



WASHINGTON STATE

Board of Health

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DATE: July 8, 2009

TO: Washington State Board of Health Members

FROM: Environmental Health Committee, State Board of Health—
Keith Higman, Karen VanDusen, John Austin

SUBJECT: PETITION FOR RULE MAKING – WAC 246-203-130, KEEPING OF ANIMALS

Background and Summary:

The State Board of Health general sanitation rules, chapter 246-203 WAC, address various public health nuisances. The chapter dates back to 1960, and at least some of the sections probably originated long before then. It includes provisions such as prohibiting spitting on the floor or providing a common drinking cup in a public building. Some provisions may be outdated or have been superseded by more specific requirements. For example, in 2007, the Board replaced WAC 246-203-120, which dealt broadly with garbage and refuse disposal, with WAC 246-203-121, focused on dead animal disposal. Other provisions of the old section were considered to have been superseded by more specific Department of Ecology rules.

RCW 34.05.330 provides the opportunity for anyone to petition the Board with a request to adopt, amend, or repeal any rule. Upon the receipt of such a petition, the Board has sixty days in which to either deny the petition or initiate rule making. Board policy number 2005-001 sets forth the procedures followed by the Board when such a request is received.

On June 25, 2009, the Board received a petition for rule making in the form of an e-mailed letter from John Larson, Executive Director of the Washington Association of Conservation Districts (WACD), requesting amendment of subsection (2) of WAC 246-203-130, Keeping of animals.

In accordance with Board policy, the Board is being notified of the request at today's meeting. The policy further directs the Executive Director to recommend a response to the Chair, after consultation with the appropriate policy committee. The Chair may decide on the request and direct the Executive Director to respond or may take the request to the full Board for discussion and possible action. Executive Director Craig McLaughlin, after consultation with this committee, is recommending that we open the section for possible rule making, but that the rule making process consider other alternatives alongside the language WACD suggests, including possibly striking subsection (2).

Ned Therien, SBOH policy adviser, will summarize this rule making petition to the Board. Also here today, available for questions from Board members, is John Larson, Executive Director of WACD. Please refer to materials behind Tab 10 for additional information.

Recommended Board Motion:

The Board may wish to consider the following motion:

The Board directs staff to file a pre-proposal statement of inquiry (CR-101) by August 24, 2009 to consider amendment or repeal of WAC 246-203-130, Keeping of animals.

Discussion:

WAC 246-203-130 has three subsections. They provide tools to local health jurisdictions for controlling potential public health nuisances caused by animals, particularly by their wastes. The first subsection provides very generalized authority regarding controlling nuisances from the keeping of animals. The second section specifically requires storing stable manure in “populous districts” in a watertight pit or chamber with weekly removal from April 1 through October 1. The third subsection prohibits the accumulation of manure that would “prejudicially affect” any source of drinking water. The terms “populous districts” and “prejudicially affect” are not defined and left to local health jurisdictions to interpret.

WAC 246-203-130 is an antiquated rule that seems to be superseded for large livestock operations by more specific authorities of the Department of Ecology and Department of Agriculture (WSDA) under RCW 90.48.260 and chapter 90.64 RCW. Ecology received legislative authority in the 1970s to be the lead state agency for water quality protection. In 2003, the Legislature transferred some of that authority for animal feeding operations to WSDA.

For small-scale animal-keeping operations, WAC 246-203-130 might be useful to local health jurisdictions. However, the lack of definition of some terms in the rule and confusion about areas of overlap with the authority of Ecology and Agriculture appear to provide problems for local health jurisdictions and lack of statewide consistency in their interpretations. The manure storage and disposal requirements in subsection (2) appear to be more restrictive than alternative modern good management practices would allow. Local conservation districts are an excellent source of information for good manure handling practices. As mentioned in the petition, the conservation districts use USDA Natural Resources Conservation Service Field Office Technical Guide practice standards and specifications. Adopting such a guide in Board rule would require citing a specific edition. Board staff have concerns that it may not be within the scope of the Board’s mission to adopt a national manure management guideline into one of its rules.

Staff recommends that the Board not direct staff to open the rule to make the specific language amendment proposed by WACD, since specific language in rule making should be based on input from local health agencies, applicable state agencies, and other stakeholders. With further study, it might even be more appropriate to repeal subsection (2) of WAC 246-203-130. Board staff thus recommends opening WAC 246-203-130 for consideration of amendment or repeal of portions or the entire rule.