

Protect the Peninsula's Future Newsletter

December 1, 2013

OUR ANNUAL MEETING: THURS. DEC. 6



The meeting will start at 7:00 PM, preceded by a potluck at 6:00 PM, at the home of Sara Lee O' Connor—**5148 Mt. Pleasant Road**. *Directions:* From Hwy 101, turn south on to Mt Pleasant. Mount Pleasant winds uphill for a little over 5 miles. There is a fork in the road close to 5 miles; stay to the right, which is Mt Pleasant. Continue south through a gate at the end of Mt Pleasant, which is to be left open. (If accidentally closed, open with electric switch at left gatepost). Tel. # is 452-5848.

40 Years & Going Strong—Steve Koehler

I have to slap myself to grasp that Protect the Peninsula's Future (PPF) has been the north Olympic Peninsula's watchdog for 40 years now—what a record of advocacy and accomplishment! This issue of our PPF's annual newsletter provides a summary of a few of those current ongoing efforts. If you would like a color copy of this issue as an Adobe PDF file please email me: steve@stevekoehler.com.

I want to personally thank all of our board members and general membership for their commitment and support. It's an honor to be associated with such an incredibly talented and dedicated assortment of folks.

EMF Notes from a Canary—Helen Sears

From the moment Port Angeles flipped on its state-of-the-art, citywide WiFi system, it decimated sleep, concentration, physical stamina, and any sense of well being for me. I was constantly exhausted, dizzy, thoughts evaporated mid-way, and had the general wonkiness of a high fever. I thought I was going crazy, or about to die.

It turned out I'm not alone. I'm a canary—one of 3-8% of the population who are currently hypersensitive to electromagnetic field (EMF) radiation. "Currently," because research has confirmed EMF sensitivity is *cumulative*: the greater and longer the exposure, the more the body becomes sensitized. Which means more of the population will begin having my symptoms in the future if nothing is done to curb the increasing EMF doses the entire population is being chronically exposed to.

Thanks to the citywide WiFi system in PA, then an unexpected "smart" meter on our new house in California it took two weeks to opt out of (and then to host our one close-by neighbor to take theirs out), plus a new cell phone tower 2 ½ miles up the road, I can now feel things I never used to, including "dirty" electricity, and my ears screamed all the time. We've had to replace our portable phones with landlines, get cable connections for everything including the computer mouse, besides experimenting until finding six breakers we could turn off permanently. In addition, we hired an EMF

consultant to first measure what levels of radiation we were dealing with and in what parts of the house, then rewire several circuits to eliminate the dirtiest of the “dirty” electricity. It took him and a helper three days.



He's been so busy helping people mitigate EMF issues he had to quit his job as an electrician. But he's become hypersensitive because of constant exposure, so doesn't know how much longer he'll be able to continue his work.

The World Health Organization and the International Agency for Research on Cancer has declared Radio Frequency (RF) electromagnetic fields (EMF) from non-ionizing radiation-emitting devices (such as “smart” meters) to be a Class 2-B carcinogen. Published studies from around the world have tied EMFs to increased risk for several types of cancer, suppression of the immune system, blood/brain barrier damage, and significant cellular and hormone changes. Specific illness linked by research to EMFs include leukemia, lymphoma, brain tumors, melanoma, breast cancer, asthma, Alzheimer's, Lou Gehrig's disease, miscarriage, and birth defects.

A broad swath of research information can be found at the following: www.magdahavas.com (Magda Havas, PhD, at Trent University in Canada, is a primary researcher of EMF), www.ElectricSense.com, www.deralmor.com, www.smartmeterdangers.org, and www.smartawareness.net. Unfortunately, federal legislation is in the works to make ‘smart’ meters mandatory. For information, go to www.mandatoryusmartgridblock.org. If passed, this would ensure the continuation of an up-and-coming, nationwide health disaster.

To find out what individual radiation is being dealt with, meters are essential. A solid, triple-purposed meter that measures radiation, and both magnetic and electric fields is the Trifield 100XE EMF Meter. It runs about \$140, but is recommended by several as reliably accurate, and it comes with a year's warranty. It's available from Amazon.

Other meters that measure both electric and magnetic fields: EMFields-PRO, ELF-GS3030B, Alpha UHS Milligauss Meter (Model UHS2), “TES 593” RF Meter, BVM (body voltage meter – this meter revealed my body picks up 1/3 more electricity than my husband's). These meters are pricier, but can also be rented by the week. (Michael R. Neuert, MA, BSME, Neuert Electromagnetic Services, www.emfcenter.com, 1-800-638-3781).

I'm the bad news of the future. My hope is that, before everyone exhibits symptoms as bad as mine, that government will follow Dr. Havas's recommendations for Health Canada:

- Eliminate wireless routers, wireless baby monitors, cordless phones.
- Shield cell phone antennas
- Make sure antennas near schools not exceed Switzerland's recommended levels for “sensitive places.”
- Eliminate fluorescent lights
- Eliminate and ban all ‘smart’ meters
- Identify and enforce that certain places remain wireless-free: schools, hospitals, hotels, restaurants, libraries, public transit (buses, trains, planes).
- Reduce radiation guidelines and base them on biological, not just thermal, effects registered on adult males for brief microwave cooking times.
- Create health clinics to deal with growing numbers of people with hypersensitivity and provide educational packages for doctors and health care professionals.

Critical Agricultural Areas—Eloise Kailin



PPF, starting over a decade ago, challenged the county's Critical Areas Ordinance (CAO) because it specifies exclusion from CAO protections not only for land used for on-going agriculture and designated Agricultural Resource lands, but includes certain lands classified as open space. Clallam County has designated only 6,194 acres as Agricultural Resource lands, but some 12,280 acres are identified by the tax assessor as Open

Space/Agricultural" lands. So all these lands can be exempted from all of the protections allocated to streams and wetlands. Forget "no net loss". Forget buffers for fish and wildlife.

PPF appealed this ordinance to the Growth Management Hearings Board (GMHB) and defended its favorable (to us) rulings in Superior Court, then Court of Appeals. Appeals Court ruled that Clallam's CAO did not meet Growth Management Act requirements. One part of the CAO was even declared "invalid".

Our case was ordered returned to GMHB. But before this happened a major conflict emerged: Washington State has significant agricultural production valuable both economically and strategically as it ensures a local food supply. Buffers and preserved wetlands use up acres commonly used for livestock and crops. The state legislature declared a moratorium on CAO regulations and set up a stakeholder committee to craft a compromise.

When the moratorium finally ended new legislation had been written and surprisingly Clallam County was cited as having a CAO that could be copied by certain other rural counties as a model of compliance. This turned on a human error.

A clerk at GMHB erroneously posted this non-compliant case on the GMHB website as closed. Closed cases are considered to be compliant with GMA. For two years this posting sat there, misleading caucuses reviewing statewide codes and legislators alike as to the status of Clallam County's CAO. The result was legislation, now codified at RCW 36.70A.735(1)(b) which added Clallam County to three other jurisdictions which had achieved compliance as a jurisdiction that other rural counties might adopt to achieve instant award of compliance status.

A further result was that the GMHB, now consisting entirely of new members, unfamiliar with the extensive history ruled that the legislature must have intended this result, but stopped short of declaring Clallam's CAO compliant with the Growth Management Act. On PPF's appeal to Superior Court, the County claimed we now have new law trumping provisions of previous determinations. "The legislature must have determined that Clallam's CAO was fine just as it is since it was named as a satisfactory model." The judge declared that he thought the legislature made a mistake, but declares that superior court is unable to correct that mistake. He speculated: "Maybe they just decided that Clallam County's critical areas ordinance was just good enough." This result, quite out of harmony with the GMA, is an absurdity.

PPF contends that the law reads differently when all of its parts are applied. Clallam County failed to choose to be governed under the Voluntary Stewardship Program, and instead must follow requirements of RCW 36A.060(2) wherein Clallam must bring its CAO into compliance by July of 2013, something it has not done. Once Clallam meets this requirement, timing provisions in the new law allow other non-compliant counties to also meet the goals of GMA even if they adopt Clallam's CAO.

A real sticking point for the County and our Superior Court judge is that the unambiguous finding of invalidity and non-compliance going up to the Appeals Court level of review has not even been addressed—let alone repaired. PPF believes that Appeals Court is likely to accord greater weight to GMA goals and decisions of the previous Appeals Court, and expects a more comprehensive analysis than that accorded by Superior Court.

We timely filed this current Superior Court decision to Appeals Court, but must find further funding to pay for the briefings that will be required. This has been a long, expensive legal effort, supported by membership contributions and grants from N.W. Fund for the Environment and Brainerd Foundation. We are afraid both Clallam and other rural counties will have a field day with exemptions from critical areas protections for their Open Space designated lands unless we correct this miscarriage of legislation.

North Olympic Peninsula to Carry Out Groundbreaking Air Pollution Study—Bob Lynette

Protect the Peninsula's Future has been concerned and involved with the proposed biomass plants at the Nippon and Port Townsend Paper for the past years. The amount of woody biomass that will be burned in these plants will more double, resulting in increased concern for human health from air pollution. With the Brainerd Foundation we, along with other environmental groups, litigated to try the Olympic Regional Clean Air Agency (ORCAA) to do a more comprehensive analysis of the Nippon project and to require Nippon to employ better pollution technologies. We lost the appeals, but were able to raise public concerns to a level that resulted in an expanded program to increase monitoring of *regulated* particulates in Port Angeles and Sequim, and later in Port Townsend.



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But a serious problem is that the *unregulated ultrafine particles*, which may be more hazardous to human health, will increase. Air monitoring for ultrafine particulates, those smaller than 0.1 to 0.3 microns, are not measured since there are no Federal requirements to regulate them, and such regulations are likely 10 years away. PPF and the Sierra Club appealed to our legislators to fund a monitoring program for monitoring these ultrafines. Thanks to the work of our 24th District State Representatives Steve Tharinger, Kevin Van de Wege, and State Senator Jim Hargrove, the State has funded a collaborative study between ORCAA and Department of Atmospheric Sciences at the University of Washington to monitor the ultrafines in both Clallam and Jefferson Counties.

The new study will more intensely measure how air quality will change once the biomass incinerators come online¹, assess any increase in Particulate Matter, including PM 2.5 and ultrafine particles, determine which neighborhoods would be most affected, and establish whether particle levels and size distributions change seasonally.

This study is the first of its kind in the country and should serve as a model for other communities. It will also add to EPA's knowledge base so that they can eventually promulgate national clean air standards to regulate ultrafines.

You can learn more at the ORCAA website: www.orcaa.org/air/ultrafine-study-proposal .

¹ Nippon has begun shakedown tests for the new biomass project. PT Paper has slowed down its development, but even the current operations merit more intensive monitoring.

Update: Rayonier-Port Angeles Harbor Cleanups—Darlene Schanfald



Photo: Tim Riley

2012 was a banner year for moving forward the Port Angeles Harborwide cleanup process. The Port of Port Angeles, the City of Port Angeles, Georgia Pacific, Merrill & Ring, Nippon and other shoreline and nearshore industries stepped forward and agreed that they were potential liable parties (PLPs) of the Harbor contamination and signed Agreed Orders with the WA State Department of Ecology (Ecology) to participate and help finance Harbor cleanups.

KPly, the former plywood mill on Marine Drive, and its tall stack are now gone. KPly opened in 1941 as a workers co-operative. ITT Rayonier purchased the mill in 1971 and renamed it PenPly. They sold it to the Canadian Klukwan Tribe in 1989, which operated it until 2008. It remained closed until 2010 when a KPly employee convinced the Port and City to invest in reopening the mill and it again became PenPly. This was a financial boondoggle for all, leaving the City and Port hanging financially for overdue rent and utilities when PenPly closed in 2011.

The Harbor sediment study is completed. Background sediment contaminant studies comparing other bays to this one are done. These and other studies will be ready for public view and comment in 2014 and 2015.

For more information about these cleanups, go to www.ecy.wa.gov. Search for Rayonier Mill, K Ply, Marine Trades Area, and or Western Port Angeles Harbor.

PPF is part of the Olympic Environmental Council Coalition (OECC) for the Rayonier and Harbor cleanups. OECC just produced a beautiful color brochure entitled, *Port Angeles Harbor Area Self-Guided Tour*. It is a waterfront guide from Rayonier to and through Ediz Hook. It is full of history and lovely historical photos; photos of areas to be cleaned; and a compilation of the contaminants of concern in each area of the Harbor, as well as other waterfront points of interest.

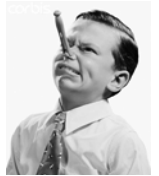
To receive a FREE brochure, send a self addressed stamped envelope to: OEC, PO Box 2664, Sequim WA 98382. This is a walk you and your visitors will want to take.

The Case of the Disappearing LOSS—Eloise Kailin

Last year PPF participated in hearings on a proposal by the Jamestown S’Klallam Tribe for placement of a Large On-Site Sewage System, (LOSS) on a 15 acre parcel in Blyn adjacent to 7 Cedars Casino, owned by the Tribe but under County jurisdiction. Most of the surrounding area is classified as a Critical Aquifer Recharge Area (CARA). The initial volume of discharge proposed was 25,000 gallons/day with future plans for 90,000 gallons/day. County ordinance specifies any discharge in a CARA of over 14,000 gallons/day requires pre-treatment to Class A Re-Use standards, virtually drinking water quality. Despite this, the County issued a permit to discharge 25,000 gallons/day of ordinary secondary treated sewage effluent.

The Tribe testified that the present septic system had frequent problems and experienced a severe failure in August of 2010, further that no suitable alternative site was available. PPF pointed out that no consideration had been given to other alternatives: Hook up to the sewage plant of the City of

Sequim is feasible and encouraged by Sequim since they recently enlarged, and over built, their state-of-the-art treatment plant. The Tribe, like Sequim, could also pre-treat their effluent to Class A Re-Use standards. PPF prepared to challenge the county permit. The Tribe withdrew its application and the permit was vacated.



The Bureau of Indian Affairs (BOIA) within weeks of this withdrawal published an intent to place the same property into Tribal Trust status with intent to install the LOSS. The BOIA issued a FONSI, a Finding of No Significant Impact, for the LOSS. A conversion of land into Tribal Trust status puts legal decisions under Federal law dealing with a sovereign nation, the Tribe, and out of the reach of state and local laws. Sewage regulations then fall under EPA, not State Department of Health and there is no law under EPA that we can find addressing escapement of sewage effluent into the wider environment due to the excessive permeability of a CARA.

PPF made extensive comments; the BOIA official issued his decision to approve transfer to Trust status. On March 11, 2013, the N. W. Regional Director of BOIA reported his decision to Governor Inslee:

"The Tribe intends to construct a large onsite sewage system on a portion of the subject property to replace the Seven Cedars Casino Resort's current onsite sewage system, which has had ongoing issues including a severe failure in August 2010. A new onsite sewage system is vital and essential for the Seven Cedars Casino Resort..." The Director reversed that decision when PPF made it clear we were going to appeal to higher levels in the Department of the Interior.

After a few weeks BOIA announced still another intent to confer Trust status on the land in question, this time stating that unspecified other measures were being taken to handle the sewage problem, so the land could be transferred to trust with no plans in the foreseeable future for the LOSS. Therefore there would be no environmental effects to consider. Again, PPF responded. The BOIA official issued his formal approval for the transfer. PPF filed a formal appeal. The BOIA official again rescinded his decision,

The LOSS has disappeared. We are back to square one.

A failing, overloaded septic system, an expanded Casino with plans to add a 7-story hotel to the complex, and no visible plans to handle the septic problem.

By now we are building a picture of just how bad the present, "old" septic system is. According to the Tribe's own engineering reports it was overloaded within a year of its installation in 1995. The Casino's main drinking water well is about 300 feet away from the drain field. Prior to the August 2010 failure, nitrogen level for this raw water was 0.5 mg/liter. Nitrogen peaked one year later at 9.08 mg./liter. As of June 5, 2013 finish water from the main tap of the pump room was 2.69 mg/L. (raw water results unavailable). Almost all of the many tests for bacteria in Casino water have been negative, but these tests were reported done only on "finished water", thus presumably tested only after disinfection.

In 2013 PPF tested Dean Creek water above and below a point thought to discharge drain field effluent. A ten-fold increase in ammonia was found in the downstream sample compared to the up stream sample, more than 7,000 per cent above the chronic toxicity levels allowed for salmon streams. PPF believes that significant quantities of nitrogen leaching from the overloaded drain field are reaching Sequim Bay. In June of 2011 three of four tourists consuming blue mussels from Sequim Bay State Park became the first documented cases in the USA of Diarrheic Shellfish Poisoning (DSP). PPF believes that migrating effluent fertilized the algae, which produce DSP toxin. The nutrients in the effluent also would exacerbate the problem of oxygen depletion of the Bay and be detrimental to the endangered salmonids that use this estuary. PPF believes the current drain field,

situated on Tribal Trust “sovereign nation” land, pollutes Sequim Bay and is not governed by state or local environmental laws. Local law would require pre-treatment of effluent to Class A Re-Use standards. EPA has not required discharge limits of any kind and has not issued a permit. Since 1995 the septic drain field has been overloaded, currently double the design load. Both human health and the environment are affected. Economic interests are considerable: a State Park, commercial and DNR shellfish beds, Battelle NW Marine Laboratory (80-100 local jobs), four species of salmon, expensive waterfront homes and an expanded Casino.

2013 Summary Report—Judy Larson



Following is my 2013 synopsis regarding what I have attended on behalf of, or reported to PPF Board Members on various issues/activities pertinent to the mission of PPF.

Dungeness River Management Team/DRMT: Judy Larson, delegate. (PPF chose Kathy Smith as PPF alternate, but this should be reaffirmed and our President then needs to email DRMT chair

Scott Chitwood of this candidacy, which is subject to tribal/county approval.) DRMT meeting/information can be reviewed online: www.olympus.net/community/dungenesswc/ The site has many excellent links and reference materials. For me, DRMT 2013 highlights included the 2013 field trip which visited DFW 3 Crabs restoration site, WA Harbor restoration site, Sequim’s CB Park areas for raingarden/low water use demos and City’s efforts to re-infiltrate CARA/ use more of its Reclaimed Class A waters. I am again serving on the DRMT Executive Committee, and have had several of my suggested agenda items actually covered. I will ask for more info on new DPS toxins in Sequim Bay.

Yikes: The ongoing saga of PPF & Sequim’s Sewage Treatment: Regarding Sequim’s pending NPDES Permit NO.WA 0022349, Paul Haynes said he believed it was approved, but to date—DOE has *still* not sent PPF an official notice of details about City of Sequim’s permit. Also, PPF was to be advised whether the City performed tests to meet its past permit modification regarding testing ammonia/total nitrogen acute/chronic toxicity scheduled to be conducted after completion of the STP expansion (which doubled its capacity). City or DOE have yet to provide pertinent information/opportunity for NPDES review by PPF or public.

Status of On-Site Septic (OSS) Regulations: Recall that counties bordering marine waters of Puget Sound were required to adopt measures to assure for proper functioning of septic systems.

Regulation details for our area can be found on the county website:

www.clallam.net/HHS/EnvironmentalHealth/ and look for OSS links. (I did bring to the County & City’s attention that the City’s Pioneer Park is on septic, but has no pumping/inspections recorded.)

Clallam County’s Shoreline Master Program: On behalf of PPF, I participated in the SMP Work Group (“working” to update County’s 1976 vintage shoreline management plan to regulate land use and development within 200 feet of fresh and marine shores in County’s jurisdiction. See:

www.clallam.net/RealEstate/html/shoreline_management.htm and also

www.clallam.net?landUse/SMP.html. This will be open for public comment after Draft FALL 2013 document is presented/discussed for Planning Commission.

Local Leaders (Water Management) Work Group: The main players: County, JSKT, DOE, Sequim-Dungeness Water Users Association helped to move Rule forward, and may yet provide info/reviews on efforts to provide “future” water via conservation, storage, & “mitigation.” See:

www.clallam.net/environment & www.clallam.net/hhs/EnvironmentalHealth/committee_LLGW.html

for background. Also—stay tuned for effects of recent WA Supreme Court decision and implications for DR water rule (Legal challenge to be addressed at a future DRMT meeting).

Issue still of concern: Proposed Carlsborg STP & PUD water rights: As noted in 2012 report, I believe there has been a lack of transparency/verifiable justifications in linkage of UGA/GMA “requirements,” water quality/public health concerns, or PUD’s interest in getting increased water rights (at a time of DR rule concerns?!). PUD’s ~\$10 million loan was taken over directly by County, which now plans to have ownership, and O & M responsibilities for an STP initially projected to cost ~\$15.6 million, but might go as low as ~\$13.8 million *if* waste gets piped to Sequim’s STP (which currently has considerable excess capacity). This would require crossing DR and new SEPA. Background is available at: www.clallam.net/DCD/committee_Carlsborg.html. Bob Martin is new best contact.

What’s Happening to Our Food & Forests?—Darlene Schanfald, Ph.D. & Richard C. Honour C., PhD

At first it was pesticides, then imported toxic food, then GMO, now hazardous industrial waste which contains all the above. Few people know that food can contain whatever industry and households flush or pour down sewer pipes. That’s right! Food can be grown in soils treated with processed sewage sludge (aka “biosolids”), polluted solids removed by wastewater treatment plants (WWTP). These pollutants can then run off into water bodies, and pollute wells and any life in their wake.



This toxic brew is also spread in forests. Land managed by the State's Department of Natural Resources are generally open to the public for many non vehicular uses, right amongst the sewage sludge dumping fields. The largest metropolitan areas in Washington State generate the greatest amounts of sewage sludge. King County, for example, generates and collectively manages the disposal of perhaps 150,000—200,000 tons of sewage sludge per year. About 15,000 tons of sludge are annually land applied in our western Cascades forests, with about 90,000—120,000 additional tons applied to rangelands and agricultural crop lands in central and eastern Washington. Lesser amounts of sludge are diverted to alternate uses and sold as compost or mulch, such as does Port Angeles and Port Townsend.

The US Environmental Protection Agency (USEPA) sanctions this activity as “Beneficial Use,” with state and county agencies labeling the activity as “Beneficial Reuse,” “Recycling,” and more.

What Pollutants are in typical biosolids?

Beyond our personal waste, WWTPs accept dozens of metals and tens of thousands of synthetic chemical compounds from industries, medical and dental facilities, laboratories, educational and research facilities, funeral parlors, superfund sites, stormwater, metal plating shops, etc., for a complex mix of heavy metals, dioxins, volatile and semi volatile compounds, animal and plant poisons, prions, pharmaceuticals including vaccines, antibiotics and antibiotic resistant strains, personal care product contaminants, fluoride, toxic household products (e.g. fire retardants), viruses, bacteria, pathogens, household cleaning agents, radioactive material and, yes, even natural gas drilling wastes. The latest research indicates that WWTPs are superbug breeding grounds and emit high levels of nitrous oxides, a powerful greenhouse gas.

The USEPA 2006-2007 study, *Biosolids: Targeted National Sewage Sludge*, of 84 sewage sludge samples collected from 74 randomly selected publicly owned treatment plants producing 1MGD in 35 communities were:

- 27 metals, 3 steroids, 3 pharmaceuticals, 4 anions and all but one flame retardant (BDE-138) in every sample;
- 9 pharmaceuticals and 6 steroids in 80 samples;
- 4 semivolatile organics and PAHs in 72 samples;
- BDE-138 flame retardant in 54 samples.

http://cfpub.epa.gov/npdes/cwa.cfm?program_id=45

Yet municipalities need only test for eight metals, and a few pathogens before marketing or spreading this waste on land.

What are the human health hazards?

Health hazards include respiratory diseases, other health reactions and death from direct contact or from inhaling sludge particulates.

Toxicology testing by sludge producers is never performed on sewage sludge, leachate or runoff, so the actual human health or environmental impacts are not evaluated to determine the toxicity associated with land applied sludges. However, plants uptake sludge constituents beyond simply the amount and kind of metals claimed to be “beneficial use.”

What can be done with sewage sludge?

There are existing technologies that can turn this waste into energy. For instance, anaerobic digesters and gasification methods turn sludge into non-fossil fuel energy, and landfill disposal results in methane that can be harnessed as a renewable energy source.

Communities need to stop spreading this toxic material that pollutes air, water, soil, wildlife and humans. Communities need to research how other countries and some U.S. municipalities are turning their waste into energy, systems appropriate for their areas, and create a safe energy resource.

What can you do about this?

- Join activists working on this issue.
- Encourage community decision makers to outlaw the land spreading of this waste.
- Encourage they look at waste2energy methods.
- Support a labeling law for foods grown in soils treated with biosolids, and municipality labeling of potential contaminants in the sludge sold as tonnage or bagged for markets.

For more information, contact Darlene Schanfald at darlenes@olympus.net or Richard Honour of the Kenmore based The Precautionary Group at rhono@precautionarygroup.org. Also visit, www.sludgefacts.com .

Fluoridation Status 2013—Eloise Kailin



In year 2010 the state Supreme Court, in a 5 to 4 decision, closed the door on any possibility of running a Port Angeles initiative on fluoridation when it ruled that the matter was considered administrative, not legislative and could not proceed to the ballot. State wide initiatives are voted on before court challenge to maximize opportunity for public expression, but local initiatives are vulnerable prior to the election process.

In 2011 PPF with Clallam County Citizens for Safe Drinking Water made use of a law that says any citizen may ask a judge to issue a warrant to seize a prescription drug that does not meet certain legal requirements. A drug is any substance used with intent to treat or prevent a disease. Tooth decay is a disease. We asked Judge Brooke Taylor to issue a warrant to seize and lock up in place the fluoride concentrate products held at both Port Angeles' and Forks' utility buildings. If fluoride were treated as a drug it would have to meet FDA requirements, such as giving proof of safety and effectiveness. Judge Taylor required a court hearing, which was heard by Judge Verser at Jefferson County Superior Court.

Judge Verser dismissed our suit because in a 1954 State Supreme Court decision, Kaul vs. Chehalis, 5 of the 9 judges agreed that fluoridation was not medication. His court could not overrule a Supreme Court decision. The Cities demanded their legal costs, claiming our suit was frivolous. Judge Verser declined this punitive action. PPF and Citizens requested direct review by State Supreme Court. In 2012 the case was sent instead to Appeals Court, which heard argument in January 2013. They too bowed to the historic decision of 1954 Supreme Court, concluding:

“Although we must apply binding precedent, the judgment below could have been reversed if our Supreme Court had overruled its prior decisions. That prospect is not entirely unreasonable, given that both Kaul and City of Port Angeles were five-to-four decisions...Given the procedural posture of this appeal and Kailin’s request that the Court overrule binding precedent, we hold that Kailin’s appeal is not so devoid of merit that no reasonable possibility of reversal exists...”

...Because we hold that Kailin’s appeal is not frivolous, we decline to award reasonable attorney fees to the Cities.”

(Whew!)

PPF and Citizens are waiting for the decision of the Supreme Court whether to accept review of our case. Our main objective is a Supreme Court determination that fluoride used in public water to treat or prevent dental caries is a drug subject to state medication laws.



Protect The Peninsula’s Future—P.O. Box 1677 Sequim, WA 98382
www.olympus.net/community/oec/ppf.htm