

WASHINGTON STATE BOARD OF HEALTH

Date: January 10, 2024

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:

Under RCW 43.20.050, 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. The Board's rules for On-Site Sewage Systems, chapter 246-272A WAC, set comprehensive standards for these small on-site sewage systems.

The on-site sewage system rules are currently under revision and are under consideration for adoption at today's Board meeting. Once a permanent rule is adopted, it generally takes 31 days after it is filed with the code reviser for the rule to take effect. While the permanent rulemaking will encompass the emergency rule, the following matter requires separate action to maintain continuity of the emergency rule regardless of the outcome of today's public hearing on proposed amendments to chapter 246-272A WAC.

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 Board adopted an emergency rule to address the issue and staff filed the rule on June 15, 2022, as WSR 22-13-101.

Under RCW 34.05.350, the Board may adopt emergency rules when action is needed to protect public health and safety and observing the time requirements of permanent rulemaking would be contrary to the public interest. Identical or substantially similar emergency rules may be adopted in sequence if the agency is actively working to adopt the rule as a permanent rule.

Consistent with these requirements and subsequent to initial action in June 2022, the Department has continued to update the Board and request this emergency rule in series. The Board has acted on each request and adopted each rule.

- Second emergency rule requested October 12, 2022, filed October 13, 2022, as WSR 22-21-070;
- Third emergency rule requested January 9, 2023, filed February 10, 2023, as WSR 23-05-055;

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- Fourth emergency rule requested April 12, 2023, filed June 9, 2023, as WSR 23-13-018; and
- Fifth emergency rule requested August 9, 2023, filed October 6, 2023, as WSR 23-21-016.

The fifth emergency rule expires February 3, 2024. Today, the Department is returning to request a sixth rule in this series to prevent a break in this emergency rule prior to completion of the permanent rulemaking on chapter 246-272A WAC and revisions to WAC 246-272A-0110 taking effect.

As brief background and as explained in prior requests, this emergency started with the manufacturing disruption and shortage of a specific product used in many proprietary systems—a disinfecting ultraviolet (UV) light manufactured by Salcor Inc. At the time other parts and components integral to the maintenance and performance of proprietary treatment products were also in short supply.

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.

In short, this emergency rule—and identical language in the proposed permanent rule—allows manufacturers of registered proprietary treatment products to get written approval from the Department 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.

Jeremy Simmons, Manager of the Department's On-Site Wastewater Management Program, will explain the Department's request for this sixth emergency rule and will again update the Board on the status of these component-replacement requests from manufacturers of proprietary treatment products.

Recommended Board Actions:

The Board may wish to consider and amend, if necessary, one of the following motions. The recommended motions are provided for the Board's ease of reference. The Board may develop a different motion as necessary.

If the Board adopts the proposed amendments to chapter 246-272A WAC prior to this agenda item:

The Board directs staff to file a sixth CR-103E, Emergency Rulemaking Order, upon expiration of the fifth emergency rule, filed as WSR 23-21-016, 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. The

Board directs staff to withdraw the emergency rule when the revised permanent rules take effect.

OR

If the Board does NOT adopt the proposed amendments to chapter 246-272A WAC prior to this agenda item:

The Board directs staff to file a sixth CR-103E, Emergency Rulemaking Order, upon expiration of the fifth emergency rule, filed as WSR 23-21-016, 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

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