

WASHINGTON STATE BOARD OF HEALTH

Date: August 9, 2023

To: Washington State Board of Health Members

From: Umair A. Shah, MD, MPH, Secretary of Health

Subject: Emergency Rulemaking for On-Site Sewage Systems, WAC 246-272A-0110—Proprietary Treatment Products and Supply Chain Shortages

Background and Summary:

By memo dated June 1, 2022, the Washington Department of Health (Department) requested an emergency rule to address supply chain shortages associated with on-site sewage system proprietary treatment products regulated under WAC 246-272A-0110. At its meeting on June 8, 2022, the State Board of Health (Board) adopted an emergency rule to address the issue and staff filed the rule on June 15, 2022, as WSR 22-13-101.

Subsequently, at the Board meeting on October 12, 2022, the Department updated the Board and requested that a second emergency rule be filed. The Board adopted a second emergency rule, which was filed on October 13, 2022, as WSR 22-21-070. On January 9, 2023, the Department again updated the Board and requested that a third emergency rule be filed when the second emergency rule expires. The Board adopted a third emergency rule and filed it on February 10, 2023, as WSR 23-05-055. On April 12, 2023, the Department requested a fourth emergency rule in this sequence. The Board adopted the rule and filed it on June 9, 2023, as WSR 23-13-018

Today, the Department is asking the Board to adopt a fifth emergency rule to allow retrofits and maintenance of proprietary treatment products with comparable components during continued supply chain shortages or similar manufacturing disruptions to avoid public health risks associated with poor system performance. The following information further explains the Department's emergency rule request, concurrent rulemaking on the full chapter, and implementation status of the emergency rule.

Under RCW 43.20.050, the Board has rulemaking authority for on-site sewage systems with design flows less than three thousand five hundred gallons per day. The Board's rules, chapter 246-272A WAC, set comprehensive standards for the siting, design, installation, use, care, and management of these small on-site sewage systems. The Department and local health jurisdictions jointly administer the rules.

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 public health, safety, or general welfare, and that observing the time requirements of notice and opportunity

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to comment upon adoption of a permanent rule would be contrary to the public interest. Emergency rules are effective for 120 days. Identical or substantially similar emergency rules may be adopted in sequence if conditions have changed or the agency is actively undertaking the appropriate procedures to adopt the rule as a permanent rule.

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 early 2024. Amending WAC 246-272A-0110 to address supply chain shortages associated with on-site sewage system proprietary treatment products fits within the existing CR-101 and staff are working to include it in the permanent rulemaking as previously directed.

The on-site sewage system rules require installation of on-site sewage 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 the Board's rules.

Homeowners, service providers, and regulators are continuing to experience supply chain shortages and other manufacturing disruptions 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 (UV) light manufactured by Salcor Inc.—as well as other parts and components that continue to be in short supply and are integral to the performance of these on-site sewage systems.

As an update, Salcor was sold earlier this year. The new owner/manufacturer of these specific UV lights is working through NSF requirements to get their products formally tested and approved, but this will take time and we expect there will continue to be a shortage of these specific UV lights.

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 transactions.

There are thousands of on-site sewage systems in Washington that use Salcor UV lights, and many types of proprietary products 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 the existing manufacturing disruptions.

Jeremy Simmons, Manager of the Department's On-Site Wastewater Management Program, will explain the Department's request for this fifth emergency rule to continue to allow manufacturers of registered proprietary treatment products to replace system components that are unavailable due to manufacturing disruptions with comparable

components that will not negatively impact performance, treatment, operation, or maintenance of the original registered product. He will also update the Board on activity to date reviewing and approving these component-replacement requests from manufacturers. Given the possibility of continuing or future shortages, staff will continue to research this issue and address it 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 directs staff to file a fifth CR-103E, Emergency Rulemaking Order, upon expiration of the fourth emergency rule, filed as WSR 23-13-018, to amend WAC 246-272A-0110 to help ensure on-site sewage system proprietary treatment products continue to function properly without negatively impacting treatment, operation, or maintenance during supply chain shortages or other manufacturing disruptions.

Staff

Stuart Glasoe

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