

WSR 26-05-022

NOTICE OF APPEAL

OFFICE OF THE GOVERNOR

[Filed February 9, 2026, 2:42 p.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 January 6, 2026,¹ 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 February 6, 2026.

¹ The Governor's Office directs petitioners to send notices of appeals of rulemaking decisions by email to GovmiAPARuleAppeal@gov.wa.gov. <https://governor.wa.gov/submit-petition-appeal-agencys-rulemaking-decision>. Mr. Osmunson's petition was instead sent to askgov1@gov.wa.gov on December 23, 2025, despite this being the third appeal that Mr. Osmunson has submitted to the Governor in the last 12 months, and his being previously advised to submit such appeals to the correct mailbox. Mr. Osmunson's message was routed to the correct mailbox by the Governor's Constituent Services Unit on January 6, 2026. Accordingly, the Governor's Office considers the petition to have been received on January 6, 2026.

DATE: February 9, 2026

Kristin Beneski
Chief Legal Counsel to the Governor

February 6, 2026

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

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

Dear Dr. Osmunson:

On January 6, 2026, 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 (ANSI) 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:

"(8) Assurance of safety communications for fluoride additives.

(a) Finding. Due to variability in total fluoride exposure (including water, formula preparation, diet, medications, post-harvest fumigants, toothpaste ingestion, etc.) and the absence of individualized dosing and FDA-labeled conditions of use, the Board has not established an assurance-of-safety determination for all consumers when fluoride is intentionally added to public water supplies.*

(b) Communications. Neither the Board nor the Department shall state or imply that public drinking water to which fluoride has been intentionally added is "safe" for all consumers. Public communications

addressing fluoridated water shall use the standardized advisory in subsection (d).*

(c) Consumer Confidence Reports (CCR). Group A water systems that add fluoride must include the advisory in subsection (d) in their annual CCR and on the utility website.

(d) Advisory language.

"When fluorides are added to the water, the Washington State Board of Health has not determined assurance of safety for all consumers, including fetuses, infants, children, pregnant persons, and other susceptible subpopulations. Caregivers preparing infant formula may consider using non-fluoridated water or consulting their health-care provider."

(e) Guidance. The Department shall publish guidance addressing aggregate exposure, susceptible subpopulations, and measures caregivers can take to manage exposure.

(9) Therapeutic-intent additives and federal jurisdiction.

(a) Where a substance is intentionally added to public drinking water to prevent disease in humans, the addition constitutes a therapeutic intended use under 21 U.S.C. § 321 (g) (1) (B). In such cases, determinations of drug safety, efficacy, labeling, and conditions of use fall within the jurisdiction of the U.S. Food and Drug Administration (FDA/CDER).*

(b) Nothing in this section alters the EPA's authority under the Safe Drinking Water Act to set national primary drinking-water regulations for contaminants, including fluoride, or a water system's obligations to comply with such standards.*

(c) The Department shall refrain from communications implying that SDWA compliance alone constitutes an FDA-style assurance of safety for therapeutic ingestion, and shall instead refer the public to the advisory.["]

Petition at 1. Your petition requested that these amendments "be adopted by emergency rule, in addition to a standard rulemaking." Petition at 1.

The Board denied your petition on December 22, 2025. The Board's formal written response indicates that its members were provided with your petition and all supporting materials when they were received. It further indicates that the Board considered your petition at its special meeting on December 5, 2025, and that at the meeting, Board staff provided background information about the scope of the existing rule and discussed relevant state and federal authorities related to fluoride in drinking water. Response at 1. Board members acknowledged that your petition requested emergency rulemaking and sought to prohibit the Board from stating that fluoride added to water is safe and to require the use of advisory language regarding fluoride. Board Response at 1. Board members noted that the Department of Health recently facilitated a science review panel regarding fluoride in drinking water, and that the Board accordingly decided to maintain optimal fluoridation levels for communities that choose to fluoridate; that recent scientific literature supports that fluoridation at optimal levels is not a public health emergency; and that treating fluoride as a drug requires determinations by the FDA that the Board cannot authorize or direct. Board Response at 1-2. 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 facilitated by the agency. Board Response at 2.

You appealed to the Board's denial of your petition on January 6, 2026. Your appeal requests that the Governor's Office "review the procedural and ethical deficiencies" in the Board's handling of your petition. Appeal Petition at 3. Your claims regarding these deficiencies are unsupported by specific facts or evidence of bias, misconduct, or any violation of applicable rules and standards. Declining to engage in formal rulemaking at this time is within the Board's discretion, and it appropriately exercised this discretion.

Your appeal petition also requests that the Governor's Office do the following: 1) require clarification as to which agency has lawful jurisdiction to determine safety and efficacy of fluoride added to water for disease prevention; 2) ensure that future science or ethics review panels are independent; and 3) suspend state endorsements or assurances of safety for fluoridation under certain circumstances. Appeal Petition at 3. All of these requested actions fall outside the limited scope of this appeal of the Board's rulemaking decision. See RCW 34.05.330.

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 petition is denied.

Sincerely,
Bob Ferguson
Governor of Washington