is so important, and is outside the purview of the Board to weigh in on. She said medical providers do have those forms completed by the child's guardian consenting to vaccination and provide information to the guardians on the vaccine. Member Love-Thurman said it is important to keep medical practice consistent.

Member Hayes said she supports base concept of informed consent and echo the comments made by Member Kwan-Gett and Member Love-Thurman. She said this petition is out of scope and belongs with the various medical boards and commissions in our state. Member Hayes said the communication and enforcement around informed consent, as well as standards of practice, comes from those medical boards and commissions. She said she is excited to hear the medical commission recently addressed this and hope we can get the petitioner get in touch with the commission on this topic.

**Motion:** The Board declines the petition to initiate rulemaking to amend chapter 246-105 WAC for the reasons articulated by Board members and directs staff to notify the petitioner of the Board's decision.

**Motion/Second:** Kutz/Love-Thurman. Approved unanimously

#### **14. REQUEST FOR EMERGENCY RULEMAKING — ON-SITE SEWAGE SYSTEMS, CHAPTER 246-272A WAC, PROPRIETARY PRODUCTS AND SUPPLY CHAIN SHORTAGE**

Member Kwan-Gett introduced the Department of Health's request for emergency rulemaking, explaining that on-site sewage systems (OSS) have specific requirements for proprietary product components. However, some components have been hard to obtain because of supply chain shortages, necessitating regulatory flexibility for system maintenance and repairs. Stuart Glasoe, Board Staff, added that the cover memo included a motion for Board consideration.

Jeremy Simmons, Department of Health explained that OSS must be approved for use in Washington and designed to provide adequate treatment. This includes proprietary systems tested and approved for use in the state, and use of consistent replacement parts when repaired or maintained. During the pandemic there have been supply chain shortages, exacerbated Salcor's recent closure and shortage of its components. The shortages are a problem for OSS maintenance and are also a barrier to new construction and property transfers. He said the emergency rule language would allow manufacturers to develop a plan for use of alternate replacement parts based on department guidance and approval. Regarding a longer-term solution, he reminded the Board that permanent rulemaking is currently underway on the chapter and will allow further analysis of the issue.

Member Kutz highlighted the sensitivity of Puget Sound shellfish beds and asked to confirm that systems would be expected to perform as designed using an authorized, alternate component. Mr. Simmons said the approach would allow replacement of parts not originally tested but that should perform similarly. Member Kutz, asked if permitted systems not yet installed could use the alternate parts. Mr. Simmons again confirmed. Member Kutz asked how we will assure long-term performance and not cause pollution. Mr. Simmons, said the department will review data provided in the proposal to determine similar performance as the OSS was tested, and said long term it is likely manufacturers will retest systems with the alternate components to verify the data. Member Kutz asked if the department would deny a request if it determine a component was not a qualified replacement. Mr. Simmons said yes, manufacturers will have to provide data showing it is a suitable replacement.

Chair Grellner asked if homeowners will be allowed to use these approvals of temporary devices until the system fails and needs replacement. Mr. Simmons said it should be viewed as an approved system but it will be up to local health jurisdictions (LHJ) to decide how they want to permit systems. Department guidance will encourage use until a system fails and needs to be replaced. He added, down the line the tested devices should be about the same as the "emergency rule" systems. It shouldn't impact homeowners. That will be our guidance. Chair Grellner said homeowners should not be penalized for companies that can't get their parts and said department guidance should urge LHJs to honor those systems. If not, the cost of replacing a system should be borne by the company.

Chair Grellner next asked what happens when a manufacturer goes out of business, and they are not around to address the matter of replacement parts—is that being considered in the rule. Mr. Simmons said the rules do not address the question of the manufacturer of the entire system going out of business. Those systems generally get replaced when they fail and are maintained as well as possible until then. Chair Grellner said it's something we need to consider in the future, looking at the nexus of housing, safety, and looking out for the homeowner. He added that he thinks this is a good short-term solution for now.

Member Flores expressed concern that retrofitted systems set up people for a sales pitch for an upgrade. I'm not sold and feel it will set up the homeowner for additional costs because they don't have the part and a band-aid fix may or may not work, and then they upsell the homeowner. She illustrated her concern by recounting a recent

upselling experience with work on her furnace, and again expressed her skepticism. Mr. Simmons said he didn't think the emergency rule would be worse than not having it. He added that it may not work as a long-term fix but didn't foresee homeowners being required to upgrade systems. Mr. Simmons mentioned the important role proprietary systems play in allowing development on sensitive sites, and again said he didn't think the emergency rule would lead to upselling.

Member Kutz said these high-tech systems are usually in critical areas and emergency authorization of alternate components eliminates incentive for manufacturers to certify systems with the new components, creating concern for new installations. As a homeowner I would want some guarantee that the system is not going to fail. I can understand systems that are already in the ground, but new installations with unproven parts is a concern. Mr. Simmons said the existing rules require proprietary products to include a two-year service warranty built into the cost of the system. He said manufacturers have a vested interest in their reputations and systems not failing. He expects manufacturers will stand behind their products and fix problems if they come up. Member Kutz said his concern is that systems may not fail but may not treat sewage to the level needed to prevent pollution, which is why we probably should not allow this for new installs. Chair Grellner said it's a valid concern, adding that he understands the department's approach in this situation. He reminded people that emergency rules are good for only 120 days, so we have a guardrail for this, and added that rulemaking on the chapter will continue to address the issues. It seems to be a reasonable solution for a short-term fix addressing a market situation not really under our control.

Mr. Glasoe chimed in noting the distinction between the short-term emergency rule and ongoing work on the permanent rule. There will be opportunity to revisit the issue when staff return to the Board for subsequent emergency rulemaking until the permanent rule is adopted.

**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.

**Motion/Second:** Member Kwan-Gett/Member Hayes. Approved unanimously

## 15. RECOGNIZING BOARD MEMBER CONTRIBUTIONS

Member Oshiro, Board Vice Chair, recognized Chair Grellner and Member Kutz for their service and contributions to the Board. Vice Chair Oshiro read Resolution 2022-03 for Member Kutz for the Board's consideration.

**Motion:** Move to adopt Resolution 2022-03 Recognizing Stephen Kutz

**Motion/Second:** Chair Grellner/Member Hayes. Approved unanimously.

Chair Grellner, thanked Steve for being a peer and a mentor and said it's been an absolute pleasure to work with him.

Member Kutz challenged his fellow board members to consider serving on the Council (HDC) as he's treasured this opportunity to represent the board.

Member Hayes added her understanding for his departure and expressed her joy, appreciation and support for his leadership and future endeavors.

Member Kutz said his predecessor, Mel Tonasket, encouraged him to serve. He said serving on the Board has been one of the most rewarding experiences of his life and he hopes to continue and thanked those he's worked with.

Member Lutz said that Steve's an incredible person and remarked on his a storied history and incredible contribution to Public Health and the state. He said that Keith and Steve are the longest serving people he has worked in person with, and he wants to ensure we keep some institutional knowledge going forward.

Member Kwan-Gett added his congratulations and remarked on how Steve brings wisdom, experience and thoughtful questions to this process. He thanked him for his service.

Member Love-Thurman said she feels she's missing out to work with Steve in this space and she honored all the work he's done with indigenous communities. She hopes to work together more with him in the future.

**Motion:** Move to adopt Resolution 2022-04 Recognizing Keith Grellner

**Motion/Second:** Member Hayes/Member Kutz. Approved unanimously.

Vice Chair Oshiro, read Resolution 2022-04 for Chair Grellner, for the Board's consideration.

Member Kwan-Gett thanked Keith for his incredible career in public health and expressed his appreciation for the way he leads meetings with fairness and efficiency. He said that during public comment, Keith makes sure everyone is heard and feels heard, and this is important as a democratic institution and for our democracy.

Member Hayes added her thanks and appreciation for Chair Grellner's style and how he balances all his work and availability and leadership, including WSALPHO, FPHS steering committee, etc. She said she hopes he takes extended time when he is able because he deserves it.

Member Kutz, asked where to begin? He said he has enjoyed working together all these years, even before the board. Member Kutz said that Chair Grellner has set the bar high and he doesn't know anyone who's done it better. Member Kutz said the Chair ensures

fairness is always brought to the process, which is important to members and residents of WA and he thanked him from the bottom of his heart.

Member Flores said she feels like she has missed the opportunity to work together. She said she is impressed with his bio and glad to witness this today. She thanked the Chair, offering the best of luck. She thanked Member Kutz for supporting dental therapy and said she wants to grow and learn from their examples.

Member Lutz said he echoes all the statements. He said the Chair handled himself with such class during all the challenges and he set the bar high for his successor. He thanked Chair Grellner for being a leader at the local and state level.

Chair Grellner, thanked everyone, saying that Vice Chair Oshiro will do a great job. He said this has been a wonderful ride, we've been through huge challenges and what a pleasure it is to work with Michelle and staff. He said he's anxious to see everyone in person. He said the board is in good hands with phenomenal people and he feels privileged and honored to be a part of this team.

Member Lutz said Keith reminds him of those professors in college or grad school that knows all about the binders behind him. Chair Grellner said they are all the minutes and resolutions in Kitsap County that go back to 1943. They are from predecessors, such as Dr. Lindquist.

## **16. BOARD MEMBER COMMENTS**

Keith Grellner, Board Chair called for any comments.

Member Flores, thanked everyone for a great meeting, including Kaitlyn, Samantha and Michelle for their guidance.

Chair Grellner, recognized Sam, saying she's done an amazing job and wants to thank her, congratulate her, and wish her all the luck in the world.

Michelle, thanked everyone, and extended gratitude on behalf of staff to Keith and Steve for their years of service. She said they are both incredible public health leaders and we are humbled to work with them. She gave a reminder for the July meeting cancellation and said we'll see folks in August.

## **ADJOURNMENT**

Keith Grellner, Board Chair, adjourned the meeting at 4:51 p.m.

## **WASHINGTON STATE BOARD OF HEALTH**

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Keith Grellner, Chair

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