January 10, 2025

The Honorable Jane Nishida
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Food & Water Watch v. EPA*, Case No. 17-CV-02162-EMC

Dear Acting Administrator Nishida:

We, the undersigned organizations, respectfully urge the Environmental Protection Agency to appeal the United States District Court for the Northern District of California's ruling in *Food & Water Watch v. EPA*, Case No. 17-CV-02162-EMC. This ruling has profound implications for the EPA's ability to regulate substances under the Toxic Substances Control Act (TSCA). It also reflects a fundamental misunderstanding and misapplication of the prevailing scientific literature on the safety of fluoride and community water fluoridation.[*]

The federal lawsuit was brought following EPA's denial of a citizen petition to "prohibit the purposeful addition of fluoridation chemicals to U.S. water supplies," based on a claim that fluoride diminishes neurocognitive health. EPA denied the petition on the grounds that reputable scientific organizations had found serious flaws in the literature provided. The petitioners sued, claiming that EPA had not given full and fair consideration to the petition.

On September 24, the court ruled for the plaintiff. But instead of deciding narrowly whether EPA had given full and fair consideration to the plaintiff's petition, the court ordered EPA to "engage with a regulatory response." It placed a federal judge's misunderstanding and misapplication of science over the risk assessment expertise of federal regulators and reputable scientific organizations.

This decision has far-reaching implications for the EPA's ability to regulate substances under the TSCA, setting a dangerous precedent that could hinder evidence-based policy making. Namely, EPA could be forced to regulate other substances without regard to the agency's own risk evaluation determinations—based on a judicial misunderstanding and misapplication of science.

In the case of fluoride, the court ordered EPA to act without specifying the nature or timeline of the required response. The court's decision was based largely on a report from the federal National Toxicology Program, whose research methods, conclusions, clarity, and transparency were highly unorthodox.[1]

For example, the report hinges on only 19 studies that rely on atypical fluoride exposure levels, invalid biomarkers, and insufficient sample sizes.[2] The agency also changed peer reviewers after the original peer reviewers reported the first two drafts would not survive scientific scrutiny.[3,4] These and other issues raise serious concerns about the report's reliability, transparency, and adherence to established scientific standards.

[*] Community water fluoridation is the controlled upward adjustment of the naturally occurring fluoride content in water to levels recommended by the U.S. Public Health Service to prevent tooth decay (0.7 mg/L).

Moreover, EPA is now at risk of being overwhelmed by citizen petitions demanding regulation of substances without a scientifically valid justification. Responding to these petitions and defending the agency when the petitions are not granted will require a substantial commitment of resources.

The CDC hailed community water fluoridation as one of ten great public health achievements of the 20th century.[5] It is one of the safest and most beneficial and cost-effective methods of reducing tooth decay in the population by at least 25 percent.[6] It would be regrettable to compromise nearly 80 years of public health success due to challenges in effectively communicating the science, which often extends beyond the simplicity of a sound bite.

Thank you for considering our request. To facilitate further discussion, please contact Mr. Robert J. Burns from the American Dental Association at 202-789-5176 or burnsr@ada.org.

Sincerely,

American Dental Association
Academy of General Dentistry
American Academy of Oral and Maxillofacial Pathology
American Academy of Pediatric Dentistry
American Academy of Periodontology
American Association of Dental, Oral, and Craniofacial Research
American Association of Endodontists
American Association of Oral and Maxillofacial Surgeons
American Association of Orthodontists
American Association of Public Health Dentistry
American Dental Education Association
American Fluoridation Society
American Student Dental Association

cc: Brandon N. Atkins, Senior Trial Counsel, U.S. Department of Justice, Environmental and Natural Resources Division
Michele Knorr, General Counsel, Environmental Protection Agency, Office of the General Counsel

---

[1] National Toxicology Program. NTP monograph on the state of the science concerning fluoride exposure and neurodevelopment and cognition: a systematic review. NTP Monogr. 2024 Aug;(8):NTP-MGRAPH-8. doi: 10.22427/NTP-MGRAPH-8.

[2] American Dental Association, letter to Kathleen Gray, chair, NTP Board of Scientific Counselors, April 28, 2023.

[3] National Academies of Sciences, Engineering, and Medicine. 2020. *Review of the Draft NTP Monograph: Systematic Review of Fluoride Exposure and Neurodevelopmental and Cognitive Health Effects*. Washington, DC: The National Academies Press. doi:10.17226/25715

[4] National Academies of Sciences, Engineering, and Medicine. 2021. *Review of the Revised NTP Monograph on the Systematic Review of Fluoride Exposure and Neurodevelopmental and Cognitive Health Effects*: A Letter Report. Washington, DC: The National Academies Press. doi:10.17226/26030

[5] Centers for Disease Control and Prevention. Ten Great Public Health Achievements – United States, 1900-1999. MMWR 1999; 48 (12): 241-243.

[6] IheozorEjioforZ, WorthingtonHV, WalshT, O'MalleyL, ClarksonJE, MaceyR, AlamR, TugwellP, WelchV, GlennyAM. Water fluoridation for the prevention of dental caries. Cochrane Database of Systematic Reviews 2015, Issue 6. Art. No.: CD010856. DOI: 10.1002/14651858.CD010856.pub2.