

WASHINGTON STATE BOARD OF HEALTH

Date: March 13, 2024

To: Washington State Board of Health Members

From: Patty Hayes – Board Chair

Subject: Petition for Rulemaking –WAC 246-290-220, Group A Public Water Supplies, Drinking Water Materials and Additives

Background and Summary:

The Administrative Procedure Act ([RCW 34.05.330](#)) allows any person to petition a state agency for the 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 and, as appropriate, offer other means for addressing the concerns raised by the petitioner, or (2) accept the petition and initiate rulemaking.

On February 12, 2024, the Washington State Board of Health (Board) received a rulemaking petition to amend its Group A Public Water Supplies standards ([chapter 246-290 WAC](#)), specifically WAC 246-290-220.

The Board has the authority under [RCW 43.20.050](#) to adopt rules for group A public water systems as defined in [RCW 70A.125.010](#). Chapter 246-290 WAC establishes the standards for these water systems related to their design, construction, sampling, management, maintenance, and operation practices. The purpose of these rules is to define basic regulatory requirements and to protect the health of consumers using public drinking water supplies.

WAC 246-290-220 requires Group A public water systems to test and certify for conformance with NSF/ANSI Standards 60 and 61 for:

- treatment chemicals added to public drinking water supplies; and
- public water system components in substantial contact with potable water such as water pipes, tank coatings or liners, and treatment system media.

Washington State, along with most other U.S. states and Canadian provinces, require this certification to ensure the safety of chemicals and products used in public water systems. The testing and certification help to ensure that the additives do not contain materials that can cause a health risk and that the system component materials will not leach chemicals that can cause a health risk.

The petitioner requests that the Board amend [WAC 246-290-220](#) to include a new subsection related to water fluoridation. The petition proposes adding language to the rule that removes the Board's endorsement of fluoride in public water systems and

(continued on the next page)

Washington State Board of Health
March 13, 2024, Meeting Memo

provides recommendations for reducing fluoride exposure for pregnant mothers, infants, and children under 6 years of age (page 14).

The petitioner included multiple attachments to their petition in support of their position regarding the potential impacts of water fluoridation on fetus, infant, and child health. Among other things, petitioner refers to fluoride as a drug. Note that Washington case law provides that fluorides in public drinking water are not drugs. See the case of *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wn. App. 201, 215 (2013).

I have invited Andrew Kamali, Board Staff, to provide more information about the petition and the Board's options for responding.

Recommended Board Actions:

The Board may wish to consider one of the following motions:

The Board declines the petition for rulemaking to amend WAC 246-290-220 for the reasons articulated by Board Members. The Board directs staff to notify the petitioner of the Board's decision.

OR

The Board accepts the petition for rulemaking to explore the proposed amendment to WAC 246-290-220 to consider additional language related to water fluoridation. The Board directs staff to notify the requestor of its decision and to file a CR-101, Preproposal of Inquiry, to further evaluate the request and possible rule change.

Staff

Andrew Kamali

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