

NOTICE OF UNLAWFUL ACTIVITY, FAILURE TO WARN, MISREPRESENTATION, AND LIABILITY

This Actual and Constructive Notice (“Notice”) from Protect the Peninsula’s Future is directed to responsible parties for entities with authority over delivery of public drinking water to which hydrofluosilicic acid (also referred to as FSA, fluorosilicic, and fluosilicic acid) and its contaminants are added, and is to serve as legal notice to all such parties.

Such parties include, but are not limited to: for the City of Port Angeles (“City”), the mayor and council members, the City Attorney, City Manager, Public Works Director, and Water Superintendent; for the Clallam County Board of Health (“local Board of Health”), members of the Board, Health Officer, and Director; for Clallam County PUD #1 (“PUD”), Commissioners, General Manager, and Water Superintendent; for the State Board of Health, members including the Secretary of Health; and the Director of the State Office of Drinking Water.

Importance of this form to the recipients of this Actual and Constructive Notice

The entities and their responsible parties have various duties to ensure safety and compliance with state law in regard to delivery of public drinking water to which hydrofluosilicic acid and its contaminants are added. In certain circumstances, specific duties to act may not arise until responsible parties receive notice of the danger or violation of law. This Actual and Constructive Notice is provided to you to give you the notice necessary for you to be found to have financial liability. See the following Supreme Court case: McDonald v. Spokane County, 53 Wn.2d 685, 687, 336 P.2d 127 (1959) (“Actual notice consists of express information of a fact. But when a person does not receive such express information, if he does have actual notice of other circumstances sufficient to put a prudent man on inquiry as to the particular fact, and if by prosecuting such inquiry he would learn of such fact, he has constructive notice of the fact itself. The legal effect of that constructive notice is the same as if he had actual notice.”)

Statement of issue

The City for the purpose of treating and preventing tooth decay for the drinking water consumer, has since May 18, 2006 added hydrofluosilicic acid, along with its contaminants, to the treated water it delivers both to its residents, and to nonresidents. The latter include visitors, passengers on an international ferry, persons staying at the community regional hospital or jail, as well as over three thousand eastern Clallam County residents who are served by the PUD with a varying mix of City water and water from other sources.

This Notice identifies unlawful activity, failures to warn, and misrepresentations including omissions of material fact concerning the use of hydrofluosilicic acid and its contaminants that can result in liability for the entities and responsible parties notified.

Scope of responsibility for a water supplier delivering hydrofluosilicic acid in its public water supply

This Notice identifies actions and omissions for which a responsible party should recognize he/she has direct control and a duty, but also further clarifies duties a water supplier has when delivering hydrofluosilicic acid and its contaminants in its public water supply within the application of the doctrines of "learned intermediary" and "sophisticated user."

Generally a water supplier delivering hydrofluosilicic acid and its contaminants in its public water supply would be subject to liability under the Washington Product Liability Act (Chapter 7.72 RCW) or alternatively under common law torts including negligence and/or the Consumer Protection Act (Chapter 19.86 RCW). While a manufacturer or supplier of hydrofluosilicic acid might have a duty to provide adequate warnings to a water supplier, such manufacturers or suppliers in a legal action may seek to

characterize the water supplier as a “learned intermediary” or “sophisticated user” to seek to avoid product liability. The water supplier has many duties to the water user. For example, the water supplier has a duty to the water user to give adequate warnings if the water supply is not reasonably safe to the water user.

The Dental Foundation disclaims responsibility

An "Agreement Regarding Gift of Fluoridation System" signed on March 1, 2005 by the City of Port Angeles and on March 18, 2005 by the Washington State Dental Foundation (WDSF) at Section 2.5 disclaims any responsibility of WDSF once the fluoridation facility has been accepted by the City as follows: "WDSF will have no liability with respect to: (A) the quality, nature, adequacy and physical condition of the System; (B) the existence, quality, nature, adequacy and physical condition of utilities serving the system (C) the System's use, habitability, merchantability, or fitness, suitability, value or adequacy of the System for any particular purpose; (D) the zoning or other legal status of the System or any other public or private restrictions on use of the System; (E) the compliance of the assets or the System's operation with any applicable codes, laws, regulations, statutes, ordinances, or any governmental or quasi-governmental entity or any covenants, conditions and restrictions applicable to the System or the fluoridation of a water supply; (F) the presence or absence of hazardous materials on, under or about the System or (J) the health effects related to the operation of the System.. As between WDSF and the City, the City assumes the responsibility and risks of all defects to and conditions in the System"

The supplier disclaims responsibility.

Lucier Industries of Florida supplied hydrofluorosilicic acid, which was received by Port Angeles on or about November 6, 2006 from a tanker truck. Accompanying the shipment was a Certificate of Analysis dated 09/04/06 by J.R. Simplot Company. The Certificate reported test results for contents of rail car # GATX 2035 to be: hydrofluorosilicic acid 24.83%, hydrogen fluoride 0.45%, lead 1.48 parts per million and phosphate zero. Color was 5 on a scale of 100. No other ingredients are mentioned although other unknown ingredients are surely present. The back of this report, copyrighted by LCI, Ltd., at item 4 disclaims responsibility as follows: "Buyer assumes all risk and liability for all loss, damage, injury to person or persons, adverse effect on wildlife and the environment, or failure to comply with any law, regulation or ruling of any governmental body resulting from storage, shipping or handling or from the use of said material in manufacturing processes or in combination with other substances, or otherwise; and buyer hereby holds harmless and shall indemnify LCI against any and all claims arising therefrom. LCI, Ltd. makes no express warranties; there are no implied warranties which extend beyond the description on the face hereof or on the face of any shipment, and there is no implied warranty of merchantability except that the material sold hereunder shall be LCI, Ltd.'s standard quality."

The Materials Safety Data Sheet (MSDS--6 pages) accompanying this shipment disclosed acute effects which might not be apparent for hours and chronic health effects such as : "bone changes, corrosive effect on mucous membranes including ulceration of nose, throat and bronchial tubes, cough, shock, pulmonary edema, fluorosis, coma and death." In closing, the disclaimer is repeated: "no responsibility can be assumed by vendor from any hazards inherent in the nature of the product."

While under the Washington Product Liability Act, a “product seller” is everyone in the chain of distribution (RCW 7.72.010), the doctrines of learned intermediary and sophisticated user have been historically employed as a shifting of the weight of responsibility and liability to entities other than manufacturers in the chain of delivery of their products to consumers.

The doctrine of Learned Intermediary proposes that an entity other than the manufacturer in the chain of delivery has specialized knowledge of the user of the product and is considered to be in a direct position for which the recipient consumer develops a trust that this entity in the chain of delivery will fully inform and warn them of dangers, risks and contraindications.

One of the few exclusions to this doctrine is that the duty to inform and warn is tempered by a

determination that a sophisticated user "could reasonably be expected to know," which also assists in establishing the scope of when an entity MUST inform.

The Washington State Supreme Court has ruled that a supplier is subject to liability if the supplier:

- (a) knows or has reason to know that the [product] is or is likely to be dangerous for the use for which it is supplied, and
- (b) has no reason to believe that those for whose use the [product] is supplied will realize its dangerous condition, and
- (c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous.

DuVon v. Rockwell International, 116 Wn.2d 749, 758-59, 807 P.2d 876 (1991).

A water consumer CANNOT reasonably be expected to know of risks

Whether a water consumer "will realize [the] dangerous condition" of the direct water additive, hydrofluosilicic acid and its contaminants such as arsenic, or generally of the water supplied using this additive, is easily answered when entities promoting fluoridation misrepresent or omit the existence of evidence of harm and risk in testimonials, advertisements and organization "position papers," continually represent the addition as "fluoride" without public disclosure of the specific nature of the actual product and its contaminants, and continue to provide exaggerated and unsubstantiated assurances of safety and effectiveness.

The City, PUD, and local and State Boards of Health have a duty to perform due diligence and act to correct all unlawful practices, misrepresentations, and omissions

These entities possess the authority and thus have the responsibility, and the duty to assure all statutory and regulatory requirements are fulfilled for the public drinking water distributed including correction of all unlawful practices and misrepresentations or omissions of material fact prior to delivery.

To date, to the best of our knowledge, no manufacturer of hydrofluosilicic acid under request will state that their specific product is safe and effective at fulfilling fluoridation's legislative intent

In example: attached is a May 9, 2007 request from the Chair of the Poughkeepsie Joint Water Board in New York State to Solvay, LLC, a major supplier of hydrofluosilicic acid:

"To assure that this Board has selected a product that is consistent with the legislative intent of safety and effectively reducing the incidence of tooth decay, we request that you or some entity in the chain of delivery provide us with the following declaration for your fluosilicic product:

"This specific product, as it is constituted and inclusive of contaminants, is effective at reducing the incidence of tooth decay when ingested in dilution amounts consistent with fluoridation goals of 0.7 to 1.2 milligrams of fluoride ion per liter, and is safe for the full range of expected human consumption at these dilution ranges, without known or anticipated adverse health effects over a lifetime, including for infants, children, the elderly, and other populations afforded equal protection.

"Please state Yes if each shipment of your product can be accompanied by the above declaration as a condition of purchase.

"Please state No if you, or any other entity in the chain of delivery, are not able to make this declaration for your product."

As the attached July 19, 2007 response by Solvay reveals, Solvay ignores the directed questions posed about their own product, and request for pertinent documents including toxicological data and proof of

meeting American National Standards Institute and National Sanitation Foundation ANSI/NSF Standard 60, and directs the client water district to contact the CDC, which by law cannot represent a manufacturer.

To the best of our knowledge, no government body or promoter of fluoridation can identify a chronic toxicological study on hydrofluosilicic acid, with or without the attendant contaminants

Response to Congressional investigation by the House Committee on Science in considering fluoride when U.S. EPA was asked to identify scientific data on sodium silicofluoride and hydrofluosilicic acid: "In collecting data for the fact sheet, EPA was not able to identify chronic studies on those chemicals."

Robert C. Thurnau, Chief, Treatment Technology Evaluation Branch, Water Supply and Water Resources Division, U.S. EPA National Risk Management Research Laboratory, November 16, 2000: "To answer your first question of whether we have in our possession any empirical scientific data on the effects of fluosilicic acid or sodium silicofluoride on health and behavior, the answer is no."

Disseminating information including safety and effectiveness claims for the addition of hydrofluosilicic acid to drinking water without revealing that there are no chronic toxicological studies on the health and behavioral effects of the substance is a misrepresentation and omission of material fact. We believe that fluoridation by hydrofluosilicic acid is substantially more toxic to humans than alternative forms of fluoridation.

PUD, as a purveyor of hydrofluosilicic acid treated water to be delivered outside City limits, is being forced by their need for water to violate State requirements

Co-mingling of non-fluoridated water with water fluoridated by the City makes it impossible to assure PUD customers of the amount of fluoride being delivered, thus frustrating the intent and ability to follow WAC 126-290-460 (2) " *Where fluoridation is practiced, purveyors shall maintain fluoride concentrations in the range 0.8 through 1.3 mg/L throughout the distribution system.*"

In this case, the City put the burden on the PUD by a declaration in its Wholesale Water Agreement signed 16 August, 2006 (page 7) to supply water to PUD that PUD would bear responsibility for changes in water quality or operating conditions that may result from mixing different sources of water in the PUD's system.

We believe that the City and others adding hydrofluosilicic acid to drinking water are violating State regulations

WAC 246-290-220 Drinking water materials and additives. (3) Any treatment chemicals, with the exception of commercially retailed hypochlorite compounds such as unscented Clorox, Purex, etc., added to water intended for potable use shall comply with ANSI/NSF Standard 60.

Pursuant to WAC 246-290-220, a water supplier such as the City or PUD adding hydrofluosilicic acid to its drinking water supply may only allow chemicals that comply with ANSI/NSF Standard 60. Section 3.2.1 of Standard 60 requires that hydrofluosilicic acid suppliers submit toxicity study information to NSF both on the acid and on the contaminants delivered with their acid in order to comply with this Standard.

Protect the Peninsula's Future hereby gives notice that Stan Hazan, an expert witness from NSF, testified on or about March 10, 2004 under oath (portion of testimony attached) that the hydrofluosilicic acid certification submissions to NSF **do not include** this toxicity information required for compliance with Standard 60. Protect the Peninsula's Future understands that the City Council, PUD, and local and State Departments of Health might not know if improperly certified fluoridation chemicals are being added to public drinking water. This Notice requests that the City, PUD, and the local and State Departments of Health immediately investigate and unless documents can be produced within two weeks showing that the hydrofluosilicic acid being added to drinking water complies with the requirements of Section 3.2.1 of Standard 60, that the use of this hydrofluosilicic acid be suspended until compliance can be documented.

If there has not been full compliance with the requirements of Section 3.2.1 of Standard 60, then the use of a hydrofluosilicic acid in drinking water would be unlawful. Because it appears that NSF has issued certifications for hydrofluosilicic acid without full compliance with Section 3.2.1 of Standard 60, any general statement of compliance by NSF should be found suspect unless specific dated, true and correct copies of submitted documents are provided as proof.

Non-compliance with Section 3.2.1 is not a minor oversight. The manufacturer is required to submit a list of known or suspected impurities within the treatment chemical formulation and the maximum percent or parts by weight of each impurity along with a list of toxicological data of the manufacturer's product including all of the contaminants. There are no published exceptions to this General Requirement, which is published by NSF as uniformly applied to all direct water additives.

NSF's statement of omission of this critical data from manufacturers of fluoridation chemicals reinforces the statutory necessity for the responsible parties to confirm compliance from the specific chemical provider.

In addition to the manufacturer/producer, ANSI/NSF Standard 60 also requires other entities in the chain of delivery of a product, including repackagers, to conform to General Requirements and annual inspection.

NSF is not able to discharge any responsibility of the manufacturer or any other party

NSF International is not a government agency, and may have no duty of care to consumers.

NSF Disclaimer: "NSF, in performing its functions in accordance with its objectives, does not assume or undertake to discharge any responsibility of the manufacturer or any other party."

Manufacturer's Safety Data Sheets do not fulfill Washington or NSF requirements

With this Notice the recipients shall also be informed that a Manufacturer's Safety Data Sheet or Materials Safety Data Sheet (MSDS) is not a valid substitute for specific submissions required by ANSI/NSF Standard 60, as an MSDS is not intended to, and does not, address the scope of data required by Section 3.2.1 of Standard 60.

Furthermore, without details of all contaminants, no interested party can determine whether the specific product fulfills the American Water Works Association (AWWA B703) requirement Section 4.3.1 Impurities, General: "The fluorosilicic acid supplied according to this standard shall contain no minerals or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water that has been properly treated with fluorosilicic acid."

This determination is not intended to be made by rhetoric or endorsement. Absent a statement by the manufacturer that their specific product is effective at reducing tooth decay when ingested and safe for all consumers at the range of water they drink, and absent appropriate submissions of data as required, claims of compliance with AWWA B703 should not be found reliable.

EPA and CDC are misrepresented as controlling authority for safety of hydrofluosilicic acid; Inappropriate standards are being applied to determine safety for such water additives

Any statement or inference that hydrofluosilicic acid meets EPA or any other federal agency safety standard is a misrepresentation and omission of fact.

U.S. Maximum Contaminant Levels (MCLs) and Washington MCLs are not intended to be safety standards for direct water additives.

MCLs are concentration points for specific contaminants at which the water operator is to limit a contaminant's concentration in the public drinking water or remediate the excess. MCL's are negotiated

with consideration for the availability of methodology and unique costs of measuring and removing contaminants from source water. They are not an invitation to "fill 'er up".

Maximum Contaminant Level Goals (MCLGs) are the appropriate standards to be used for optional water additives. MCLGs are maximum contaminant levels for which no known or anticipated adverse effects on human health occur including an adequate margin of safety. There should only be invitation to "fill 'er up" to the MCLG. NSF Standard 60 does not provide adequate safety when it allows optional water additives to cause contaminant levels to be raised above the MCLGs.

Hydrofluosilicic acid is a direct water additive. It does not occur in water naturally in its commercially available form, and is processed by the phosphate fertilizer industry without any federal quality control for safety or effectiveness of the product.

On July 7, 1988, by Notice in the Federal Register (53 FR, 25586), U.S. EPA terminated oversight responsibilities for water additives, which at that time was limited to an informal advisory role, in favor of industry-established standards which individual states or water suppliers are free to adopt.

Tudor T. Davies, Director, Office of Science and Technology, U.S. EPA, states in a letter to George Glasser on April 2, 1998, "In the U.S., there are no Federal safety standards which are applicable to drinking water additives, including those intended for use in fluoridating water."

Statements of safety and effectiveness of hydrofluosilicic acid, coming from, or attributed to, Centers for Disease Control are equally misrepresentative, as the CDC has no authority from Congress to determine or endorse the safety or effectiveness of any direct water additive.

Congress has defined a drug as "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease" and "articles intended to affect the structure or any function of the body of man." (21 U.S.C. §321)

Congress has ordered and the United States Food and Drug Administration (U.S. FDA) has replied to Congressional investigation that the FDA is the only government agency with the authority to approve or reject any claim of safety or effectiveness for any product that is intended to cure, mitigate, treat or prevent any disease in man.

Promoters of fluoridation and legislative bodies have attempted to circumvent this status by restricting their claims of safety and effectiveness to the public policy. Any statement that a specific manufacturer's hydrofluosilicic acid is safe and effective thrusts that claim into the jurisdiction of the FDA and requires approval for such claim.

Claims of authority derived from a 1979 Memorandum of Understanding (MOU) between the U.S. EPA and U.S. FDA, in which the two parties appear to agree that U.S. EPA will perform duties concerning water additives, did at no time address water additives intended to perform as medication, treatment, prevention, or in any manner as a drug, so was never on point for the issue of substances intended to treat humans rather than the water.

The 1979 MOU is further not controlling, and non-operative for U.S. EPA's jurisdiction over direct water additives, as on July 7, 1988 U.S. EPA terminated its informal advisory function on additives that was essential to the MOU Terms of Agreement.

Legal actions confirm U.S. Food and Drug Administration authority over safety and effectiveness of a product

The U.S. Supreme Court has confirmed that it is Congress and the language of the statute that controls the jurisdiction of the FDA Act, not a statement by an agency or another governmental entity. FDA v. Brown & Williamson, (529 U.S. 120 (2000)).

In a December 2003 decision of widespread importance, the U.S. District Court ruled, and was not challenged, that even the U.S. government under emergency conditions of war can not force an individual to be medicated with a substance that has not been specifically approved for the purpose it is intended, and especially approved in the manner it is administered.

The Court ruled that the approval of one substance, or manner of delivery, does not translate to an approval of another similar substance or different mode of delivery.

The Court clarified that the fact that the use of the anthrax vaccine was also subject to action by the FDA, and that the FDA had not taken action, did not refute the relevancy of the evidence that the drug was not approved by the FDA, and thus was "arbitrary" and therefore could not be sustained. (Doe v. Rumsfield, 2003 U.S. Dist. LEXIS 22990 December 22, 2003)

FDA states in their 2000 response to Congressional investigation on fluoride: "Fluoride, when used in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal, is a drug that is subject to FDA regulation," and that no fluorine-containing product intended for ingestion for the purpose of reducing tooth decay has ever been approved for safety and effectiveness. Products such as oral drops and tablets of fluoride are on the market under the umbrella of dietary supplements and vitamins and are regulated as such with a general concern for good manufacturing processes and labeling, but without the determination of safety or efficacy required of a registered drug.

American Dental Association (ADA) denies accountability for representations of safety, and omissions of material fact

In the California case of Tolhurst v. Johnson & Johnson, the American Dental Association argues to the Court, and is dismissed from liability for its omissions of material fact and its claims of safety, on the grounds that ADA is a trade association with no duty of care to the general public.

Attributing authoritative claims of safety and effectiveness or a denial of existing evidence without disclosure that such statements are not intended to be reliable representations for which ADA accepts accountability, is a misrepresentation and omission of material fact.

Specific misrepresentations and omissions of material facts about the significant concentrations of arsenic in hydrofluosilicic acid

Washington State has not adopted a Public Health Goal (PHG) or Maximum Contaminant Limit Goal, (MCLG) for arsenic., a contaminant found in hydrofluosilicic acid. California's Public Health Goal (PHG) for arsenic, which represents California EPA's established scientific point of safety for lifetime consumption at the risk rate of one person per million for lung/bladder cancer is 4 parts per trillion.

In the NSF response to Congressional investigation by the House Committee on Science, we understand that NSF International reports an "acceptable" sample of 1.66 parts per billion arsenic contamination of hydrofluosilicic acid after dilution at the manufacturer's declared Maximum Use Level. We understand that this concentration represents a lifetime risk of lung/bladder cancer of more than 1 person per 1000.

This translates to 18 additional lung/bladder cancers in the population served by Port Angeles.

At 0.5 ppb arsenic concentration after dilution, we understand that the data presented by the NRC Report on Arsenic that prompted the lowering of the U.S. MCL and California PHG for arsenic calculates that one person in 3000 will risk lung/bladder cancer because of the addition of hydrofluosilicic acid.

Reporting these risks as non-detected or representing them as non-significant is a misrepresentation of material fact.

Failure to inform that ingestion of 1 liter of fluoridated water per day increases fluoride dosage over currently allowable prescription for children and EPA Reference Dose (RfD) for fluoride.

The City has included flyers in utility bills announcing addition of fluoride to municipal water but these flyers have never addressed the need to restrict intake of the fluoridated water by infants and small children. This failure to inform recipient water consumers of a material fact that the increased concentrations of the fluoride ion in the drinking water delivered by the City will result in a higher expected dosage of fluoride to children under 6 years of age than their family doctor can now prescribe.

Current limitations on prescription dosages of fluoride per day are: none for infants, 0.25 mgs for 6 months of age to 3 years, and 0.5 mgs for children 3 to 6 years of age. Just two cups of fluoridated water (16 ounces total) now contains approximately 0.5 mgs of fluoride.

The Integrate Risk Information System (IRIS) Reference Dose (RfD) for fluoride is 0.06 mg/kg/day.

Failure to inform that the expected dosage from the addition of hydrofluosilicic acid will exceed the RfD of fluoride for a significant percentage of children is a misrepresentation and omission of material fact. A 22 lb. child will receive the allowable fluoride dose from approximately 2 cups of water/day. Other sources of fluoride in food will then cause the allowable dose to be exceeded.

Representations that critics of the use of hydrofluosilicic acid "claim" that some children will receive excessive dosages as a result of water fluoridation is a misrepresentation and omission of material fact. It is also an omission of material fact that the incidence of dental fluorosis is higher in fluoridated communities than in non-fluoridated communities.

Failure to inform of increased arsenic exposure

The City likewise has failed to disseminate information on hydrofluosilicic acid's attendant contaminants, resulting in a failure to inform recipient water consumers and health professionals of a material fact that the addition of hydrofluosilicic acid will be accompanied by an increase of arsenic and other contaminant exposures, over waters that were previously delivered.

Failure to comply with U.S. Safe Drinking Water Act requirements for Consumer Confidence Reports

Failure to disclose on annual water quality reports the material fact that a source of arsenic or other contamination in the water is the hydrofluosilicic acid additive is not in compliance with the U.S. Safe Drinking Water Act for Consumer Confidence Reports.

Misrepresenting the dangers, and specific failures to warn

Recipients of public drinking water are captive consumers in that the water is delivered to the consumer's home with assurances of safety. Without warning of material facts, including absorption of fluoride from dermal exposures (bathing, swimming etc.), the consumer does not have the information to consider whether abandoning the water supply, re-treating their specific water supply, or otherwise protecting themselves from harm, is necessary or appropriate.

Nondisclosures by water suppliers in the chain of delivery by not revealing that susceptible populations, and effects of susceptibility, are already identified in government scientific literature, including the Acute Toxic Substances Disease Registry (ATSDR) and the December 2006 NRC report on Fluoride, do not allow the consumer the opportunity to assess whether the product consumed is safe for their specific health conditions, and constitutes a specific failure to warn.

Blanket denials of the existence or relevance of evidence of harm that can occur from consumption of water containing hydrofluosilicic acid and its contaminants, from dosages received from water alone, or in combination from other sources, are misrepresentations and omissions of material fact.

Nondisclosure that any statement of safety is based on limited consumption of water containing hydrofluosilicic acid and its contaminants is a misrepresentation and omission of material fact.

Denial of warning to parents of an infant's susceptibility to dental fluorosis and other diseases if water containing hydrofluosilicic acid is mixed with infant formula or juice concentrates constitutes a negligent failure to warn.

Insufficiency in public warning

Attempts to evade public disclosure consistent with the universality of exposure to public water for drinking and bathing by providing information and warnings that are accessible only after the economic burden of owning or using a computer to check a water supplier's web site, or consulting a health professional for that specific purpose, can hardly be deemed sufficient when the stated purpose of delivering hydrofluosilicic acid through the public water system is that the target recipients are the indigent and those that do not have economic access to a health professional.

Providing notice at the initiation of fluoridation does not adequately inform parents of newborns who may not have anticipated any interest, or new residents, and constitutes a failure to properly warn.

Addition of hydrofluosilicic acid to municipal water is not the traditional utility function which has led to consumer expectations of professional control of a vital resource.

The addition of hydrofluosilicic acid is not treatment of water. It is added to water, after treatment of water, for the sole purpose of treating humans.

Furthermore, the decision to fluoridate is not an administrative duty such as all other treatment decisions, i.e., using aluminum as a flocculating agent, or using chloramines in place of chlorine in the secondary stage of disinfection.

Each decision to add fluoridation chemicals to water by any entity in the State of Washington has been made separately and distinctly as a legislative act to affect the bodily functions of humans to be more resistant to tooth decay. At no time has there been a claim that it increases the potability of water, nor that it improves the production, storage, supply, or distribution of water.

It appears that uneven distribution, and various combinations of blending will result in only some of PUD's residents receiving fluoridated water, yet without separate costs per delivery line, some residents will be paying for the pass-through associated costs of fluoridating the water without receiving the claimed benefit. Each person paying for the associated proportional share of the pass-through fluoridation costs cannot be charged for said costs unless the person is actually receiving his proportional share.

Personal liability

We also hereby provide formal notice that as the water operator is a learned intermediary delivering a purchased product for delivery to constituents, any actions or omissions that do not heed these aforementioned violations of code and misrepresentation or omissions of material fact may expose the water operator to liabilities for which you as a responsible party may not have provided adequate disclosure of known or reasonably anticipated risks to financial auditors for the purpose of establishing appropriate credit ratings, or securing adequate insurance coverage to cover the breadth of potential claims.

Failure to address the risks inherent in noncompliance with State law in a timely fashion, and omissions of your disclosure, may trigger exceptions to the normal hold-harmless protections of individuals acting in a governing body's behalf.

City's Agreement with WSDF is not breached if improper hydrofluosilicic acid use is stopped

There is widespread belief that fluoridation of municipal water in Port Angeles is a "done deal" because the City signed an Agreement with Washington State Dental Foundation which may require the City to pay back to the Foundation the \$433,000 cost of building the fluoridation facility unless fluoridation continues for 10 years.

The Agreement which was entered into March 1, 2005, at Section 2.2, requires the City to perform "all obligations relating to the operation and ownership of the System." One such obligation of the Agreement is for the City to comply with WAC 246-290-220 and only add hydrofluosilicic acid that fully complies with Section 3.2.1 of ANSI/NSF Standard 60. If neither NSF nor a manufacturer can timely provide the City with documentary proof of compliance with Section 3.2.1 of Standard 60 regarding toxicity studies for the hydrofluosilicic acid and all of its contaminants, the City for reasons beyond its control is prevented by State regulation from continuing to add hydrofluosilicic acid to the public water supply. Section 8.9 of the Agreement provides that the City will not be deemed in violation of the Agreement if it is prevented from performing any of its obligations under the Agreement for any reason beyond its control.

Summary

This Actual and Constructive Notice provides you with statements of fact concerning the selection, administration, and dissemination of information concerning hydrofluosilicic acid and its contaminants; apprises you of misrepresentations and omissions; clarifies authority and acceptance of liability; informs you of unlawful activity and noncompliance with Washington regulations; and informs you of the risk of your ignoring your own responsibilities for effecting corrective action.

With this notice, any reliance on a statement by the chemical provider, or reliance on a possibly faulty NSF certification, without specific proof that the source of fluoridation chemicals, and any other re-packager or other entity in the chain of delivery that is so required, has fulfilled all of the requirements stated in Standard 60, including General Requirement 3.2.1, or any failure to meet the Standard by any entity in repackaging or any other aspect of distribution, including annual inspections, is contrary to your duties as a learned intermediary.

Responsible parties have the authority and duty to either personally correct, or demand correction, of misrepresentations, omissions, and unlawful or noncompliant actions.

We thus hereby provide you with formal notice that any action on your part to accept delivery of water that has been subject to the addition of any fluoridation chemical supplied by a manufacturer that has not fully complied with all ANSI/NSF Standard 60 requirements for certification is in violation of Washington law.

You of course have the right, and we suggest the duty, to confirm the factual representations herein, but this Notice hereby asserts that from this point forward, you know or with reasonable care should know of the facts set herein before you, and that any further actions that you may effect, including any inquiry that a prudent person may institute to confirm statements made herein, are deemed to be performed with this knowledge. If we can be of assistance in providing you with documents referenced, please contact us.

Respectfully, on this 2nd day of January, 2008 in Clallam County, Washington,

Eloise Kailin, M. D.
Secretary, PPF
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Sequim, WA 98382