

The Water Fluoridation Lawsuit Against the U.S. EPA (Under the Toxic Substances Control Act)

Food and Water Watch, Inc. et al vs. Environmental Protection Agency et al

Frequently Asked Questions

Q. What was the lawsuit about?

A. A group of non-profit environmental and health organizations and individuals petitioned the U.S. EPA in 2016 to end the addition of fluoridation chemicals into drinking water based on the risk of neurotoxicity (brain damage). The EPA rejected the petition. In response, the citizen groups sued the EPA in 2017.

The case was held in federal court in the Northern District of California in San Francisco. Judge Edward Chen heard the case and ruled in favor of the citizen groups.

<https://www.courtlistener.com/docket/6201332/445/food-water-watch-inc-v-environmental-protection-agency/>

Q. What health risks were brought up?

A. The court's 80-page decision evaluated and weighed the evidence from dozens of studies on IQ loss, including studies that both sides agreed were high-quality. The court described this research as ". . . a robust body of evidence finding a statistically significant adverse association between fluoride and IQ." This evidence included several high-quality studies from North America finding reduced IQ among children exposed to so-called "optimal" amounts of fluoride in the womb and early infancy.

Q. Does the court's decision apply to sources of fluoride other than community water fluoridation, such as fluoridated toothpaste?

A. No, the decision applies only to community water fluoridation at the current target concentration of 0.7 mg/L.

Q. Did the lawsuit address possible dental benefits of fluoridation?

A. No, only possible harm. However, a CDC representative acknowledged in a sworn deposition that fluoridated water provides no cavity-preventive benefit from prenatal or infant exposure before teeth have erupted. These are the life stages when the risk of neurotoxicity is greatest.

Q. What was the court's ruling?

A. On Sept. 24, 2024, the court ruled in favor of the citizen groups against the EPA: *"the Court finds that fluoridation of water at 0.7 milligrams per liter ("mg/L") – the level presently considered "optimal" in the United States – poses an unreasonable risk of reduced IQ in children...."*

The decision also ordered the EPA to establish rules that would eliminate this risk.

Q. Did the court say there was absolute certainty that fluoridated water reduced IQ?

A. Certainty of harm is not a requirement for the EPA to find an unreasonable risk, and the court did not go so far as to say there is a certainty of IQ loss from fluoridation. The court did conclude, however, that *"There is significant **certainty** (emphasis in original) . . . regarding the association between fluoride and reduced IQ"* and that *"Plaintiffs have proven, by a preponderance of evidence,"* that water fluoridation presents an *"unreasonable risk"* of this hazard.

Q. How many IQ point losses were identified by the scientific data in the lawsuit?

A. For mothers drinking an average amount of water, the expected IQ loss for their children is in the range of 1-3 IQ points. However, for mothers drinking substantially more (about 5% of the population), the estimated loss is in the range of 5-7 IQ points. Since there is a wide range of susceptibility between individuals to any toxic chemical, some children will have less (or no) IQ loss while others will have higher IQ loss than average.

The court noted that a loss of just 1 IQ point *"has been shown to be associated with reduced educational attainment, employment status, productivity, and earned wages...."*

Q. How did the judge make his decision?

A. His 80-page ruling was based solely on the science and the TSCA statute. He considered testimony from scientists and government officials from both sides, including experts in neurotoxicity, epidemiology, and risk assessment.

The judge also cited the systematic review produced by the National Toxicology Program (NTP), regarded as the one of the world's pre-eminent authorities on the hazards of chemicals. Both sides agreed the NTP review was thorough and high quality. Its evaluation underwent an unprecedented degree of peer-review from independent panels of scientists.

Over seven years, NTP analyzed over 70 studies on fluoride and IQ loss. It found that out of the 19 highest-quality studies, 18 linked higher fluoride with lower IQs, several at levels in fluoridated water.

https://ntp.niehs.nih.gov/sites/default/files/2024-08/fluoride_final_508.pdf

Q. Didn't NTP say that fluoride is consistently linked to IQ loss only at water concentrations of 1.5 mg/L and above, with lower levels not as well established? This is double the standard fluoridation level of 0.7 mg/L.

A. Yes, that's accurate, although NTP cited several studies, all funded by the National Institutes of Health, finding IQ loss at 0.7 mg/L.

Furthermore, water concentration is only part of the equation determining harm from fluoride intake. The other is the dose – many people drink far more water than average. They also ingest even more fluoride from food and drinks processed with fluoridated water.

Also, the judge cited the EPA's standard risk assessment protocol that requires protecting those people with greater susceptibility. To do this, the EPA takes an established level of harm and divides by at least 10 to set a level of safety for everyone in a population. Thus, $1.5 \text{ mg/L} \div 10 = 0.15 \text{ mg/L}$, substantially lower than fluoridated water's 0.7 mg/L.

Q. What did the judge require the EPA to do?

A. The judge said the EPA must take action, implementing rules to eliminate this risk of IQ loss. He did not specify what those rules should be. However, he did say *"One thing the EPA cannot do . . . is to ignore that risk."*

Q. Does the ruling apply only to northern California?

A. No, it applies to the entire country.

Q. Can the EPA appeal this judgment?

A. Yes, the EPA has 60 days to appeal after the Court enters judgment. If the EPA appeals, it would go to a three-judge panel in the Ninth Circuit Court of Appeals.

Q. If the EPA appeals, how long would it take for the appeal to be decided?

A. Most likely, 1-2 years.

Q. If the EPA doesn't appeal, does it have a firm deadline for enacting rules to eliminate fluoridation's risks?

A. No.

Q. Do communities have to wait for the EPA to take any action?

A. No, not at all. Communities or water authorities can take action to stop, or not start, fluoridation at any time. Based on the court ruling, several communities have already stopped or paused fluoridation. Some states mandate fluoridation in cities above a minimum size. These states don't have to wait to rescind those mandates.

This FAQ produced by Safe Water Calgary, in consultation with Michael Connett, lead attorney for the plaintiffs in the lawsuit.