

## **What is the Pollution Control Hearings Board?**

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 projects approval (HPA) decisions,
4. The Department of Natural Resources (DNR) pertaining to forest practices, and
5. Other agencies as provided by law.

The PCHB's sole function is to give you and all other litigants 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. To insure the Board's impartiality, the state Legislature created this independent, quasi-judicial state agency entirely separate from any other state, or regional resource or regulatory agency or local unit of government.

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.

## **Do I 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 conducted more like court trials, instead of city council meetings.

## **Is there a filing fee?**

No.

## **When and where do I file an appeal?**

The Board must RECEIVE your appeal within 30 days of the “receipt” of the order or decision. “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.

The original and one copy of the appeal must be filed with the Board at:

Pollution Control Hearings Board

Physical address:

1111 Israel Rd. SW, Ste 301

Tumwater, WA 98501

Mailing address:  
PO Box 40903  
Olympia WA 98504-0903

Within 30 days of receipt of the decision, you must also serve a copy of your appeal with the Department of Ecology or Clean Air Agency or other agency whose order or decision you are appealing.

To serve Ecology:

By mail  
Department of Ecology  
Appeals Processor  
PO Box 47608  
Olympia WA 98504-7608

to deliver in person  
Department of Ecology  
Appeals Processor  
300 Desmond Drive SE  
Lacey WA 98503

To serve a clean air agency:

Puget Sound Clean Air Agency  
1904 3<sup>rd</sup> Ave, Suite 105  
Seattle WA 98101

Olympic Clean Air Agency  
2940 B Limited Lane NW  
Olympia WA 98502

Spokane Regional Clean Air Agency  
3104 E Augusta Ave  
Spokane WA 99207

Southwest Clean Air Agency  
11815 NE 99<sup>th</sup> St Suite 1294  
Vancouver WA 98682-2322

Yakima Regional Clean Air Agency  
329 N 1<sup>st</sup> St  
Yakima WA 98901-2303

Northwest Clean Air Agency  
1600 S Second St.  
Mt Vernon WA 98273

If you are appealing a decision on a permit, you should also serve a copy of your appeal on the holder of the permit unless you are the permittee.

Failure to observe the 30 day deadline for filing with the Board and serving the Department of Ecology or Air Pollution Control Authority or other agency will result in termination and dismissal of the appeal.

Service on all parties shall be by personal service or by mail. Service by mail is effective on the date of mailing; however, filing with the Board is only effective on actual receipt by the Board.

**Filing of the appeal does not stop (stay) the effectiveness of an appealed permit. For information on how to obtain a stay or temporary restraining order for all appeals except for forest practices appeals, please refer to RCW 43.21B.320 and Civil Rules for Superior Court 65 (CR 65). For information on obtaining a temporary suspension or discontinuance in a forest practices appeal, refer to WAC 223-08-087.**

## **What must be in my 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.
- A brief statement why you are appealing.
- A statement of what you want the Board to do.
- A statement, signed by you or your representative under penalty of perjury, attesting the content of the appeal is true.

## **What if my 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 appellant.

## **What are my hearing dates?**

When an appeal is filed, the Board will assign your case to a board member or judge. Your hearing date(s) and date for pre-hearing conference will be included in a scheduling letter.

## **What is a Pre-Hearing Conference?**

After an appeal is filed, a pre-hearing conference will be convened with the Presiding Officer. The conference is usually conducted by telephone. The scheduling letter will provide you with a phone number and pin code for you to call in for the pre-hearing conference at the designated time.

The conference has three purposes:

- discuss interest in settlement, including use of the Board's no-cost mediation program;
- determine the legal issues; and
- set a schedule for preparing the case for hearing if settlement is not reached.

Prior to the pre-hearing conference each party is required to submit a list of *proposed* legal issues and lists of *preliminary* witnesses and exhibits. You will be able to make adjustments to your lists of witnesses and exhibits later as you prepare your 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.

Make sure you read the Pre-Hearing Order as it will contain important details.

## **Settlement**

Litigation is time and energy consuming for the parties. Each party needs to think about possible compromise. For settlement to be reached, each side needs to offer something. Parties are encouraged to begin settlement talks, without waiting for Board participation.

## **Mediation**

The Board has mediators available to assist in negotiating a settlement of your case. If you are interested in pursuing mediation, please contact the EHO for assignment of a mediator.

If the parties settle directly or through mediation, normally a written document containing the settlement terms will be signed by all and filed with the Board. Once the parties request that the appeal be withdrawn, the Board will dismiss the appeal if the settlement conforms to the law.

## **Procedural Assistance**

Although the Board cannot provide legal advice, it can provide some procedural assistance to parties, if requested. If you would like procedural assistance, please call 360-664-9160, and your request will be directed to the appropriate person. Also, the EHO website contains useful procedural information, forms, and explanations about the process.

## **Motions**

Any party may file a request by one of the parties asking the Board or the Presiding Officer to rule on a particular issue or for something to order. This is called a “motion.”

There are different kinds of motions. A “dispositive” motion asks for a decision on an issue or issues, or even the whole case based on the law, sworn statements of fact, and documents. A

“non-dispositive” motion is a request for something that does not result in a decision on part or the whole case, but it is also decided on the law and sworn statements. One example of a *non-dispositive* motion is a motion *in limine*. A motion *in limine* asks the Board, in advance of the hearing not to consider certain evidence. *Dispositive* motions are decided by the full Board. An example of a *dispositive* motion is a motion for summary judgment. A motion for summary judgment is typically based on sworn statements of fact from a person having personal knowledge of the facts alleged. A sworn statement may be either a declaration or an affidavit. Some forms are available on the EHO website at <http://www.eho.wa.gov>.

A *declaration* or *affidavit* must also identify attached documents as true and correct exhibits.

## **Dispositive Motion**

The scheduling and other requirements of dispositive motions are set forth in the pre-hearing order. Copies must be served simultaneously on each party in the case on the date the motion is filed.

Any party opposing the motion will typically have 14 days from the day the motion is received to file a response with the Board with sufficient copies, and to serve a copy on each of the other parties. The moving party generally will have 10 days from the date the response is received to file an original and the requisite copies of a reply with the Board, and to serve a copy on each of the other parties. Any party may request an oral hearing on the motion from the Presiding Officer who will decide whether to grant or deny the request.

## **Non-Dispositive Motions**

The deadlines for responding and replying to non-dispositive motions will generally be part of the Pre-Hearing Order. Most non-dispositive motions will be reviewed and decided solely by the Presiding Officer. In those situations, the parties need only supply an original and one copy of the pleadings to the Board and serve copies on the other parties.

## Before the Hearing

You will want to prepare your case before the hearing. The process of finding out the basis for the decision is called “discovery.” You have the right to review the file of the decision you are appealing. To do that, contact the agency to arrange a time and place to see the file.

You and the other parties have the right to find out in advance what witnesses and other evidence will be used at the hearing. You can ask that it be provided to you without formal procedures, by telephone, email, regular mail, or by looking at public records. If done formally, this kind of discovery is best accomplished with the assistance of a lawyer.

Examples of formal discovery are: **Deposition**-questioning witnesses before the hearing, under oath with a court reporter present. **Interrogatories**-presenting written questions to the other side that must be answered under oath. There are formal rules applying to discovery. These are described or referenced in the Board’s regulations.

## What happens at the hearing?

At the hearing, it is important to be on time. Failure to appear may result in the loss of your case. You will have a full opportunity to present your side of the case. Judicial procedure will be followed so all sides can be heard in an orderly manner.

The Presiding Officer for the Board manages the proceedings. In a penalty case, Ecology or authority must present its case first. A court reporter will record everything that is said. In all other cases, the petitioner has the obligation to present its case first. Then, the respondent will present its case. Each side has the right to make an **opening statement** briefly outlining what its evidence will be. After the opening statements, the parties will present their witnesses and other evidence. The Board and parties may conduct a **site visit**. Parties must limit communications with the Board during the site visit. It is appropriate to point out physical landmarks, to help the Board later, at the hearing, but a court reporter is not present during the site visit, and the site visit is not the time to present evidence or argue your case.

After the site visit, everyone will return to the hearing room. **Witnesses** who are sworn to tell the truth, testify from their personal knowledge in response to questions from the party calling them to testify. This is called “direct testimony.” After this direct testimony, the witness must answer questions asked by the other parties during “cross-examination.” The Board members may also ask questions.

Persons essential to your case need to be present at the hearing to testify as witnesses. Evidence rules prevent you from testifying for others or relating what they know or what they have said. Parties with important knowledge must be sworn and must testify themselves.

**Exhibits**, such as letters, maps, etc. may be offered as evidence. These documents must stay in the Board file if they are offered as evidence. Before the hearing, number your exhibits and prepare an exhibit list. At the hearing, you will need to have the original and copies for each member of the Board and the Presiding Officer and one for each of the other parties. If you have multiple exhibits, please place them in a binder.

After all the evidence has been presented, litigants can summarize their cases in closing arguments. The record is then closed and the hearing is over.

## The Board’s Decision

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

The Board will prepare a written decision called "Findings of Fact, Conclusions of Law, and Order" and mail it to all litigants.

## **Can I appeal the final decision?**

The Board's decision may be appealed to superior court within **30 days** from the date the Order is **mailed**.

It is not required, but you may file a petition with the Board for a reconsideration within 10 days of the mailing of the Order in which case you may wait until the Board issues its decision on the reconsideration.

You may appeal the Board's decision after a petition for reconsideration within 30 days from the date the order is mailed. If the Board does not act on the reconsideration petition within 20 days of its filing, it is deemed denied. In certain cases raising urgent statewide or regional issues or involving significant precedential matters, a procedure for direct review by the [Court of Appeals](#) may be available.

## **Glossary:**

**AIR POLLUTION CONTROL AGENCY:** a local or regional agency authorized under the Washington Clean Air Act, RCW 70.94, to issue orders and assess penalties for air pollution violations, and to issue notices of construction for new air emission sources.

**APPEAL:** A request for review of a decision filed with the Board.

**APPELLANT:** A person or entity bringing the appeal.

**BOARD:** The Washington State Pollution Control Hearings Board.

**DISMISSAL:** Dismissal is an order entered by the Board terminating the appeal, canceling the hearing, and ending the Board's consideration of the case.

**ECOLOGY:** The Washington State Department of Ecology.

**INTERVENOR:** A third party asking to be heard in an appeal.

**PARTY:** A person who is an appellant, respondent, or intervenor.

**PERSON:** An individual, partnership, corporation, association, organization, governmental subdivision, agency, or entity of any character.

**PRESIDING OFFICER:** A member of the Board or an Administrative Appeals Judge who is assigned by the chair or vice-chair to conduct a conference or hearing.

**RESPONDENT:** A person or entity on the other side of the dispute from the appellant.

**STIPULATION:** An agreement between the parties.