

# Two Major Legal Victories in Federal Court Case to End Water Fluoridation



## Story at-a-glance

- Fluoride Action Network (FAN) is among a coalition of environmental, medical and health groups suing the U.S. Environmental Protection Agency (EPA) to ban artificial water fluoridation
- FAN has recently won two major legal victories, defeating efforts by the EPA to dismiss the case and limit the evidence that can be considered
- Legal experts say the lawsuit will be precedent setting and increase other challenges to EPA chemical rules by environmental watchdog groups

By Stuart Cooper | [mercola.com](https://www.mercola.com)

## Campaign Director, Fluoride Action Network

In November 2016, the Fluoride Action Network (FAN) together with a coalition of organizations and private citizens, including Food & Water Watch, American Academy of Environmental Medicine, International Academy of Oral Medicine & Toxicology, and Moms Against Fluoridation, presented a petition<sup>1</sup> to the U.S. Environmental Protection Agency (EPA) calling on the agency to exercise its authority to prohibit the addition of fluoridation chemicals to the public's drinking water supplies under Section 21 of the Toxic Substances Control Act (TSCA).

FAN's petition was made on the grounds that a large body of animal, cellular and human research shows that fluoride is neurotoxic at doses within the range now seen in fluoridated communities, and included over 2,500 pages of scientific documentation detailing these health risks.

The Toxic Substances Control Act (TSCA) allows individuals to petition the EPA to regulate and prohibit the "particular use" of a chemical if the petitioner can show that it presents an unreasonable risk to the general public or susceptible subpopulations. TSCA specifically gives the EPA the authority to prohibit drinking water additives.

However, in an attempt to put up an unreasonable roadblock the EPA dismissed our petition based on a questionable interpretation of Congress's recent amendments to TSCA. In response, FAN and our coalition partners filed a lawsuit in the U.S. District Court for the Northern District of California legally challenging the EPA's denial of our petition.

It also prompted the Natural Resources Defense Council to file an amicus brief challenging EPA's strained interpretation of the law.<sup>2</sup> Since challenging the EPA in court, a lot has happened to move us closer to a successful outcome. We have won our

first two battles in federal court, new government-funded research has been published which strengthens our case, and our day in court has been scheduled.

## Two Legal Victories as EPA Tries to Dismiss Case and Limit Evidence

The EPA's motion to dismiss FAN's petition was heard November 30 by federal Judge Edward M. Chen, of the Northern District Court of California in San Francisco. Our attorney, Michael Connett, argued the motion on behalf of FAN. Only days before Christmas, the judge gifted us our first legal victory. December 21, 2017, Chen denied the EPA's motion<sup>3</sup> to dismiss the case. This ruling was covered by Reuters<sup>4</sup> and various legal and regulatory journals.

Two and a half weeks later, on February 7, 2018, we won a second major legal victory. This time, the EPA tried to put up another roadblock by limiting the scope of discovery. In other words, EPA worked to prohibit our attorneys from obtaining internal EPA documents, and to prohibit our experts from relying upon recently published studies. According to Chen:<sup>5</sup>

*The text of the TSCA, its structure, its purpose and the legislative history make clear that Congress did not intend to impose such a limitation in judicial review of Section 21 citizen petitions. The Court therefore DENIES the EPA's motion."*

Connett noted:<sup>6</sup> *If you look at the legislative history, Congress wanted a robust mechanism for citizen oversight over EPA. This court's decision highlights for environmental groups that Congress created a powerful tool. Had the EPA prevailed we would have been prohibited from including any new fluoride neurotoxicity study published after our petition was submitted in November 2016, including the landmark U.S. government-*

funded 12-year study<sup>7</sup> by Bashash et al. published in September 2017. This study is critical in demonstrating that fluoride is neurotoxic and has no place in the public water supply.

## **New Government-Funded Research Links Fluoride to IQ Loss**

It is difficult to overstate the importance of this new study,<sup>8</sup> published in the journal *Environmental Health Perspectives*, linking fluoride levels in the urine of pregnant women with lower measures of intelligence in their children. This is especially true because it was funded by the following U.S. agencies: National Institutes of Health, National Institute of Environmental Health Sciences and the EPA. As noted by the authors:

*“In this study, higher levels of maternal urinary fluoride during pregnancy (a proxy for prenatal fluoride exposure) that are in the range of levels of exposure in other general population samples of pregnant women as well as nonpregnant adults were associated with lower scores on tests of cognitive function in the offspring at 4 and 6–12 y old.”*

The authors from several universities in Canada, the U.S. and Mexico followed over 300 mother-child pairs in Mexico City for a 12-year period. They found a strong relationship between the mothers' exposure to fluoride (as measured in their urine) and lowered IQ in their offspring at 4 and again at 6 to 12 years of age. The urine levels of the pregnant woman in the study were the same as is found in pregnant women in the U.S. (0.5 to 1.5 mg/Liter, or ppm). At these levels the authors reported a staggering loss of six IQ points.

**[Related Article: Former EPA Senior Scientist Confirms Fluoride Lowers Children's IQ](#)**

Most of the Mexican women had urine fluoride between 0.5 and

1.5 mg/L. Studies have found that adults in the U.S. have between about 0.6 and 1.5 mg/L, almost exactly the same range. From the low end of that range to the high end is a difference of 1 mg/L, which is what caused the five to six IQ-point difference in the children of the study mothers.

Furthermore, the study was very carefully conducted by a group of researchers who have collectively produced over 50 papers on the cognitive health of children in relationship to environmental exposures.

The lead investigator of this study, Dr. Howard Hu from the University of Toronto, commented on the quality of the study in the Canadian National Post,<sup>9</sup> “This is a very rigorous epidemiology study. You just can’t deny it. It directly related to whether fluoride is a risk for the neurodevelopment of children.”

This new study thus helps to confirm the health risks described in our petition, and will be an invaluable piece of evidence for our attorneys as they develop our case over the next year.

It has also inspired a FAN campaign called [Moms2B Avoid Fluoride](#). We launched the campaign in April to advise pregnant women to avoid fluoride, particularly [fluoridated water](#), because of the potential for harm to the brain of the fetus. With your help, we can educate the next generation of parents, so they can take action to [avoid fluoride exposure](#) during this critical time in the development of their child.

**Take Action Now**

# **The Next Step – Discovery and Our Day in Court**

The judge has scheduled the trial for the beginning of August 2019. This gives the FAN legal team less than 16 months for pretrial procedures. Thanks to the court's recent ruling, we have the right to obtain various internal documents from the EPA through a process known as "discovery," which will last up through November. We will also have the right to depose EPA's experts under oath.

Our legal team will also be recruiting our own expert witnesses for the trial, including experts in developmental neurotoxicology, endocrinology, epidemiology, toxicology and risk assessment. According to Connett, "These experts will be needed to explain how fluoride affects the brain and how the levels that Americans now ingest in fluoridated areas are in the range at which harm can occur, particularly among vulnerable populations."

## **Fluoride Lawsuit Opens Door to More Citizen Petitions; Attorneys Urge Industry to Help EPA**

According to legal experts who've been quoted in related news coverage, FAN's lawsuit will likely be precedent setting in determining how the court deals with citizen petitions for chemical regulation under TSCA going forward. Experts have also said our case is likely to inspire an increase in the filing of citizen petitions and lawsuits by environmental, animal welfare and public health watchdog groups to compel the EPA to enact safer regulations on toxic chemicals.<sup>10</sup>

Watchdog groups no longer have to convince the EPA of unreasonable risk; they can now have an objective judge decide

based on an independent review of the evidence. Because of Chen's ruling to deny the EPA's motion to dismiss our case, TSCA law will now be interpreted to allow the EPA to be petitioned to regulate single uses of substances, rather all uses, which was the EPA's position. This change will make it easier for activists to force the EPA to review the risks of specific chemicals used commercially.

In response to our success, some attorneys for industry have publicly called on industry groups to follow and help defend the EPA's position (or lack of action on regulating toxic chemicals).<sup>11</sup> But we will continue on, and will keep our focus on providing the Court with the best available evidence on the risks of adding industrial fluoride chemicals to over 200 million Americans' water supply.

## **TSCA Lawsuit Timeline and Media Coverage**

You can learn more about our lawsuit against the EPA using these additional resources available on our website and updated regularly:

- Watch a [video presentation by Attorney Michael Connett](#), providing a primer on our TSCA lawsuit
- See a [timeline of our lawsuit](#)
- Read the [full TSCA petition](#) submitted to EPA November 22, 2016
- Read a [shorter eight-page summary](#) of our petition
- Read the [documents submitted into the court record](#)
- See [media coverage](#)

## **Invest in an End to Fluoridation**

FAN has been the leading educational and advocacy organization campaigning to end the reckless practice of water fluoridation

throughout the world for over 17 years. We are up against governments with huge budgets to defend outdated policies, special interests with big money, ill-informed professional bodies and a largely oblivious media, which keeps the public, and itself, in the dark on the issue.

With each passing year, our effort gets more and more urgent because of the continuing revelations of the dangers posed to our children, especially with respect to the development of their brains. The latest example is the September 2017 Bashash study<sup>12</sup> – the most important fluoride/IQ study to date – which we discuss above.

There are now over 220 animal studies<sup>13</sup> that link fluoride exposure to the disruption of various aspects of brain function, over 40 studies<sup>14</sup> that show fluoride interferes with the ability of animals to learn and remember and 52 human studies<sup>15</sup> that have associated exposure to fluoride with loss of IQ. And some of the best of these studies have been carried out at doses exceeded by many children in fluoridated communities.

**[Related Article: Fluoride Has Been Proven To Be Toxic and It's Still Being Added to YOUR Water](#)**

Using standard risk assessment techniques, former U.S. EPA risk assessment specialist William Hirzy, Ph.D., has shown that 1.4 mg/day is associated with a lowering of IQ by five IQ points in one well-conducted Chinese study<sup>16</sup> (Xiang et al., [2003a](#), [2003b](#)).

We cannot allow this practice to continue to harm the public. With your support, we can make ending water fluoridation the greatest public health achievement of the 21st century. Our historic lawsuit offers both a significant opportunity for an end to the practice, as well as an opportunity for you to play a key role in making it happen.



Please consider investing in our efforts by making [a tax-deductible donation](#) to the Fluoride Action Network, a project of the American Environmental Health Studies Project.

**DONATE TODAY**



On May 20 to 27, we launch Fluoride Awareness Week. We set aside an entire week dedicated to ending the practice of fluoridation. There's no doubt about it: Fluoride should not be ingested. Even scientists from the Environmental Protection Agency's (EPA) National Health and Environmental Effects Research Laboratory have classified fluoride as a "chemical having substantial evidence of developmental neurotoxicity."

Furthermore, according to the Centers for Disease Control and Prevention (CDC), 41 percent of American adolescents now have dental fluorosis – unattractive discoloration and mottling of the teeth that indicate overexposure to fluoride. Clearly, children are being overexposed, and their health and development put in jeopardy. Why?

The only real solution is to stop the archaic practice of water fluoridation in the first place. Fortunately, the [Fluoride Action Network \(FAN\)](#) has a game plan to END water fluoridation worldwide. Clean pure water is a prerequisite to optimal health. Industrial chemicals, drugs and other toxic additives really have no place in our water supplies. So, please, protect your drinking water and support the fluoride-

free movement by making a tax-deductible donation to the Fluoride Action Network today.

## **Together, Let's Help FAN Get to the Finish Line**

This is the week we can get FAN the funding it deserves. I have found very few NGOs as effective and efficient as FAN. Its team has led the charge to end fluoridation and will continue to do so with our help!

So, I am stepping up the challenge. We are turning the tide against fluoride, but the fight is not over. I'm proud to play my part in this crucial battle. For the eighth year in a row, a portion of sales from purchases made on the Mercola online store, up to \$25,000, will be donated to Fluoride Action Network. Please make a donation today to help FAN end the absurdity of fluoridation.

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