WSR 25-24-048
NOTICE OF APPEAL
OFFICE OF THE GOVERNOR
[Filed November 26, 2025, 8:59 a.m.]

NOTICE OF APPEAL
RCW 34.05.330(3)

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On October 13, 2025, the Governor's Office received an appeal from William Osmunson, relating to the Washington State Board of Health's denial of a petition to amend or repeal WAC 246-290-220 (*Drinking water materials and additives*). The Governor denied the appeal on November 26, 2025

DATE: November 26, 2025

Kristin Beneski
Chief Legal Counsel
to the Governor

November 26, 2025

William Osmunson, DDS, MPH
Via email: billosmunson3@gmail.com

Re: APA Appeal - Washington Administrative Code (WAC) 246-290-220.

Dear Dr. Osmunson:

On October 13, 2025, the Governor's Office received the appeal you filed in response to the Washington State Board of Health's decision to deny your petition to amend WAC 246-290-220. Under RCW 34.05.330(3), an agency's denial of a petition to repeal or amend a rule may be appealed to the Governor.

WAC 246-290-220 concerns drinking water materials and additives. Subject to limited exceptions, this regulation generally requires that materials or additives in water intended for potable use conform to certain standards established by the American National Standards Institute (ANSF) and NSF International (formerly known as the National Sanitation Foundation) (NSF), and that pipes and other components of a public water system shall be lead-free. WAC 246-290-220; WAC 246-290-010 (5), (164). This regulation ensures that materials and additives used in drinking water meet safety standards.

Your petition asked the Washington State Board of Health to amend WAC 246-290-220 by adding the following sections:

> "(1) Any substance intentionally added to public drinking water with the intent to diagnose, mitigate, prevent, or treat disease in humans shall be defined as a drug for the purposes of this chapter.
> (2) Fluoride, when intentionally added to public water supplies for the stated purpose of preventing dental caries, is a drug as defined by 21 U.S.C. § 321 (g)(1) and RCW 69.04.470 and shall be treated as a drug for purposes of this chapter.
> (3) Because no fluoride drug products intended for systemic ingestion via drinking water have been approved under 21 U.S.C. § 355 (New Drug Application), no public water system may add fluo-

ride for therapeutic or disease-prevention purposes absent FDA/CDER approval.

(4) The Washington State Board of Health, Department of Health, and local health jurisdictions shall not promote, sponsor, advertise, or recommend the addition, dilution, formulation, or any other method of introducing fluoride, or any other unapproved drug, to public water supplies until such substance or drug has been approved by the U.S. Food and Drug Administration, Center for Drug Evaluation and Research (FDA/CDER).

(5) Manufacturers, importers, or suppliers of raw fluoride products—such as fluorosilicic acid, sodium fluoride, and sodium fluorosilicate—bear primary responsibility under federal and state law for securing FDA/CDER approval before marketing these substances for ingestion through community water fluoridation, including all costs associated with a New Drug Application (NDA), safety testing, and efficacy trials. This responsibility and financial burden shall not be borne by Washington taxpayers or public agencies."

Petition at 1-2.

Your petition raises various public health concerns related to fluoride in drinking water that you cite as reasons for the amendments. Petition at 3-10. In your appeal, you state that the proposed amendments are "to ensure that any substance intentionally added to public drinking water for therapeutic or disease-prevention purposes is evaluated under existing drug or poison statutes." Appeal Petition at 1.

The Board denied your petition on October 8, 2025. The Board's formal written response indicates that its members were provided with your petition and all supporting materials and discussed relevant authorities related to fluoride in drinking water during its October 8, 2025, meeting. Response at 1. The Board members noted that while your petition requested that fluoride not be added to drinking water until approved as a drug by the FDA, the FDA in fact has no authority over drinking water. Response at 1. Board members also confirmed that the Board does not have authority to regulate which entities bear the financial burden of attaining FDA approval, which is the effect of your proposed section 5. Response at 1. "Board members additionally noted anticipating further information from the Department of Health regarding an ethics review of the fluoride science review panel completed this year." Response at 1.

You appealed the Board's denial of your petition on October 13, 2025. Your appeal requests that the Governor direct the Board to "initiate rulemaking to align WAC 246-290-220 with federal drug law and state poison law, ensuring substances added for therapeutic purposes are properly classified and regulated." Appeal Petition at 3. The appeal petition also makes a series of assertions regarding fluoride, largely without substantiation. Appeal Petition at 2-3. Your appeal does not identify legal authority to support the theory that the FDA has authority to regulate fluoride in drinking water. It instead appears to contend that "fluoridation exists in a regulatory void." Appeal Petition at 3.

As indicated in the Board's response to your petition, the Board anticipates further information from the Department of Health regarding an ethics review of the fluoride science review panel completed this year. Response at 1. Declining to engage in formal rulemaking at

this time is within the Board's discretion, and it appropriately exercised this discretion.

The Board of Health denied your petition to amend WAC 246-290-220 after careful consideration, and I am not persuaded that it erred in doing so. Your appeal is denied.

Sincerely,

Bob Ferguson
Governor of Washington