



Environmental Appeal Board

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How to File an Appeal Under the *Water Sustainability Act*

This information sheet explains how to file an appeal of a decision made under the [Water Sustainability Act](#) (the “Act”) with the Environmental Appeal Board (the “Board”). The requirements can be found in the [Act](#) and in [section 22 of the Administrative Tribunals Act](#). And the Board’s [Rule 5](#). Rule 5 describes about how appeals can be filed and when the filing is effective.

What decisions may be appealed?

Most orders of the comptroller, a water manager or an engineer that result from an exercise of discretion are appealable. The *Act* makes several exceptions, however. The exceptions are for orders:

- extending water licences for power purposes under [section 19(9)];
- requiring licensees to submit to 30-year reviews of licences that will last more than 30 years [section 23(2)];
- requiring licensees to declare their use of water rights under their licence or to provide information/consents for verification purposes [section 30(6)];
- of the comptroller, a water manager or an engineer acting as a responsible person for a water sustainability plan [section 72(1)];
- of the comptroller that define the critical environmental flow threshold for a stream [section 87(1)];
- cancelling all or part of an authorization and associated rights because of non-payment of money owed to the government or a water bailiff [sections 94(1)(j) and (k)]; and
- deciding whether to enter into a compliance agreement and what its terms will be [section 102].

Who may appeal the decision?

Section 105(1) of the *Act* allows the following people to appeal orders to the Board:

- the person who is the subject of the order;
- an landowner whose land is or is likely to be physically affected by the order;
- the owner of works that are the subject of the order; and
- the holder of an authorization, a landowner whose land borders a river, or an applicant for an authorization, who considers that their rights are or will be negatively affected by the order.

Section 105(2) of the *Act* limits rights of appeal against orders authorizing drilling. A landowner who has consented to a drilling authorization on their land under section 62(4)(c) of the *Act* cannot appeal such an order, unless it is inconsistent with the consent they gave.

How do I start an appeal?

To appeal an order, you must deliver a “notice of appeal” to the Board’s office **within 30 days** of the order being delivered to you. A notice of appeal has been created as [Form 1](#). If you do not use Form 1, your notice of appeal **MUST**:

1. include your name, address, and telephone number;
2. the name and daytime telephone number of anyone representing you;
3. include the address to which all official letters and documents are to be sent, which may be your (or your representative’s) current postal address, fax, or email;
4. identify the decision you are appealing (e.g., name of the decision-maker, date of decision, what is the decision about);
5. provide a description of what is wrong with the decision and why it should be changed (the grounds for appeal and particulars);
6. provide a description of what you want the Board to order at the end of the appeal;
7. be signed by you or your representative; and
8. include a cheque, bank draft or money order for \$25 for each decision being appealed, payable to the Minister of Finance. The Board does not have the discretion to waive this appeal fee.

The Board also asks that you include your email address and/or your representative's email address (if available), the date you were notified about the decision, and a copy of the decision (if possible).

The notice of appeal may be sent to the Board by ordinary mail, registered or certified mail, or courier. You can instead leave a copy at the Board's office during normal business hours: 8:30 am to 4:30 pm, Monday to Friday, excluding public holidays. You can also fax or email the notice of appeal, and send the original plus the \$25 appeal fee afterward, by mail. Regardless of the way that it is sent, the notice of appeal **must** be received by the Board within the appeal period. The Board has no power to extend the time to appeal.

What happens if the notice of appeal is not complete?

If you do not satisfy all of the requirements described above, the Board will send a letter to let you know. The Board will not proceed with the appeal unless those deficiencies are fixed or explained.

An appeal may not act as a stay

Generally, when an appeal is filed the appealed decision remains effective. If you want to ensure the decision is not effective, you must ask the Board to "stay" the decision. For more information, see the Information Sheet, "[Stays Pending a Decision on an Appeal](#)".

An application is not needed for appeals of administrative penalties. Administrative penalties are automatically stayed when appealed, under section 99(4)(c) of the *Act*.