

If Your Permit is Appealed

Perhaps you have been granted a permit by the Department of Ecology, air authority or another agency, but another party has appealed. You have a right to defend the permit and are automatically a respondent in the appeal before the Board. All subsequent sections in this publication apply to you as well as to the appealing party.

Prehearing Conference and Hearing Date

When an appeal is filed, the Board will assign and notify you of a date for the prehearing conference and a date for hearing the case.

After the pre-hearing conference, a written pre-hearing order will be mailed to the parties. It will include the hearing date, the list of legal issues, hearing preparation deadlines, and other important procedural information.

Mediation

The Board has a no-cost mediation program to assist the parties in reaching settlement. It is a voluntary program offered to the parties at no charge.

Motions

Any party may file a motion. A motion is a request by one of the parties asking the Board, or the Presiding Officer to rule on a particular issue.

A motion may be dispositive or non-dispositive. A dispositive motion may dispose of an issue or issues, or the whole case. A non-dispositive motion is a request for relief, which does not decide an issue or issues or the whole case.

Hearing

At the hearing, it is important to be **on time**. A party's failure to appear may result in default.

You will have a full opportunity to present your side of the case, but there is a judicial procedure to be followed, so that all sides can be heard in an orderly manner.

The Board's Decision

The Board will deliberate on the testimony, exhibits, and final arguments, before issuing a written decision.

The written decision called "Findings of Fact, Conclusions of Law, and Order" is prepared and mailed to all parties generally within 90 days after the hearing, or after the submission of memoranda, briefs, or proposed findings.

You May Appeal the Final Order

The Board's decision may be appealed to Superior Court within 30 days from the date the **ORDER is mailed**, or you may file a petition with the Board for reconsideration within 10 days of the date of the mailing of the **ORDER**.

Please note, if the Board fails to act on the petition for reconsideration within 20 days of its filing, it is deemed denied.

Procedural Assistance and Questions?

Please call our office if you need assistance or have any questions regarding filing an appeal.

While our office does offer procedural assistance to people with active appeals before one of our Boards, we cannot provide legal advice. We also do not take any enforcement actions outside of active cases.



POLLUTION CONTROL HEARINGS BOARD

Your Right To Be Heard

Contact

Physical Address: 1111 Israel Rd SW Ste 301,
Tumwater WA 98501

Mailing Address: PO Box 40903,
Olympia WA, 98504

Phone: 360-664-9160
Fax: 360-586-2253

New Appeals Email Address: PCHB-SHBappeals@eluhwa.gov

General Email Address: eluhwa@eluhwa.gov

This is your informal guide to your rights and responsibilities in an appeal. It is not exclusive, it is not legal advice, and **does not have force and effect of state law or regulation**. For more information, please visit the Environmental and Land Use Hearings Office website at <http://www.eluhwa.gov>.

For more detailed information, please go to the web pages labeled *Frequently Asked Questions and Forms*.

Do You Need an Attorney?

An attorney may represent you, but the law does not require one. Consider this very carefully before deciding to represent yourself. The appeal process can be complicated and significant rights may be at stake. The hearings are formal and are conducted more like court trials than city council meetings.

Your Right to Be Heard

The Pollution Control Hearings Board (PCHB) hears appeals from orders and decisions made by:

1. Local and regional air pollution control agencies or authorities.
2. The State Department of Ecology.
3. The Department of Fish and Wildlife (WDFW) pertaining to hydraulic project approval (HPA) decisions.
4. The Department of Natural Resources (DNR) pertaining to forest practices, surface mining, and forest health orders, and
5. Other agencies and orders as provided by law.

The Board's sole function is to give you and all other parties in a disputed matter an opportunity for a full and complete hearing, as promptly as possible, followed by a fair and impartial written decision based on the facts and law.

The Board is not affiliated with the Department of Ecology or any other agency. The Board consists of three full-time members, who are appointed by the governor and confirmed by the State Senate for staggered six-year terms. One of the three must be an attorney. All are salaried employees of the State, who also serve on the Shorelines Hearings Board.

When, Where, and How to File an Appeal

No fee is required for filing an appeal.

Generally, the Board must RECEIVE your appeal within 30 days of the "receipt" of the order or decision you are appealing. "Date of Receipt" is defined in RCW 43.21B.001(2)

If the appeal pertains to a decision or action by a state agency regarding a derelict vessel, the appeal must be filed and served within 30 days of when the state agency acquired custody of the vessel, or within 30 days of the date of redemption if the vessel is redeemed before the agency acquires custody.

Different deadlines apply to some types of decisions made by the Department of Natural Resources pertaining to forest practices. Refer to the Forest Practices Act, Ch. 76.09 RCW for specific information pertaining to the type of decision you want to appeal. Note some deadlines are as short as 15 days. The decision document itself will also generally include appeal information about the timeline for appeal.

An appeal may be filed with the Board by personal delivery and commercial delivery at the physical address, by fax, by electronic mail, or by first-class, registered mail sent to the mailing address.

An **ORIGINAL** and one copy should be sent in the mail in addition to the fax filing and e-filing. Mailed and personally served originals should also include one copy.

You must also serve a copy of your appeal on the agency that issued the decision, and all other parties named in the appeal. Some types of appeals have additional requirements, please check the Board's website for more information.

Contents of The Appeal

Your appeal should include the following items:

- **A copy of the order or decision** you are appealing, and if the order or decision followed an application, a copy of the application.
- Your name and address (mailing and legal, if different) and, if applicable, the name and address of your representative.
- A daytime phone number, and an e-mail address if available.
- A brief statement why you are appealing.
- The relief you seek (what you want the Board to do).
- A statement, signed by you or your representative, attesting the content of the appeal is true.

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