

**WASHINGTON STATE
FOREST PRACTICES APPEALS BOARD
ENVIRONMENTAL HEARINGS OFFICE**

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"Your Right To Be Heard"

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Tom P. May, Chair
Joel Rupley, Member
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Administrative Appeals Judges

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This is your informal guide to your rights and responsibilities in an appeal. It is not exclusive and **does not have force and effect of state law or regulation**. More detailed information, in The Forest Practices Act, RCW 76.09 and in a chapter of the Washington Administrative Code entitled, "Rules of Practice and Procedure of the Forest Practices Appeals Board, WAC 223-08," is available at your county law library or upon request from the Environmental Hearings Office or on the Environmental Hearings Office website: <http://www.eho.wa.gov>. For more detailed information, please open up on the web page the *Environmental Hearings Office Handbook* and the *Environmental Hearings Office Sample Formbook*.
ALTERNATE FORMAT FOR THIS DOCUMENT AVAILABLE UPON REQUEST

YOUR RIGHT TO BE HEARD

The Forest Practices Appeals Board (Board) hears appeals from the decisions of the Department of Natural Resources (DNR) including:

1. Appeal of the approval or disapproval of a forest practices application.
2. Appeal of a civil penalty.
3. Appeal of a stop work order.
4. Appeal of a notice to comply.
5. Appeal of a notice of intent to disapprove.
6. Appeal of final hazard reduction plan.

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

To insure the Board's impartiality, the state Legislature created this independent, quasi-judicial state agency entirely separate from DNR and any other state, regional or local unit of government.

The Presiding Officer at each hearing is the Administrative Appeals Judge. That person is an experienced judge with a demonstrated knowledge of the law applicable to your case.

The Board consists of three part-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.

DO YOU NEED AN ATTORNEY?

An attorney may represent you, but the law does not require one. However, you should carefully consider whether a lawyer would be helpful, before you decide to represent yourself. The appeal process can be complicated and your rights are at stake. The hearings are conducted more like court trials, instead of city council meetings.

WHEN AND HOW TO FILE AN APPEAL

No fee is required for filing an appeal.

The time for filing an appeal depends on the type of action being appealed.

1. Forest Practice Application

If you are appealing the approval or disapproval of a **forest practices application**, your appeal must be received by the Board within 30 days of the approval or disapproval.

2. Civil Penalty

If you are appealing a **civil penalty**, the 30 days starts when you receive the notice of penalty. Alternatively, you can ask the DNR supervisor to reduce or eliminate the penalty within 15 days after you receive the notice. If the DNR response is not satisfactory, the 30 days for appeal to the Board begins when you receive the DNR response.

3. Notice to Comply

If you are appealing a **notice to comply**, you must ask the DNR regional office for a hearing within 15 days after the notice to comply is served on the operator or

landowner. A hearing with the DNR is a prerequisite to appeal to the Board for a notice to comply. If the DNR response is not satisfactory, the 30 days for appeal to the Board begins on the date of DNR's response.

4. Stop Work Order

If you are appealing a **stop work order**, there is only a 15 day appeal period, beginning when the operator has been served.

5. Notice of Intent to Disapprove

If you are appealing a notice of intent to disapprove, you must file the appeal within 30 days of the date of the notice of intent.

All appeals must be **RECEIVED** by the Board within the 30 day or 15 day (stop work order) appeal period. If not, your appeal will be dismissed.

WHERE TO FILE AN APPEAL

Your appeal must be filed with each of the following:

Original:

State Forest Practices Appeals Board

Physical address:

4224 6th Avenue SE
Bldg. 2, Rowe Six
Lacey, WA, 98504-0903

Mailing address:

PO Box 40903
Olympia WA 98504-0903

Copy:

State Department of Natural Resources,
1111 Washington Street SE
PO Box 47001
Olympia WA 98504-7001

Copy:

State Attorney General
Natural Resources Division,
Highways-Licenses Bldg.
1125 Washington Street
PO Box 40100
Olympia WA 98504-0100

Copy:

The permit applicant, if the appeal concerns the approval or disapproval of a forest practices application.

Note: Application to the DNR for remission/mitigation of a civil penalty, and appeal to DNR of a notice to comply are governed by different rules. Please refer to WAC 332-08 and WAC 222-46-030 and 060.

CONTENT OF THE APPEAL

You must supply the Board, in writing, with:

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

See WAC 223-08-075

TEMPORARY SUSPENSION OR DISCONTINUANCE (STAY)

A person appealing a department approval under RCW 76.09.220(8), or any operator, timber owner, or forest landowner appealing a stop work order, may request a temporary suspension or discontinuance of the department's decision. The Appellant must file a motion, supported by affidavit, setting forth specific facts supporting a temporary suspension or discontinuance. Upon receipt of the motion, the presiding officer will schedule a hearing and serve notice of the hearing on all parties.

In emergency situations, a temporary suspension or discontinuance may be granted by the presiding officer without a hearing, only if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party before any adverse party can be heard in opposition.

For more information on the temporary suspension or discontinuance, refer to WAC 223-08-087.

PRE-HEARING CONFERENCE

After the appeal is filed, a pre-hearing conference will be convened with the Presiding Officer. This conference is not for the purpose of arguing your case. The conference has three purposes: to discuss interest in settlement, including use of the Board's no-cost mediation program, to

determine the legal issues, and to set a schedule for preparing the case for hearing if settlement is not reached. The parties need to have a sufficient understanding of their case so they can present a list of legal issues, proposed witnesses and exhibits prior to the pre-hearing conference. If they have not been set previously, hearing dates will be set during the conference. 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, the hearing preparation deadlines and other important procedural information..

CAN THIS DISPUTE BE SETTLED?

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.

The Board has a no-cost mediation program to assist parties in reaching settlement. It is a voluntary program offered to the parties without charge. All parties must agree to mediate before a mediation can be scheduled. A trained Administrative Appeals Judge will work with the parties to resolve the case.

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

BEFORE THE HEARING

Before the hearing you will want to prepare. You have the right to review the DNR's file of their decision. Contact the Assistant Attorney General representing DNR to arrange a time and place to review the file.

Parties have the right to know in advance the other parties' witnesses and other evidence. This may be provided to you without formal procedures, such as by telephone, email, regular mail, and looking at public records.

If done formally, **discovery** is best accomplished with the assistance of a lawyer. Examples of formal discovery are: **Deposition**--questioning parties or witnesses before the hearing, under oath, with a court reporter present.

Interrogatory--presenting written questions to the other side. There are formal rules that apply to discovery. These are described or referenced in the Board's regulations.

Prior to the hearing, the parties will be required to exchange and file a final list of those witnesses and exhibits, which will be presented at the hearing.

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 be based on 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. An example of a non-dispositive motion is a motion in limine. A motion in limine asks the Board, in advance of the hearing to exclude 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. An example of a declaration may be found on page 28 of the Environmental Hearings Office (EHO) Sample Formbook. This Formbook may be found by going to the EHO website. The website is: <http://www.eho.wa.gov>. After you have opened to the home page, click on the "Resources" button under "Research." When that page opens up, click on "The Environmental Hearings Office Sample Formbook" under "Other Resources."

A declaration or affidavit may also identify and attach documents as exhibits. This is the format of the declaration contained in the EHO Sample Formbook.

Dispositive Motions

The scheduling of dispositive motions is set forth in the pre-hearing order. An original and sufficient copies of the dispositive motion for each Board member and the Presiding Officer, if the Presiding Officer is not a Board member, shall be filed with the Board. A copy should be served simultaneously on the date the motion is filed, on each party in the case.

Any party opposing the motion will typically have 10 days from the day it received the motion, to file an original and the requisite copies of a response with the Board and serve a copy on each of the other parties. The moving party generally will have seven days from the date it receives the response, to file an original and the requisite copies of a reply with the Board and serve a copy on each of the other parties. Any party may request an oral hearing from the Presiding Officer on the motion. The Presiding Officer determines whether to grant or deny the request. If the request is granted, the parties will typically personally appear and present their oral argument to the Board at its hearing room in Lacey, Washington.

Non-dispositive Motions

The deadlines for responding and replying to non-dispositive motions will generally be shorter than the above deadlines for dispositive motions. Additionally, 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.

HEARING

At the hearing, it is important to be **on time**. A party's failure to appear may result in default. A respondent who fails to appear probably will be bound by the decision resulting from the hearing, which he or she did not attend.

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

An opening statement, briefly outlining the facts each side will attempt to establish, may be made at the beginning of the hearing. After the opening statements, the party with the burden of proof will present its evidence. In a penalty or regulatory action, the agency has the burden of proof and will call witnesses first. In a permit appeal, the appealing party has the burden of proof and presents its witnesses first at the hearing.

In certain cases the Presiding Officer may determine a **site visit** would be helpful to the Board's understanding of the evidence. At such a visit, the parties are requested to

limit communication 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 it is not the time to present evidence or argue your case.

After the site visit, we return to the hearing. **Witnesses** who are sworn to tell the truth, testify from their personal knowledge in response to questions from the party calling them to testify. After this **direct testimony** is completed, the witness must answer questions on **cross-examination** asked by the attorney or representative of the other side. Quite often one or more Board members will ask questions.

Persons essential to your case should be available as witnesses at the hearing. The "hearsay" rule prevents you from relating their knowledge or information. Parties with important information are to be sworn and testify themselves.

Exhibits, such as letters, contracts, photographs, maps, etc. may be offered by any side to explain or prove contentions or facts. If there are no valid objections, the exhibit will be admitted as evidence. Please bring a copy for each Board member and other litigants as specified in the pre-hearing order. You should number them and provide an exhibit list at the hearing.

If you have multiple exhibits, please place them in a binder.

After all the testimony has been heard and the exhibits admitted as evidence, each litigant may summarize his or her side of the matter in a closing statement to the Board. At this point the hearing is ended and no further evidence is taken.

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 litigants generally within 90 days after the hearing, or after the submission of memoranda, briefs, or proposed findings.

YOU MAY APPEAL THE FINAL ORDER

The final 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 a reconsideration within 10 days of the date of the **ORDER**. You may appeal the Board's final action on a petition for reconsideration within 30 days from the date the order is mailed. Please note, if the Board fails to act on a petition for reconsideration within 20 days of its filing, it is deemed denied.

FREQUENTLY USED TERMS

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

APPELLANT: A person or persons bringing the appeal.

BOARD: The Washington State Forest Practices Appeals Board.

DEPARTMENT: The Washington State Department of Natural Resources (DNR).

FOREST PRACTICE: Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

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

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

MITIGATED: Reducing, diminishing or lessening either the penalty or the impact of the proposed action.

PERSON OR PERSONS: A citizen, a business firm, an association or a government agency.

PRESIDING OFFICER: 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.

The Environmental Hearings Office does not discriminate in employment or any of its services against persons with disabilities, and will make reasonable accommodations for any citizen who needs assistance to participate in our hearings or other activities.. If a party or a witness requires an interpreter, or qualifies for reasonable accommodations, that person shall notify the presiding officer at least three weeks before the hearing or situation for which assistance is needed.