Environmental Appeal Board

2016/2017

Annual Report

APRIL 1, 2016 ~ MARCH 31, 2017

BRITISH COLUMBIA

Environmental Appeal Board

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Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2016 through March 31, 2017.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

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Message from the Chair

I am pleased to submit the Annual Report of the Environmental Appeal Board for the 2016/2017 fiscal year.

The Year in Review – Appeals

Section 59.2(a) of the *Administrative Tribunals Act* requires the Commission to provide a review of its operations during the preceding reporting period. After receiving a large number of appeals in 2015/2016, the Board received a more typical number of appeals in 2016/2017. Ninety-two appeals were filed during the 2016/2017 fiscal year, which is close to the five-year average of approximately 100 appeals. In comparison, 143 appeals were filed during 2015/2016. Due to the high number of appeals filed in 2015/2016, the Board was very busy and closed a total of 154 appeals during 2016/2017. Notably, the Board dealt with 102 appeals filed under the *Environmental Management Act* by companies in the pulp and paper industry in response to changes in the reporting requirements associated with their permits. Eighty-three of the appeals that were closed did not require a hearing, as the appeals were withdrawn, abandoned, rejected, or resolved by consent of the parties. I am also pleased to note that most of the matters that required a hearing were heard by way of written submissions, which reduces costs for all parties and the Board.

In addition, the Board heard and decided its first appeal involving an administrative monetary penalty under the *Environmental Management Act*. In that case, the Board confirmed a $20,000 penalty that was levied by the Director, *Environmental Management Act*, against a fast food company for failing to have an approved product stewardship plan for packaging and printed paper products as required under the *Recycling Regulation*.

During this reporting period, the BC Supreme Court issued three decisions on judicial reviews involving decisions of the Board. The BC Supreme Court dismissed a petition filed by Harrison Hydro Project Inc. and five limited partnerships over the calculation of water rental rates under the *Water Act* and the *Water Regulation*. The Court confirmed the Board's decision, finding that it was reasonable and consistent with the applicable legal principles. However, in another case, the Court allowed a petition by the Shawnigan Residents Association and directed the Board to reconsider a permit authorizing the operation of a contaminated soil landfill, primarily due to the Court's concern that some of the evidence before the Board was flawed. Finally, the Court issued a preliminary ruling that the judicial reviews of a Board decision and two related Ministry decisions should be heard together.

Legislative Changes – New Jurisdiction over *Mines Act* Appeals

During this reporting period, the Board's jurisdiction expanded to include appeals from certain decisions made by the Chief Inspector of Mines under the *Mines Act*. On February 27, 2017, amendments to the *Mines Act* came into force which establish an administrative penalty scheme for certain contraventions of the legislation, as well as an appeal process to an "appeal tribunal". The Board is identified as the "appeal tribunal" in a new regulation titled *Administrative Penalties (Mines) Regulation* (the "*Regulation*"), also made on February 27, 2017. As a result, the Board now hears appeals from decisions issued by the Chief Inspector of Mines regarding contraventions and administrative monetary penalties.

Plans for improving the Board's operations

Section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future. During 2016/17, the Board was involved in the replacement and upgrading of the electronic appeal management system that is used by the Board and the seven other tribunals that are jointly administered through a shared office and staff. The existing appeal management system is nearly 20 years old and its software is no longer supported. A new appeal management system will allow the shared administrative office to continue to function effectively and efficiently, using modern information technology. The Board plans to have the new system in place in 2017/18.

Forecast of workload for the next reporting period

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the succeeding reporting period. The Board's workload for the 2017/18 reporting period is expected to be consistent with the past five years. No significant increases or decreases in workload are forecast. Based on the past five years, it is expected that approximately 100 appeals will be active, 90 new appeals will be filed, and 50 hearings will be completed during the coming year.

Board Membership

The Board membership experienced some changes during the past year. I am very pleased to welcome Lorne Borgal, Kent Jingfors, and John M. Orr, Q.C., as new members of the Board. They will complement the expertise and experience of the outstanding professionals on the Board.

I am very fortunate to have a Board that is comprised of highly qualified individuals who can deal with the various subjects that are heard by the Board. The current membership includes professional biologists, agrologists, engineers, foresters, and lawyers with expertise in the areas of natural resources and administrative law. These members bring with them the necessary expertise to hear appeals on a wide range of subject matters, ranging from air emissions and contaminated sites, to guide outfitter hunting quotas, to water licensing on sensitive streams and water bodies.

I would like to take this opportunity to thank all Board members and staff for their hard work and dedication over the past year, and for their continued commitment to the work of the Board.

Alan Andison
Chair

Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period from April 1, 2016 to March 31, 2017.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, a selection of summaries of the decisions issued by the Board during the report period is provided, and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Board's website, and at the following libraries:

- Ministry of Environment and Climate Change Strategy Library
- University of British Columbia Law Library
- University of Victoria Law Library

Decisions are also available through the Quicklaw Database.

Detailed information on the Board's policies and procedures can be found in the Board's Practice and Procedure Manual, and the Board's Rules, which may be obtained from the Board office or viewed on the Board's website. If you have any questions or would like additional copies of this report, please contact the Board office. The Board can be reached at:

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The Board

The Environmental Appeal Board is an independent, quasi-judicial tribunal established on January 1, 1982 under the *Environment Management Act*, and continued under section 93 of the *Environmental Management Act*. As an adjudicative body, the Board operates at arms-length from government to maintain the necessary degree of independence and impartiality. This is important because it hears appeals from administrative decisions made by government officials under a number of statutes.

For the most part, decisions that can be appealed to the Board are made by provincial and municipal government officials under the following eight statutes, the relevant provisions of which are administered by the Minister identified: the *Environmental Management Act*, the *Integrated Pest Management Act*, and the *Greenhouse Gas Industrial Reporting and Control Act*, administered by the Minister of Environment and Climate Change Strategy; the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* and the *Mines Act* administered by the Minister of Energy, Mines, and Petroleum Resources; and the *Wildlife Act*, the *Water Sustainability Act*, and the *Water Users' Communities Act* administered by the Minister of Forests, Lands, Natural Resource Operations, and Rural Development. The legislation establishing the Board is administered by the Attorney General of BC.

The Board makes decisions regarding the legal rights and responsibilities of parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Board must decide its appeals by weighing the evidence before it, making findings of fact, interpreting the legislation and the common law and applying the law and legislation to the facts.

In carrying out its functions, the Board has the powers granted to it under the above-mentioned statutes, as well as additional powers provided under the *Administrative Tribunals Act*, including the ability to compel persons or evidence to be brought before the Board. The Board also ensures that its processes comply with the common law principles of natural justice.

Appointments to the Board and the administration of the Board are governed by the *Administrative Tribunals Act*.

Board Membership

Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 93(3) of the *Environmental Management Act*. The members appointed to the Board are highly qualified individuals, including professional biologists, professional foresters, professional engineers and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Board membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members. The length of the initial appointments and any reappointments of Board members, including the chair, are set out in the *Administrative Tribunals Act*, as are other matters relating to the appointments. That Act also sets out the responsibilities of the chair.

The Board members during this report period were as follows:

The Board	Profession	From
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
Robert Wickett, Q.C.	Lawyer	Vancouver
Members		
Maureen Baird, Q.C.	Lawyer	West Vancouver
Lorne Borgal	Professional Agrologist (retired)	Vancouver
Monica Danon-Schaffer	Professional Engineer	Britannia Beach
Cindy Derkaz	Lawyer (retired)	Salmon Arm
Brenda L. Edwards	Lawyer	Victoria
Les Gyug	Professional Biologist	West Kelowna
James Hackett	Professional Forester	Nanaimo
Jeffrey Hand	Lawyer	Vancouver
R.G. (Bob) Holtby	Professional Agrologist	West Kelowna
Kent Jingfors	Environmental Consultant	Nanoose Bay
Gabriella Lang	Lawyer (retired)	Campbell River
James S. Mattison	Professional Engineer	Victoria
Linda Michaluk	Professional Biologist	North Saanich
John M. Orr, Q.C.	Lawyer	Victoria
Howard Saunders	Forestry Consultant	Vancouver
David H. Searle, CM, Q.C.	Lawyer (retired)	North Saanich
Daphne Stancil	Lawyer/Biologist	Victoria
Michael Tourigny	Lawyer (retired)	Vancouver
Gregory J. Tucker, Q.C.	Lawyer	Vancouver
Douglas VanDine	Professional Engineer	Victoria
Reid White	Professional Engineer/Professional Biologist (retired)	Dawson Creek
Norman Yates	Lawyer/Professional Forester	Penticton

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the rights and interests of people. It applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. This law has developed to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Board is governed by the principles of administrative law and, as such, must treat all parties involved in a hearing before the Board fairly, giving each party a chance to explain its position.

Appeals to the Board are decided on a case-by-case basis. Unlike a court, the Board is not bound by its previous decisions; present cases of the Board do not necessarily have to be decided in the same way that previous ones were.

The Board Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Board shares its staff and its office space with the Forest Appeals Commission, the Oil and Gas Appeal Tribunal, the Community Care and Assisted Living Appeal Board, the Financial Services Tribunal, the Hospital Appeal Board, the Industry Training Appeal Board and the Health Professions Review Board.

Each of these tribunals operates completely independently of one another. Supporting eight tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, reducing administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If a member of the public requests information regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*. Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Board's published decisions which are posted on the Board's website, and may appear in this Annual Report. Some Board decisions may also be published in legal journals and on law-related websites.

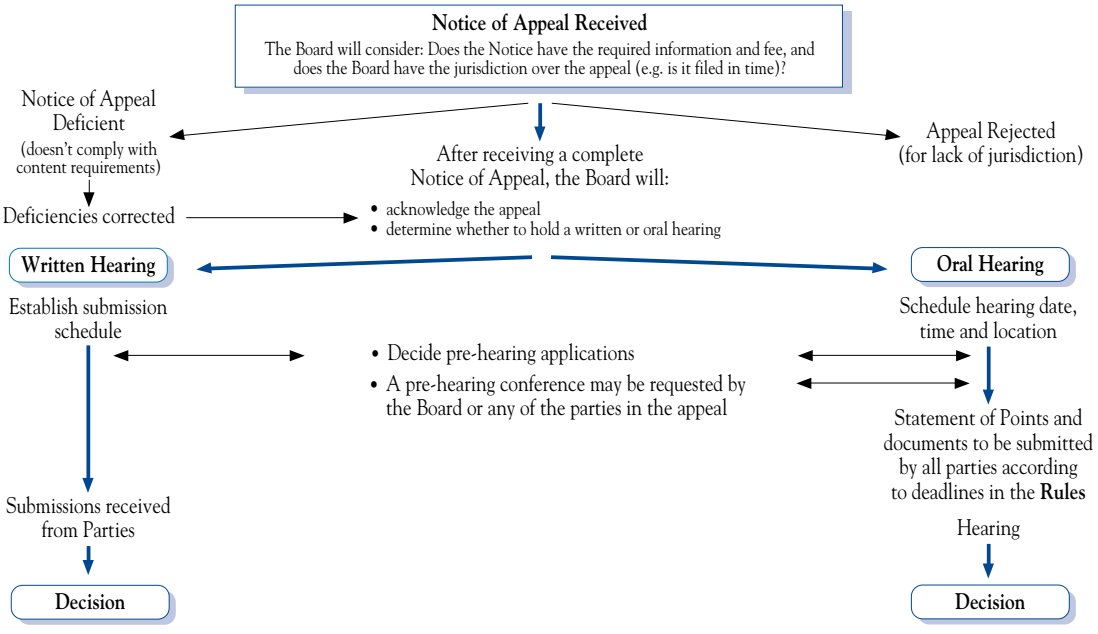
The Appeal Process

General Powers and Procedures of the Board

Part 8, Division 1, of the *Environmental Management Act*, together with the sections of the *Administrative Tribunals Act* specified in section 93.1 of the *Environmental Management Act*, set out the basic structure, powers and procedures of the Board. This legislation describes the composition of the Board and how hearing panels may be organized. It also describes the authority of the Board to add parties to an appeal, the rights of the parties to present evidence, and the Board's power to award costs. Additional procedural details are provided in the *Environmental Appeal Board Procedure Regulation*, B.C. Reg. 240/2015. The relevant portions of the *Environmental Management Act*, the *Administrative Tribunals Act*, and the *Regulation* are included at the back of this report.

In addition to the powers and procedures contained in the *Environmental Management Act*, the *Administrative Tribunals Act*, and the *Regulation*, the Board has developed its own policies and procedures. These policies and procedures have been created in response to issues that arise during the appeal process, from receipt of a notice of appeal, to the hearing, to the issuance of a final decision on the merits. To ensure that the appeal process is open and understandable to the public, these policies and procedures have been set out in the Environmental Appeal Board Practice and Procedure Manual which is posted on the Board's website. Also on the Board's website are a number of "Information Sheets" on specific topics and specific stages of the appeal process. The Board has also created a Notice of Appeal form that can be filled out on line. Under section 11 of the *Administrative Tribunals Act*, the Board also has the authority to make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it. During this reporting period, the Board released its Rules.

Finally, in order to determine what decisions are appealable to the Board, who can appeal the decisions, the time for filing an appeal, whether the Board can issue a stay of the decision under appeal, and what the Board's decision-making powers are with respect to the appeal, one must consult the individual statutes and regulations which provide the right of appeal to the Board. A summary of the appeal provisions in the individual statutes is provided below.



The Basics: who can appeal, what can be appealed and when to appeal

As stated above, to determine what decisions are appealable to the Board, who can appeal the decisions and the time for filing an appeal, as well as the Board's power to issue a stay of the particular decision under appeal, the individual statutes and regulations which provide the right of appeal to the Board must be consulted. The following is a summary of the individual statutes and the provisions that answer these questions.

Environmental Management Act

The *Environmental Management Act* regulates the discharge of waste into the environment, including the regulation of landfills and the clean-up of contaminated sites in BC, by setting standards and requirements, and empowering provincial officials, and in some cases municipal officials, to issue permits, approvals, operational certificates, and orders, and to impose administrative penalties for non-compliance. Waste regulated by this *Act* includes air contaminants, litter, effluent, refuse, biomedical waste, and special wastes.

The decisions that may be appealed under the *Environmental Management Act* are set out in Part 8, Division 2. That division states that a person "aggrieved by a decision" of a director or a district director may appeal that decision to the Board. An appealable "decision" is defined as follows:

(a) making an order,

(b) imposing a requirement,

(c) exercising a power except a power of delegation,

(d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

(e) including a requirement or a condition in an order, permit, approval or operational certificate,

(f) determining to impose an administrative penalty, and

(g) determining that the terms and conditions of an agreement under section 115(4) have not been performed [*under section 115(5), a director*

may enter into an agreement with a person who is liable for an administrative penalty; the agreement may provide for the reduction or cancellation of the penalty, subject to the terms and conditions the director considers necessary or desirable].

The Board has interpreted the phrase "person aggrieved" to mean that an appellant must establish that he or she has a genuine grievance because a decision has been made which prejudicially effects his or her interests.

The time limit for filing an appeal of a decision is 30 days after notice of the decision is given. The Board may order a stay of the decision under appeal, except in the case of administrative penalty decisions which are automatically stayed upon appeal.

Greenhouse Gas Industrial Reporting and Control Act

The *Greenhouse Gas Industrial Reporting and Control Act* enables performance standards to be set for industrial facilities or sectors by listing them within a Schedule to the *Act*. The Schedule sets a greenhouse gas emissions benchmark for liquefied natural gas facilities. The Schedule also includes an emission benchmark (which is not yet in force) for coal based electricity generation operations. The *Act* brings several aspects of previous greenhouse gas legislation into a single enactment, including the emission reporting framework that was established under the former *Greenhouse Gas Reduction (Cap and Trade) Act*, under which the Board previously heard appeals.

Under this *Act*, certain decisions of a director may be appealed by a person who is served with an appealable decision. Under section 40 of the *Act*, a person who is served with an administrative penalty notice referred to in subsection 40(1)(a) or (b), or a document evidencing a decision referred to in subsection 40(1)(c), may appeal the decision to the appeal board. Under section 40 of the *Act*, the following decisions may be appealed to the Board:

- a determination under section 24 of the *Act* of non-compliance with reporting requirements or of the extent of that non-compliance, as set out in an administrative penalty notice;
- a determination under section 25 of the *Act* of non-compliance with the *Act* or regulations, of the extent of that non-compliance, or of the amount of the administrative penalty, as set out in an administrative penalty notice;
- a prescribed decision or a decision in a prescribed class.

Several types of prescribed decisions can be appealed to the Board pursuant to the section 12 of the *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation*. Under section 12(1) of that regulation, a decision under the following sections of the *Greenhouse Gas Emission Reporting Regulation* may be appealed to the Board:

- section 16(2)(a) or (3)(a) [*choice between direct measurement and mass balanced-based methodology*]; and
- section 26(3)(b) [*verification bodies*].

In addition, under section 12(2) of the *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation*, a decision under the following sections of the *Greenhouse Gas Emission Control Regulation* may be appealed to the Board:

- section 10(1), (3) or (4) [*suspension or cancellation of accounts*];
- section 13(4)(b) [*validation bodies and verification bodies*];
- section 17(2) [*acceptance of project plan*]; and
- section 23(2) [*issuance of offset units*].

The Board's powers and procedures in Division 1 of Part 8, and sections 101, 102(2) and 103 of the *Environmental Management Act* apply to appeals under the Act, as provided in section 40(3) of the *Act* and section 12(4) of the *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation*. The time limit for filing an appeal of a decision is 30 days after notice of the decision is given. The Board may order a stay of the decision under appeal. However, in appeals of administrative penalties levied under sections 24(2) or 25(2) of the *Act*, an appeal acts as an automatic stay of the penalty.

Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act

The *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* requires suppliers of fuels used for transportation to supply a prescribed percentage of renewable fuels and to submit annual compliance reports to the government, and empowers government officials to impose administrative penalties for non-compliance.

Certain decisions of a director, as designated by the responsible minister, may be appealed by a person who is served with an appealable decision. The decisions that may be appealed are:

- a determination of non-compliance under section 11 of the *Act* [*imposed administrative penalties: fuel requirements*] or of the extent of that non-compliance, as set out in an administrative penalty notice;
- a determination of non-compliance under section 12 of the *Act* [*administrative penalties in relation to other matters*], of the extent of that non-compliance or of the amount of the administrative penalty, as set out in an administrative penalty notice;
- a refusal to accept an alternative calculation of carbon intensity under section 6(5)(d)(ii)(B) of the *Act* [*low carbon fuel requirement*]; and
- a prescribed decision or a decision in a prescribed class.

According to the *Renewable and Low Carbon Fuel Requirements Regulation*, B.C. Reg. 394/2008, the time limit for commencing an appeal is 30 days after the decision is served. The Board is not empowered to order a stay of the decision under appeal. However, under section 12(3)(c) of the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, if a person appeals an administrative penalty arising from a determination of noncompliance, the administrative penalty is automatically stayed pending the Board's final decision on the appeal.

Integrated Pest Management Act

The *Integrated Pest Management Act* regulates the sale, transportation, storage, preparation, mixing, application and disposal of pesticides in BC. This *Act* requires permits to be obtained for certain pesticide uses, and requires certain pesticide applicators to be certified. It also prohibits the use of pesticides in a way that would cause an unreasonable adverse effect, and it empowers government officials to impose administrative penalties for non-compliance.

Under this *Act*, the right of appeal (those with standing to appeal) is quite broad. The *Act* states that "a person" may appeal a decision under this *Act* to the Board. "Decision" is then defined as:

(a) making an order, other than an order under section 8 [*an order issued by the Minister of Environment*];

(b) specifying terms and conditions, except terms and conditions prescribed by the administrator, in a licence, certificate or permit;

(c) amending or refusing to issue, amend or renew a licence, certificate or permit;

(d) revoking or suspending a licence, certificate, permit or confirmation;

(e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;

(f) determining to impose an administrative penalty; and

(g) determining that the terms and conditions of an agreement under section 23(4) have not been performed [*under section 23(4), the administrator may enter into an agreement with a person who is liable for an administrative penalty. The agreement may provide for the reduction or cancellation of the penalty, subject to the terms and conditions the administrator considers necessary or desirable*].

The time limit for filing an appeal of a decision is 30 days after the date the decision being appealed is made. The Board may order a stay of the decision under appeal, except in the case of administrative penalty decisions which are automatically stayed upon appeal.

Mines Act

The *Mines Act* regulates mining activities in the province through a system of permits, regulations, and the Health, Safety and Reclamation Code. It applies to mines during their exploration, development, construction, production, closure, reclamation and abandonment phases. The *Mines Act* includes an administrative penalty scheme for certain contraventions of the legislation, as well as an appeal process to an "appeal tribunal". The Board is identified as the "appeal tribunal" in the *Administrative Penalties (Mines) Regulation* (the "*Regulation*").

Under section 36.1 of the *Mines Act*, the Chief Inspector of Mines may find that a person has contravened. or failed to comply with:

- an order made under the *Mines Act*;
- a term or condition imposed in a permit, a permit exemption, or a term or condition otherwise specified in section 36.1(b) of the *Mines Act*; or
- "prescribed provisions" of the *Mines Act*, the regulations under that *Act*, or the Health, Safety and Reclamation Code.

According to the *Regulation*, an administrative penalty may be levied for the failure to comply with permitting requirements, discrimination of an employee complying with the legislation, failure to properly supervise, failure to comply with certain provisions in the *Workplace Hazardous Materials Information System Regulation (Mines)*, and for various other contraventions identified in the *Regulation*.

Under section 36.2 of the *Mines Act*, the Chief Inspector may impose an administrative penalty for the contravention or the failure to comply. The Chief Inspector must notify a person of the decision finding a contravention and/or imposing an administrative penalty under section 36.3 of the *Mines Act*.

Under section 36.7 of the *Mines Act*, a person to whom a notice has been given under section 36.3 may appeal the decision to the Board. The time limit to commence an appeal is 30 days after the date on which the notice under section 36.3 is given to the person. The Board cannot order a stay of the appealed decision, but an appeal automatically postpones the date for paying a penalty. Section 37.4 of the *Mines Act* provides that, if a person on whom an administrative penalty is imposed commences an appeal, the person

must pay the penalty within 40 days after the date on which the Board's decision is given to the person.

Water Sustainability Act

The *Water Sustainability Act* regulates the use and allocation of surface water and ground water, regulates works in and about streams, and regulates the construction and operation of ground water wells. It also includes requirements for protecting fish and aquatic ecosystems, dam safety, and compliance. It empowers government officials to issue licences, approvals, orders, and administrative monetary penalties.

The decisions that may be appealed under the *Water Sustainability Act*, and the persons who may appeal them, are set out in section 105(1) of the *Act*. The *Act* states that, except as otherwise provided in the *Act*, an order resulting from an exercise of discretion of the comptroller, a water manager or an engineer may be appealed to the Board by the person who is subject to the order, an owner whose land is or is likely to be physically affected by the order (subject to an exception in section 105(2)), the owner of the works that are the subject of the order, or the holder of an authorization, a riparian owner, or an applicant for an authorization who considers that his or her rights are or will be prejudiced by the order.

Certain sections of the *Act* state that particular orders may not be appealed to the Board. For example, section 87(3) of the *Act* states that an order by the comptroller under section 87(1) (determining the critical environmental flow threshold for a stream once a significant water shortage declaration has been issued) is final and may not be appealed.

The time limit for filing an appeal is 30 days after notice of the order being appealed is delivered to the person commencing the appeal. The Board can order a stay of the order under appeal, except in the case of appeals of administrative penalty decisions which are automatically stayed pending the Board's final decision on the appeal.

Water Users' Communities Act

The *Water Users' Communities Act* provides for water users' communities. A water users' community is a group of six or more water licensees, each with their own licence(s), who create and maintain a system to store and deliver water. Water users' communities are incorporated and named by the comptroller. A water users' community may acquire, hold and control property and water licences. The community may also acquire, construct, hold, maintain, improve, replace and operate works. The provisions in the *Water Users' Communities Act* were previously in Part 3 of the *Water Act* before it was replaced by the *Water Sustainability Act*.

Section 100.1(1)(b) of the *Water Users' Communities Act* adopts the appeal provisions in section 105 of the *Water Sustainability Act*.

Wildlife Act

The *Wildlife Act* regulates the use, allocation, ownership, import and export of fish and wildlife in BC, and empowers government officials to issue licences, permits, certificates, and orders, and to impose administrative penalties for non-compliance. Activities regulated by this *Act* include hunting, angling in non-tidal waters, guide outfitting, and trapping.

Under section 101.1 of the *Wildlife Act*, a decision of a regional manager or the director that affects a licence, permit, registration of a trapline or guiding territory certificate, or an application for any

of those things, may be appealed by the person who is affected by the decision.

The time limit for filing an appeal under the *Wildlife Act* is 30 days after notice is given.

The Board can order a stay of the decision under appeal.

Starting an Appeal

For all appeals, an appellant must prepare a notice of appeal and deliver it to the Board office within the time limit specified in the relevant statute. The notice of appeal must comply with the content requirements in section 22 of the *Administrative Tribunals Act*. It must identify the decision that is being appealed, state why the decision should be changed, contain the name, address, and telephone number of the appellant and of the appellant's agent (if any), and the address for the delivery of notices regarding the appeal. Also, the notice of appeal must be signed by the appellant, or on his or her behalf by their agent, and the notice must be accompanied by a fee of $25 for each decision or order appealed. The Board has created a Notice of Appeal form that may be filled out on-line.

In addition, the Board requires a copy of the permit, licence, order or decision being appealed.

If the Board does not receive a notice of appeal within the specified time limit, the appellant will lose the right to appeal.

If the notice of appeal is missing any of the required information, the Board will notify the appellant of the deficiencies. The Board may refrain from taking any action on an appeal until the notice is complete and any deficiencies are corrected.

Once a notice of appeal is accepted as complete, the Board will notify the office of the official who made the decision being appealed. The decision-maker will be the respondent in the appeal.

Parties and Participants to an Appeal

A party to an appeal has a variety of important rights: the right to present evidence, cross-examine the witnesses of the other parties, and make opening and closing arguments. The person who filed the appeal (the appellant) and the decision-maker (the respondent) are parties to the appeal.

In addition to the appellant and respondent, the Board may add other parties to an appeal. As a standard practice, the Board will offer party status to a person who may be affected by the appeal, such as the person holding the permit or licence which is the subject of an appeal by another person. In addition, a person may apply to the Board to become a party to the appeal if he or she may be affected by the Board's decision. These additional parties are referred to as "third parties" to the appeal.

The Board also has the discretion to invite any person to be heard in the appeal, without making that person a party to the appeal. This may be done on the Board's initiative or as a result of a request. The Board refers to these people as "participants". If a person applies to participate in an appeal, the Board will decide whether the person should be granted participant status and, if so, the extent of that participation. In all cases, a participant may only participate in a hearing to the extent that the Board allows.

Stays

A "stay" has the effect of postponing the legal obligation to implement all or part of a decision or order under appeal until the Board has held a hearing, and issued its decision on the appeal.

The Board has the power to stay most decisions under appeal, with some exceptions. As

described above, under several Acts, an appeal of an administrative monetary penalty automatically acts as a stay of the penalty, or automatically delays the imposition of the penalty until the appeal is concluded.

Even if the Board has the authority to grant a stay, the Board may decide not to do so. A stay is an extraordinary remedy that a person must apply for. For the Board to grant a stay, the applicant must satisfy a particular legal test. That test is described later in this report under the heading "Summaries of Decisions: Preliminary Applications".

Dispute Resolution

The Board encourages parties to resolve the issues underlying an appeal at any time in the appeal process. The Board's procedures for assisting in dispute resolution are as follows:

- early screening of appeals to determine whether the appeal may be resolved without a hearing;
- pre-hearing conferences; and
- mediation, upon consent of all parties.

These procedures give the parties an opportunity to resolve the issues underlying the appeal and avoid the need for a formal hearing. If the parties reach a mutually acceptable agreement, the parties may set out the terms and conditions of their settlement in a consent order which is submitted to the Board for its approval. Alternatively, the appellant may withdraw their appeal at any time.

Pre-hearing Conferences

The Board, or any of the parties to any appeal, may request a pre-hearing conference. Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Board member and one staff member from the Board office. It will be less formal than a hearing and will usually follow an agenda, which is set by the parties. The parties are given an opportunity to resolve the issues themselves, giving them more control over the process.

If all of the issues in the appeal are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon, or some issues still remain, and the appeal will proceed to a hearing.

Scheduling a Hearing

After a notice of appeal is accepted by the Board, the chair will determine which member(s) of the Board will hear the appeal and the type of appeal hearing. A hearing may be conducted by way of written submissions, an oral (in person) hearing, or a combination of both.

If the chair decides that the issues in the appeal can be fairly decided on the basis of written submissions, the chair will schedule a written hearing. Prior to ordering a written hearing, the Board may request the parties' input.

If the chair decides that an oral (in person) hearing is required in the circumstances, the chair must set the date, time and location of the hearing and notify the parties and any other persons who are entitled to notice of the hearing. It may be held in the locale closest to the affected parties, at the Board office in Victoria or anywhere in the province.

Regardless of the type of hearing scheduled, the Board has the authority to conduct a "new hearing" on the matter before it. This means that the Board may hear the same evidence that was before the original decision-maker, as well as receive new evidence.

Written Hearings

If it is determined that a hearing will be by way of written submissions, the chair will invite all parties to provide submissions and will establish the due dates for the submissions. The general order of submissions is as follows. The appellant will provide its submissions, including its evidence, first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions, and to present their own evidence.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Oral Hearings

Oral (in person) hearings are normally scheduled in cases where there is some disagreement on the facts underlying the dispute, or where there is a need to hear the parties' evidence and assess the credibility of witnesses.

To ensure the hearing proceeds in an expeditious and efficient manner, in advance of the hearing, the chair asks the parties to provide the Board, and each of the parties to the appeal, with a written Statement of Points (a summary of the main issues, evidence, witnesses, and arguments to be presented at the hearing) and all relevant documents.

Board hearings are less formal than hearings before a court. However, some of the Board's oral hearing procedures are similar to those of a court: witnesses give evidence under oath or affirmation and witnesses are subject to cross-examination. In addition, each party to the appeal may have a lawyer or other spokesperson represent them at the hearing, but this is not required. The Board will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings before the Board are open to the public.

Evidence

The Board has full discretion to receive any information that it considers relevant and will then determine what weight to give the evidence when making its decision.

Experts

An expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on certain aspects of the subject matter of the appeal. To be an "expert" the person must have knowledge that goes beyond "common knowledge".

The Board is not bound by the provisions relating to expert evidence in the BC *Evidence Act*. However, the Board does require 84 days advance notice that expert evidence will be given at a hearing. The notice must include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Obtaining an Order for Attendance of a Witness or Production of Documents

If a proposed witness refuses to attend a hearing voluntarily or refuses to testify, a party may ask the Board to make an order requiring the person to attend a hearing and give evidence. Also, if a person refuses to produce particular relevant documents in their possession, a party may ask the Board to order the person to produce a document or other thing prior to, or during, a hearing.

Section 93.1 of the *Environmental Management Act* and subsection 34(3) of the *Administrative Tribunals Act* provide the Board with the power to require the attendance of a witness at a

hearing, and to compel a witness to produce for the tribunal, or a party to the appeal, a document or other thing in the person's possession or control that is admissible and relevant to an issue in the appeal.

The Decision

To make its decision, the Board is required to determine, on a balance of probabilities, what occurred and to decide the issues that are raised in the appeal.

The Board will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and a written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the participants, and the appropriate minister(s).

There is no right of appeal to the courts from a Board decision. A party dissatisfied with a decision or order of the Board may apply to the BC Supreme Court for judicial review of the decision pursuant to the *Judicial Review Procedure Act*. Under section 57 of the *Administrative Tribunals Act*, a judicial review application must be commenced within 60 days of the date that the Board's decision is issued. Alternatively, section 97 of the *Environmental Management Act* allows Cabinet to vary or rescind an order or decision of the Board if it is in the public interest to do so.

Costs

The Board also has the power to award costs. In particular, it may order a party or participant to pay all or part of the costs of another party or participant in connection with the appeal. The Board's policy is to only award costs in special circumstances.

In addition, if the Board considers that the conduct of a party has been improper, frivolous, vexatious or abusive, it may order that party to pay all or part of the expenses of the Board in connection with the appeal.

Legislative Amendments Affecting the Board

New jurisdiction over appeals under the *Mines Act*

On February 27, 2017, the Lieutenant Governor in Council brought into force amendments to the *Mines Act* which establish an administrative penalty scheme for certain contraventions of the legislation, as well as an appeal process to an "appeal tribunal". The Board is identified as the "appeal tribunal" in a new regulation titled *Administrative Penalties (Mines) Regulation* (the "*Regulation*"), also made on February 27, 2017.

The types of decisions that may be appealed to the Board under the *Mines Act* have already been set out in this annual report. The time to appeal a notice of decision, and the Board's decision-making powers on an appeal, are set out in section 36.7 of the *Mines Act*. Section 10 of the *Regulation* sets out the provisions of the *Administrative Tribunals Act* that apply to the Board for the purposes of hearing appeals under this legislation.

To ensure that the appeal process is easy to understand, the Board has created a new information sheet titled, "How to Start an Appeal under the *Mines Act*", and has amended the process and procedure documents on its website to include this new category of statutory appeals.

Recommendations

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees.

The Board has identified no trends or special problems that need to be reported on. Accordingly, the Board is not making any recommendations at this time.

Statistics

Section 59.2(c) of the *Administrative Tribunals Act* requires the Board to report details on the nature and number of appeals and other matters received or commenced by the Board during this reporting period

The following tables provide information on the appeals filed with the Board, and decisions issued by the Board, during this reporting period. The Board publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Board also issues hundreds of unpublished decisions on a variety of preliminary matters, which are included in a separate line in the statistics below.

Between April 1, 2016 and March 31, 2017, a total of 92 appeals were filed with the Board against 92 administrative decisions. No appeals were filed or heard under the *Greenhouse Gas Industrial Reporting and Control Act*, the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, the *Integrated Pest Management Act*, or the *Mines Act*. The Board issued a total of 310 decisions, of which 145 were published.

April 1, 2016 – March 31, 2017

Total appeals filed		**92**
Total appeals closed		**154**
Appeals abandoned or withdrawn		**77**
Appeals rejected, jurisdiction/standing		**42**
Hearings held:		
Oral hearings completed	10	
Written hearings completed	39	
Total hearings held		**49**
Total oral hearing days		**11.5**
Decisions issued:		
Appeals allowed	4	
Appeals allowed, in part	1	
Appeals dismissed	6	
Final regular decisions		**11**
****Final decisions resulting from applications**		**21**
Total final decisions		**32**
Consent orders/s. 17 settlement orders		**3**
Preliminary decisions		**272**
Costs decisions		**2**
Reconsideration decisions		**1**
Total decisions		**310**

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This table provides an overview of the total appeals filed, hearings held, and decisions issued by the Board during the report period. It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Notes:

* This statistic includes final hearings of the merits of appeals, and hearings on preliminary applications and post-hearing applications.

** This statistic includes applications for summary dismissal, for an order withdrawing or abandoning an appeal under section 17 of the Administrative Tribunals Act, etc.

Appeal Statistics by Act

	Environmental Management Act	Greenhouse Gas Industrial Reporting and Control Act	Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act	Integrated Pest Management Act	Mines Act	Water Act/Water Sustainability Act/Water Users' Communities Act	Wildlife Act	Total
Appeals filed during report period	64				9	19		92
Appeals closed – final decision	24				2	6		32
Appeals closed – consent order/s. 17 settlement	1					2		3
Appeals closed - abandoned or withdrawn	71				2	4		77
Appeals closed - rejected jurisdiction/standing	40				1	1		42
Total appeals closed	135				5	11		151
Hearings held								
Oral hearings	3				5	2		10
Written hearings	26				5	8		39
Total hearings held	29				10	10		49
Total oral hearing days	3				7.5	1		11.5
Decisions issued								
Final decisions	24				2	6		32
Consent orders/s. 17 settlement orders	1					2		3
Costs decisions					1	1		2
Reconsiderations	1							1
Preliminary applications	226				27	19		272
Total decisions issued	**252**				**30**	**28**		**310**

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This table provides a summary of the appeals filed, hearings held and published decisions issued by the Board during the report period, categorized according to the statute under which the appeal was brought.

Performance Indicators and Timelines

Sections 59.2(b) and (d) of the *Administrative Tribunals Act*, respectively, require the Board to report on performance indicators, and provide details of the time from filing or commencement of appeals to the Board's decision on the appeals and other matters disposed of by the Board during this reporting period.

The Board strives to facilitate the early resolution of appeals, and the resolution of appeals without the need for a hearing, to reduce the time and expenses associated with appeals for all parties. The Board is pleased to report that 54% of the appeals that closed during this reporting period were resolved without the need for a hearing. As a result, the parties and the Board avoided the time and expenses associated with a hearing in those cases. Of the hearings that were held, 80% were conducted by way of written submissions rather than in person. Conducting a hearing in writing also saves time and expenses for the parties and the Board.

Regarding the appeals that were concluded without the need for a hearing, the time elapsed between the filing of the appeal and the closure of the appeal was an average of 317 days. Regarding appeals which involved a hearing on the merits, the time elapsed from the filing of the appeal until the final decision was issued was an average of 229 days. The overall average for all appeals concluded during this reporting period was 299 days.

The Board is also pleased to report that it achieved the timelines set out in its Practice Directive regarding the time elapsed from the completion of the hearing until the release of the final decision. Practice Directive No. 1, which is available on the Board's website, provides timelines for completing appeals and releasing final decisions on appeals. For matters where the hearing is conducted in writing or the total number of hearing days to complete the appeal is two days or less, the final decision will generally be released within three months of the close of the hearing. For matters where the total number of hearing days to complete the appeal is three to five days, the final decision will generally be released within six months of the close of the hearing. For matters where the total number of hearing days to complete the appeal is six or more days, the final decision will generally be released within nine months of the close of the hearing. In all appeals involving a hearing on the merits that were completed within this reporting period, the decisions were released well within those timelines.

Summaries of Board Decisions

April 1, 2016 ~ March 31, 2017

Appeal cases are not heard by the entire Board, they are heard by a "panel" of the Board. As noted earlier in this report, once an appeal is filed, the chair of the Board will decide whether the appeal should be heard and decided by a panel of one or by a panel of three members of the Board. The size and the composition of the panel (the type of expertise needed on a panel) generally depends upon the subject matter of the appeal and/or its complexity. The subject matter and the issues raised in an appeal can vary significantly in both technical and legal complexity. The chair makes every effort to ensure that the panel hearing an appeal will have the depth of expertise needed to understand the issues and the evidence, and to make the decisions required.

In terms of its decision-making authority, a panel has the power to confirm, vary or rescind the decision under appeal. In addition, under all of the statutes except the *Mines Act*, a panel may also send the matter back to the original decision-maker with or without directions, or make any decision that the original decision-maker could have made and that the panel considers to be appropriate in the circumstances. When an appellant is successful in convincing the panel, on a balance of probabilities, that the decision under appeal was made in error, or that there is new information that results in a change to the original decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all of the changes that he or she asked for, the appeal is said to be "allowed in part". When an appellant fails to establish that the decision was incorrect on the facts or in law, and the Board upholds the original decision, the appeal is said to be "dismissed".

Not all appeals proceed to a hearing and a decision by the Board. Many cases are settled or resolved prior to a hearing. The Board encourages parties to resolve the matters under appeal either on their own or with the assistance of the Board. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a consent order and ask the Board to approve the order. The consent order then becomes an order of the Board. In the summaries, the Board has included an example of a case that resulted in a consent order.

In addition, some cases are withdrawn or abandoned by an appellant, before a hearing. In other cases, an appellant's standing to appeal may be challenged, or the Board's jurisdiction over the appeal may be challenged, resulting in the Board dismissing the appeal in a preliminary decision. The Board is also called upon to make a variety of other preliminary decisions, some which are reported and others that are not. Examples of some of the preliminary decisions made by the Board have been provided in the summaries below.

The summaries that have been selected for this Annual Report reflect the variety of subjects and the variety of issues that come before the Board in any given year. The summaries have been organized into preliminary applications decided by the Board, and final decisions on the merits of the appeal. The summaries of final decisions are further organized by the statute under which the appeal was filed. Please refer to the Board's website to view all of the Board's published decisions and their summaries.

Preliminary Applications and Decisions

Jurisdictional Issues

For the Board to have jurisdiction over an appeal, certain requirements in the Board's enabling legislation must be met. Generally, the legislation sets out requirements such as the categories of decisions that may be appealed, the categories of persons who may file appeals, and the time limits for filing an appeal. All of the applicable legislative requirements must be met before the Board has jurisdiction to hear an appeal.

Over the years, there have been many cases in which the Board has been asked to determine, as a preliminary matter, whether the person filing an appeal has "standing" to appeal, i.e., whether the person falls within a category of persons who may file an appeal under a specific *Act*. The requirements for "standing" vary from one *Act* to another. For example, under section 101(1) of the *Environmental Management Act*, an appeal may be initiated by a "person aggrieved by a decision".

Similarly, the Board must sometimes make a preliminary determination about whether the decision or order being appealed is appealable under the applicable legislation, as the types of decisions or orders that may be appealed vary from one *Act* to another. For example, specific types of decisions may be appealed under the *Environmental Management Act*. Section 99 of that *Act* defines "decision" for the purposes of an appeal.

The following summaries include examples of preliminary decisions regarding who has "standing" to appeal, and the types of decisions that may be appealed to the Board.

Changes in reporting requirements for the pulp and paper industry are appealable "decisions"

2016-EMA-001(a) to 030(a), 032(a) to 056(a), 061(a), 067(a) to 105(a) West Fraser Mills Ltd. et al v. Regional Director, *Environmental Management Act*

Decision Date: September 13, 2016

Panel: Alan Andison

West Fraser Mills Ltd. and nine other companies in the pulp and paper industry (collectively, the "Appellants") filed separate appeals against numerous notifications issued by the Regional Director, *Environmental Management Act* (the "Director"), Ministry of Environment ("Ministry"). The Director sent emails to thousands of permit holders, including the Appellants, notifying them that the Ministry was implementing new reporting processes for permits that authorize the discharge of waste under the *Environmental Management Act* (the "*Act*"). One or both of the following notifications was included in the emails:

- a notification requiring annual reports for high priority authorizations to include an annual status form (the "ASF" notifications); and
- a notification requiring non-compliance reporting to be submitted electronically to the Ministry (the "NCR" notifications).

NCR notifications were sent to approximately 3,209 permit holders, and ASF notifications were sent to 182 permit holders. Each of the Appellants appealed one or both of the notifications that pertained to their permits. A total of 95 appeals were before the Board: 27 appeals against the ASF notifications; and 68 appeals against the NCR notifications.

After the appeals were filed, the Director raised a preliminary issue regarding whether the ASF and NCR notifications were appealable "decisions" under section 99 of the *Act*. If the ASF and NCR notifications were not "decisions" as defined under section 99, then the Board had no jurisdiction over the appeals.

The Director argued that the notifications were not appealable "decisions", as they were administrative in nature, and merely addressed the method by which any existing reporting requirement in a permit was to occur. In addition, the Director submitted that the notifications only applied if a permit already contained the relevant reporting requirement.

The Appellants submitted that the notifications were appealable under section 99(b) of the *Act* because they contained the "imposition of a requirement". The Appellants argued that the notifications changed the manner of reporting and, in some cases, required additional information to be provided that was not otherwise required by the permit. Further, the Appellants submitted that the decisions were made by a statutory decision-maker under the legislation.

First, the Board considered whether the notifications contained the "imposition of a requirement" under section 99(b) of the *Act*. The Board reviewed the language in the notifications and the documents that were attached to them. The Board found that the notifications imposed requirements that changed the manner of reporting that was required in many of the permits. For some permits, the notifications also imposed requirements for the Appellants to provide the Ministry with information that their permits did not already require them to provide. Although the Director may have intended the notifications to simply change how the Appellants would carry out pre-existing reporting requirements under their permits, the Board found that the changes were substantive in nature, and not simply administrative. The Board also found that, in issuing the notifications, the Director was acting under section 16(4)(j) of the *Act* by changing or imposing requirements in the Appellants' permits "to report information specified by the director in the manner specified by the director." Consequently, the Board concluded that the notifications were appealable decisions because they contained the "imposition of a requirement" under section 99(b) of the *Act*.

In conclusion, the Board found that it had jurisdiction over the appeals.

Greater Vancouver granted standing to appeal Cache Creek landfill closure plans

2016-EMA-126(b) Greater Vancouver Sewerage and Drainage District v. Director, *Environmental Management Act* (Wastech Services Ltd. and Village of Cache Creek, Third Parties; Ashcroft Indian Band and Bonaparte Indian Band, Participants)

Decision Date: January 16, 2017

Panel: Alan Andison

The Greater Vancouver Sewerage and Drainage District ("GVSDD") appealed a decision by the Director, *Environmental Management Act*, Ministry of Environment, to approve two plans related to the closure of the Cache Creek landfill. Most of the waste discharged to the landfill comes from the Greater Vancouver Regional District (now called Metro Vancouver), but the landfill also receives waste from the Village of Cache Creek (the "Village") and the

Thompson Nicola Regional District. Wastech Services Ltd. ("Wastech") and the Village operate the landfill pursuant to an operational certificate that includes requirements for the landfill's closure. Wastech and the Village submitted the closure plans that the Director had approved. The costs associated with the closure plans must be paid by the GVSDD pursuant to a private agreement between Wastech and the GVSDD.

The GVSDD appealed the approval of the closure plans on several grounds. The main issue concerned a proposal in the plans to collect and treat groundwater affected by elevated levels of chloride. The GVSDD submitted that groundwater treatment should not be part of the closure plans, because the landfill is not the source of the elevated chloride, and the chloride level poses no threat to the environment or human health.

After the appeal was filed, the Director challenged the GVSDD's standing to appeal the approval. The Director argued that the GVSDD was not a "person aggrieved" by the approval within the meaning of section 100(1) of the *Environmental Management Act* (the "*Act*"), and therefore, the Board had no jurisdiction over the appeal. The Director submitted that the GVSDD was only concerned with the economic impact of the approval on the GVSDD, as a result of its agreement with Wastech. The Director also argued that the phrase "person aggrieved" has been interpreted as excluding persons who only claim that their economic interests are affected by the decision under appeal.

The Board noted that the legal test to establish standing under section 100(1) of the *Act* is whether the appellant has provided sufficient evidence to establish, on a prima facie basis, that the appealed decision prejudicially affects the appellant's interests. The appellant's interests must be affected by the appealed decision in a way that is distinct from the general public. The Board found that the courts have made it clear that unduly restrictive interpretations of the phrase "person aggrieved" in the *Act* should be avoided.

Turning to the facts, the Board found that the GVSDD provided sufficient *prima facie* evidence to establish that its interests will be affected by the approval in ways that are distinct from the general public. Approximately 90% of the waste that is disposed of at the landfill is deposited by the GVSDD. Although the GVSDD chose to hire a contractor, Wastech, to administer and operate the landfill, the GVSDD is, by far, the biggest user of the landfill.

Furthermore, the Board held that the economic impacts of an appealed decision on a person's interests, as distinct from economic impacts on the general public, may form the basis of standing as a "person aggrieved" under the *Act*, as long as the alleged economic harm arises from the appealed decision. The Board found that the approval affects the GVSDD's interests by approving closure plans that uniquely affect the GVSDD's interests and obligations in relation to the landfill and the closure process. Although the agreement between Wastech and the GVSDD is the mechanism by which the GVSDD bears certain financial responsibilities for the landfill, the GVSDD's grievance arose from the closure plans that were approved under the approval. Specifically, the risk of harm to the GVSDD's economic interests arose from the definition of "closure" and the groundwater collection and treatment proposed in the closure plans, which were approved under the approval. The approval, and not the agreement with Wastech, triggered the risk of harm to the GVSDD's interests.

The Board concluded that the GVSDD provided sufficient evidence to establish, on a *prima facie* basis, that the approval prejudicially affects the GVSDD's interests, such that it is "a person aggrieved" under section 100(1) of the *Act*.

Consequently, the Board denied the application to dismiss the appeal for lack of jurisdiction.

An Extraordinary Remedy – the Power to Order a Stay

An appeal to the Board does not automatically prevent the decision under appeal from taking effect, except for a few types of decisions specified in the legislation. In most cases, the decision under appeal remains valid and enforceable unless the Board makes an order to temporarily "stay" the decision. A temporary stay prevents the decision from taking effect until the appeal is decided.

If a party wants to postpone the decision from taking effect until after the appeal is decided, the party must apply to the Board for a stay and address the following issues:

- whether the appeal raises a serious issue to be decided by the Board;
- whether the applicant for the stay will suffer irreparable harm if a stay is not granted; and
- whether there will be any negative consequences to property (real or economic), the environment or to public health or safety if the decision is stayed until the appeal is concluded (the balance of convenience test).

When addressing the issue of irreparable harm, the party seeking the stay must explain what harm it would suffer if the stay was refused and why this harm is "irreparable" (i.e., it could not be remedied if the party ultimately wins the appeal). "Irreparable" has been defined by the Supreme Court of Canada as follows:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision …, where one party will suffer permanent market loss or irrevocable damage to its business reputation …, or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined.

In addressing the issue of "balance of convenience", the party seeking the stay must show that it will suffer greater harm from the refusal to grant a stay than the harm suffered by the other parties or the environment if the stay is granted.

Public interest in the protection of human health and the environment leads to a stay of a permit

2016-EMA-107(a) to 2016-EMA-119(a) Nickmekl Enhancement Society et al v. District Director, *Environmental Management Act* (Ebco Metal Finishing L.P., Third Party)

Decision Date: May 26, 2016

Panel: Alan Andison

Thirteen individuals and organizations (collectively, the "Appellants") filed separate appeals against an approval issued by the District Director, *Environmental Management Act* (the "District Director"), of the Greater Vancouver Regional District ("Metro Vancouver"). The approval authorized Ebco Metal Finishing L.P. ("Ebco") to discharge contaminants to the air from a galvanizing facility located in Surrey, BC. The approval was valid for nine months, from March 1 to November 30, 2016. The approval was issued under both the Greater Vancouver Regional District Air Quality Management Bylaw and section 15 of the *Environmental Management Act* (the "*Act*").

The approval authorized the discharge of a maximum of 7 mg/m^3 of zinc, 20 mg/m^3 of particulates, and 0.024 t/year of sulphuric acid. The approval also regulated the maximum emission flow rates of four emission sources at the facility. The approval contained numerous conditions, including

requirements for Ebco to submit certain plans and reports to the District Director on specific dates during the term of the approval. For example, Ebco had to submit plans, for the District Director's review and approval, setting out the methodologies it would use for emission testing and air dispersion modeling. Ebco also had to provide the District Director with reports discussing the predicted maximum concentrations of the emissions and the potential impacts of the emissions on human health and the environment.

In their Notices of Appeal, the Appellants requested a stay of the approval, pending the Board's decision on the merits of the appeals.

In determining whether the stay applications ought to be granted, the Board applied the three-part test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*. With respect to the first stage of the test, the Board found that the appeals raised serious issues which were not frivolous, vexatious, or pure questions of law. The issues included whether the District Director had sufficient information about the potential impacts of the emissions before he issued the approval, whether he was biased or erred in exercising his discretion, and whether the emissions may cause harm to human health and the environment. Consequently, the Board proceeded to consider the next part of the test.

Regarding the second part of the test, the Board found that the Appellants, as the applicants for a stay, had the onus of establishing that their interests would likely suffer irreparable harm if a stay was denied. The Board found that they had failed to do so. The Appellants asserted that the emissions would cause harm to the health of humans, horses, and fish, and harm to soil, water, crops, and business interests. Some of the Appellants claimed that scientific studies supported their assertions. However, the Appellants cited no scientific studies, or evidence such as a letter from a medical professional or veterinarian, to support their assertions. The Appellants also failed to identify the levels at which the air contaminants may cause the alleged adverse effects. The Board found that some of the Appellants may experience additional costs, such as costs to test their crops or a temporary loss of some customers, if a stay was denied, but there was no evidence that they would suffer irreparable harm to their business interests.

Turning to the third part of the test, the Board weighed the potential harm to the Appellants' interests, if a stay was denied, against the potential harm to Ebco's interests if a stay was granted. The Board found that, although the Appellants would suffer some additional costs if a stay was denied, Ebco would also suffer some additional costs if a stay was granted. Based on those considerations, the balance did not clearly tip in favour of either party.

The Board then considered that the *Act* promotes certain public interests, including the regulation of waste emissions for the protection of the environment and human health. The Board found that, in deciding a preliminary application for a stay of an approval, there is a general presumption that the waste discharge authorized by the approval is subject to requirements that provide adequate protection for human health and the environment. However, in the present case, the approval contained requirements for Ebco to provide the District Director with plans and reports which would provide information about the predicted dispersion of the emissions and the effects on human health on the environment. On their face, those requirements indicated that the District Director did not have this type of information when he issued the approval. Moreover, Ebco provided no scientific or technical information to the Board in support of its claims that the emissions would cause no harm, and Ebco acknowledged that it had no previous emission data for sulphuric acid. In these circumstances, the Board found that it could not presume that the

approval, on its face, provided adequate protection for human health and the environment, or that denying a stay would not pose an unreasonable risk of harm to human health or the environment. Rather, the Board found that denying a stay would allow Ebco to emit contaminants that had unknown dispersion characteristics and impacts.

For those reasons, the Board concluded that the balance of convenience favoured granting a stay pending Ebco providing the District Director with certain plans and reports that were required in the approval, although Ebco was allowed to operate in accordance with the approval to the extent necessary for completing the emission testing required by the approval. The Board ordered that, once those plans and reports were completed to the District Director's satisfaction, the District Director must advise the Board and the parties, and the Board would then rescind the stay.

Accordingly, the stay applications were granted.

Final Decisions

Environmental Management Act

$20,000 penalty confirmed for noncompliance with *Recycling Regulation*

2016-EMA-120(a) MTY Tiki Ming Enterprises Inc. v. Director, *Environmental Management Act*

Decision Date: September 1, 2016

Panel: Michael Tourigny

MTY Tiki Ming Enterprises Inc. ("MTY") appealed a decision issued by the Director, *Environmental Management Act*, Ministry of Environment. The Director concluded that MTY had contravened section 2 of the *Recycling Regulation* (the "*Regulation*"), and he imposed an administrative penalty of $20,000 against MTY.

MTY is a franchisor of various quick service restaurants in BC and across Canada. With respect to MTY's BC operations, section 2 of the *Regulation* requires MTY, as a producer of packaging and printed paper products, to have an approved product stewardship plan, or to appoint an agency with an approved product stewardship plan to carry out MTY's duties under the *Regulation*.

The requirement for producers of these products to have a product stewardship plan was added to the *Regulation* a few years before the Director issued the decision against MTY. On May 19, 2011, the *Regulation* was amended by adding Schedule 5, which made producers of packaging and printed paper products subject to the *Regulation*. Section 3 of Schedule 5 included a 36-month transition period which required producers of packaging and printed paper products to have an approved product stewardship plan in effect by May 19, 2014.

In June 2014, the Ministry sent a warning letter to MTY requesting that it advise the Ministry by September 2014 as to how it had met its obligations under the *Regulation*. By October 2015, MTY still had not advised the Ministry how it had met its obligations under the *Regulation*. The Ministry decided to proceed with enforcement action.

On February 25, 2016, the Director notified MTY that he was considering imposing an administrative penalty of $40,000 for MTY's non-compliance with section 2 of the *Regulation*. The Director offered MTY an opportunity to be heard before making a final decision. In response, MTY advised the Director that it had appointed Multi-Material BC ("MMBC") to carry out its duties under the *Regulation* with respect to product stewardship plans.

The Director concluded that MTY did not have an approved product stewardship plan as required by section 2 of the *Regulation* until March 21, 2016, when MTY appointed MMBC as its agent for the purposes of the *Regulation*. Since MTY had belatedly come into compliance with the *Regulation*, the Director reduced the penalty by 50% of the amount originally proposed, and imposed a penalty of $20,000 against MTY.

MTY appealed the decision on several grounds. MTY submitted that it had acted in good faith since 2012 to meet the requirements of the *Regulation*, and had paid a total of $16,869.01 to file annual reports with MMBC for 2013, 2014, and 2015. MTY argued that the penalty was "grossly excessive and disproportionate." MTY also submitted that this was its first contravention, the contravention caused no environmental damage, and MTY did not profit from its behavior. MTY requested that the penalty be cancelled.

The Board found that, between May 19, 2014 and March 21, 2016, MTY was a producer of packaging and printed paper products, and was in contravention of its obligations under section 2 of the *Regulation* by reason of its failure to have an approved product stewardship plan or to have appointed an agency with an approved product stewardship plan under Part 2 of the *Regulation*.

In addition, the Board considered each of the applicable factors for assessing the appropriate penalty, as set out in section 7(1) of the *Penalties Regulation*, based on the evidence. Specifically, the Board found that MTY's non-compliance persisted from May 19, 2014 until March 21, 2016, which undermined the integrity of the regulatory regime and the Ministry's capacity to protect and conserve the natural environment. Although the immediate environmental impact of the contravention was low, a lack of producer fees to fund the packaging and printed paper recycling program in BC may undermine the program. The Board also found that the continuing non-compliance by MTY was deliberate. Despite a clear record of communication between MTY and the Ministry, and between MTY and MMBC, which showed that MTY was aware of its obligations and the steps it needed to take to comply with the *Regulation*, MTY failed to take reasonable steps to achieve compliance until March 2016, almost two years after the *Regulation's* requirements came into effect. Although MTY did not "profit" from its contravention, it derived some economic benefit from its delay in paying MMBC fees of $16,869.01 until at least April 2016, rather than the earlier dates that payment would have been made if MTY has signed its membership agreement with MMBC effective from May 19, 2014, as required by the *Regulation*. Finally, the Board agreed with the Director's reduction of the preliminary penalty amount by 50% to $20,000. The reduction acknowledged MTY's belated efforts to correct the contravention, and reflected the fact that MTY had paid $16,869.01 in fees to MMBC that it had previously avoided paying through non-compliance.

In conclusion, the Board found that the administrative penalty of $20,000 was fair and reasonable in the circumstances, and would serve as an adequate deterrent specifically to MTY, and generally to other producers subject to the *Regulation*. Accordingly, the Board confirmed the Director's decision and the $20,000 penalty. The appeal was dismissed.

Greenhouse Gas Industrial Reporting and Control Act

There were no decisions by the Board during this reporting period.

Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act

There were no decisions by the Board during this reporting period.

Integrated Pest Management Act

There were no decisions by the Board during this reporting period.

Mines Act

There were no decisions by the Board during this reporting period.

Water Act/Water Sustainability Act

Water licence amendments for run-of-river hydroelectric project adequately protect stream flows

2015-WAT-007(a) 5997889 Manitoba Ltd. (Boralex) v. Acting Regional Executive Director

Decision Date: November 17, 2016

Panel: Gabriella Lang, Daphne Stancil, Douglas VanDine

5997889 Manitoba Ltd. ("Boralex") appealed a decision of the Assistant Regional Executive Director (the "Director"), Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"), denying Boralex's request to amend the Instream Flow Requirements (the "IFRs") stipulated in Boralex's conditional water licence. IFRs are the minimum water flows in a stream that are required to maintain a certain level of ecological health. The conditional water licence authorizes Boralex to divert water from Jamie Creek and West Jamie Creek for use in a run-of-river hydroelectric project (the "Project"). Boralex requested that the licence be amended to allow lower IFRs, which would allow more water to be diverted from the stream for use in the Project.

West Jamie Creek flows into Jamie Creek upstream of the Project's powerhouse. This confluence is downstream of the water intakes on West Jamie Creek and Jamie Creek. After going through the turbines in the powerhouse, the diverted water rejoins Jamie Creek, which flows into Downton Reservoir. There are impassable fish barriers in the form of waterfalls on Jamie Creek upstream of the powerhouse. Jamie Creek is one of about 125 creeks flowing into Downton Reservoir.

The conditional water licence was issued in May 2012, and included several conditions, such as a requirement that a minimum flow of 0.27 cubic metres per second must pass a flow measuring station located upstream of the Project's tailrace between October 1 and May 31 at all times, and a minimum flow of 0.39 cubic metres per second must pass the flow measuring station between June 1 and September 30 at all times. In addition, the licence required Boralex to carry out a monitoring program to determine whether the Project had any impacts on fish and/or wildlife and their habitats.

In December 2014, Boralex submitted its request to lower the IFRs stipulated in its licence. Boralex noted that two separate operational field tests had been done, one for ramping rates and one for the requested IFRs, based on work plans that were approved by the Ministry, and Ministry staff were present during those tests. Boralex submitted that the

IFRs could be reduced with minimal impacts on the ecosystem. Boralex also advised that it was committed through the monitoring program to continue operational field tests and to evaluate any changes to the ecosystem made by the Project.

In May 2015, the Director refused to grant Boralex's request for lower IFRs. Boralex appealed the Director's decision on numerous grounds, and requested that the Board amend the licence to incorporate the requested IFRs. Boralex also requested an order for costs, but gave no reasons to support that request.

First, the Board rejected Boralex's arguments that the Director failed to provide adequate reasons for his decision, showed a reasonable apprehension of bias or actual bias, or fettered his discretion. The Board found that the appeal hearing was conducted as a new hearing of the matter, and therefore, any procedural defects in the Director's decision-making process were cured by the appeal process.

Next, the Board considered whether the lower IFRs will protect Jamie Creek with respect to stream flow continuity at all times, aquatic invertebrates and riparian vegetation, and fish and fish habitat. In deciding this issue, the Board considered numerous technical reports and expert evidence.

Regarding stream flow continuity, the Board found that the evidence established that Jamie Creek is likely a 'gaining' stream, in that groundwater contributes to stream flow. The evidence also established that during tests conducted in 2014 during extremely dry conditions and with zero flow release for 18 hours, stream flow continued at all times in the diversion reach. Although there was a lack of information about the potential impact of the lower IFRs on stream flows in the diversion reach during winter months, evidence established that stream flow continuity at all times can be assured with the lower IFRs if certain conditions are added to the licence.

Regarding aquatic invertebrates and riparian vegetation, the Board found that the Ministry had accepted Boralex's aquatic invertebrate and riparian vegetation monitoring plans and assessments in a 2014 monitoring report. The evidence showed that extensive monitoring and data analysis is taking place, and that Boralex is committed to maintaining stream flow continuity to protect aquatic invertebrates and riparian vegetation health, regardless of the approved IFRs. Therefore, the Board found that the lower IFRs would protect aquatic invertebrates and riparian vegetation health, provided that the required monitoring and assessments of impacts continue, and that stream flow continues at all times in the diversion reach.

Regarding fish and fish habitat, the Board found that the Ministry had accepted that Jamie Creek is non-fish bearing, and that the Project posed a low risk to fish and fish habitat. During 2014, the first operational year for the Project, fish surveys were conducted in the spring, summer and fall in Jamie Creek. Sampling was intensive and included multiple methods. No fish were caught or observed. Boralex continues to monitor the lower reach of Jamie Creek for fish presence/absence using the sampling times and methods that were requested by the Ministry. Consequently, the Board found that the lower IFRs pose a low risk of adverse impact on fish and/or fish habitat, and any remaining uncertainty regarding the potential impacts on fish and fish habitat would be addressed through the monitoring measures already in place along with some additional monitoring requirements.

In conclusion, the Board sent the matter back to the Director with directions to amend the licence to: include the lower IFRs; add licence conditions aimed at ensuring stream flow continuity at all times; and add requirements that Boralex undertake a winter stream flow continuity study and submit a year-round flow monitoring plan.

Accordingly, the appeal was allowed.

Water licence confirmed based on expert evidence

2015-WAT-005(a) Maureen and Charlie Chapman v. Assistant Regional Water Manager (Zella Holdings Ltd., Third Party; Judith White and Robert Cunningham, Participants)

Decision Date: August 24, 2016

Panel: Robert Wickett, Q.C., James Mattison, Linda Michaluk

Maureen and Charlie Chapman appealed a decision of the Assistant Regional Water Manager (the "Water Manager"), Ministry of Forests, Lands and Natural Resource Operations, to issue a conditional water licence to Zella Holdings Ltd. ("Zella"). The water licence authorizes Zella to divert water from Lorenzetta Creek for use in a run-of-the-river hydroelectric plant.

The Appellants reside downstream of the hydroelectric plant, and hold a conditional water licence that authorizes them to use water from Lorenzetta Creek for irrigation and domestic purposes.

When Zella applied for the water licence in 2012, the Appellants were offered an opportunity to file an objection. The Appellants wrote objection letters to both the Ministry and to Zella. The Appellants also attended a meeting with representatives of Zella and the Ministry. The Appellants raised concerns about the impacts of the project on salmon and the Creek's ecosystem. Zella provided written responses to the Appellants.

The Water Manager issued the water licence in April 2015. The licence authorizes a maximum diversion rate of 0.6 cubic metres per second throughout the year, subject to numerous conditions. For example, the licence requires Zella to: maintain a minimum instream flow of 0.062 cubic metres per second at all times; conduct continuous instream flow monitoring; manage ramping rates when fish fry are present; prepare a monitoring plan for the Water Manager's approval; submit annual reports summarizing the results of monitoring and any impacts on fish habitat and wildlife; and implement any mitigation to the Water Manager's satisfaction. Additionally, prior to construction of the project, the licence requires Zella to: submit engineered design drawings to the Water Manager for approval; retain an independent engineer and an independent environmental monitor; prepare a construction management plan to mitigate the effects of construction; and, obtain the Water Manager's permission to commence construction. Further, before beginning the diversion and use of water, the licence requires Zella to: establish stream gauges at various locations; submit an operating plan for the Water Manager's approval; and obtain the Water Manager's permission to commence water diversion and use.

The Appellants appealed the licence on numerous grounds including concerns about the potential impacts of the project on invertebrates, fish, fish habitat, water quality, and flooding, among other things. They also submitted that there was a lack of direct communication from the Ministry before the licence was issued.

The Board found that the Ministry appropriately relied on Zella to respond to the Appellants' questions or concerns about Zella's licence application, given the technical complexity of the project. However, the Board recommended that, in the future, the Ministry should advise objectors that the proponent will respond to questions and requests for information about the proponent's application.

Turning to the Appellants' concerns about the licensed water use, the Board considered the extensive evidence that was presented by Zella, including six expert witnesses, and by the Water Manager. In contrast, the Appellants presented little evidence, and no expert evidence, in support of their

appeal. Based on the evidence, the Board found that there were sufficient requirements in the licence, and sufficient consequences for any non-compliance, to ensure sufficient stream flow to protect environmental values, and to ensure proper monitoring and reporting of potential impacts. The Board found that variations in stream flow, including periods of flooding as well as low flow, were addressed in the project design and the licence conditions. The Board also found that the diversion and use of water in accordance with the licence would have minimal impact on invertebrates, fish, fish habitat, and frogs, and any potential environmental impacts would be managed and addressed through monitoring and mitigation measures. Furthermore, there was no evidence that the licence would impact the Appellants' licensed water use.

Accordingly, the appeal was dismissed.

Wildlife Act

Guide outfitter's appeal resolved by consent of the parties

2017-WIL-004(a) Barry D. Brandow v. Deputy Regional Manager

Decision Date: March 1, 2017

Panel: Alan Andison

Barry Brandow appealed a decision of the Deputy Regional Manager (the "Regional Manager"), Recreational Fisheries and Wildlife Programs, Kootenay-Boundary Region, Ministry of Forests, Lands and Natural Resource Operations, denying Mr. Brandow's application for a permit.

Mr. Brandow is a guide outfitter. In 2016, he applied for a permit under section 70(1)(b) of the *Wildlife Act* to take clients on guided hunts for black bear in an area east of Christina Lake during 2017. Under section 70(1)(b) of the *Wildlife Act*, a regional manager may issue a permit authorizing a guide outfitter to guide in an area other than that endorsed on his or her guide outfitter licence. Most of the clientele of guide outfitters are non-resident hunters. For many years in the past, Mr. Brandow had received such permits.

The Regional Manager denied Mr. Brandow's permit application on the basis that: such permits may only be issued in special circumstances; in December 2014 the Minister directed that such permits will only be issued when there is no material impact to resident hunter priority (over non-resident hunters); and, Ministry policy did not support the issuance of a permit in this case.

Mr. Brandow appealed on the grounds that such permits had supported his small family business since the 1980s, and his guided hunting business helps deal with "problem" bears in the Christina Lake area.

Before the appeal was heard by the Board, the parties negotiated an agreement to resolve the matter. The Regional Manager advised that he was willing to obtain more information from Mr. Brandow and reconsider his permit application in light of that information, and he would consider the Minister's December 2014 direction as guidance only. Thus, by consent of the parties and pursuant to section 17(2) of the *Administrative Tribunals Act*, the Board directed the Regional Manager to reconsider his decision.

Accordingly, the appeal was allowed, by consent of the parties.

Boat ramp permitted due to minimal impact on foreshore, fish or wildlife

2016-WIL-001(a) Seaforth Lodge LLC v. Deputy Regional Manager

Decision Date: January 18, 2017

Panel: Brenda Edwards

Seaforth Lodge LLC (the "Appellant") appealed a decision of the Deputy Regional Manager

(the "Regional Manager"), Recreational Fisheries and Wildlife Programs, Ministry of Forests, Lands and Natural Resource Operations. The Regional Manager denied the Appellant's application for a permit to use Crown land for an existing boat ramp in a wildlife management area.

The Appellant owns a recreational property in Qualicum Beach. A family with ties to the Appellant company uses the property. That family originally purchased the property in the 1930s, and the boat ramp was built around that time. The boat ramp is located on the marine foreshore, which is Crown land, and no lease or other form of tenure was ever granted for the boat ramp. The boat ramp is made of natural wood planks and posts, sand, gravel, aluminum, and nails. It has been repaired and maintained in the same style, with the same type of materials, since it was built. The boat ramp extends from the foreshore up to a wooden boat house on the Appellant's property, and is used to launch small non-motorized boats and paddleboards.

The boat ramp is located in a wildlife management area designated under the *Wildlife Act*. The Ministry designated the wildlife management area in 1993, and a management plan for the area guides the Ministry's exercise of discretion when considering whether to issue a permit for the boat ramp.

In Spring of 2015, a Ministry Compliance and Enforcement Officer visited the boat ramp, and subsequently issued a notice to the Appellant advising that the ramp was in trespass on Crown land, and directing the removal of the ramp by July 10, 2015.

After discussions with the Appellant, the Ministry agreed to extend the deadline for removing the boat ramp, to allow time for the Appellant to apply for a permit. On July 9, 2015, the Appellant applied for a permit for the ramp under section 19 of the *Wildlife Act*.

In February 2016, the Regional Manager denied the application on the basis that no land tenure was in place for the boat ramp when the wildlife management area was created in 1993, and issuing a permit would deviate from the management plan for the wildlife management area.

The Appellant appealed on the grounds that: lack of tenure is not a reason to deny the permit; the boat ramp is consistent with the objectives in the management plan for the wildlife management area; and, the boat ramp supports recreational activities that do not conflict with protected habitat values. The Appellant requested that the Board allow the boat ramp to remain in place.

The Board considered evidence from both parties regarding the potential impacts of the boat ramp. The Board found that, by designating the area as a wildlife management area rather than a protected area, the Ministry recognized the existence of human habitation and recreation in the area. The Board also found that the boat ramp was not inconsistent with the management plan for the wildlife management area, as the ramp allowed the Appellant to use the area for low impact boating activities while avoiding foreshore damage that could be caused by unmanaged boat launching sites. In addition, the Board found that there had been very little change in the movement of sediments along the foreshore since the boat ramp was built, and there was no evidence that fish or wildlife were adversely affected by the boat ramp. For all of those reasons, the Board concluded that issuing a permit for the boat ramp would not be contrary to either the management plan for the wildlife management area, or the proper management of wildlife resources in accordance with the *Permit Regulation*.

In addition, the Board found that securing a foreshore tenure under the *Land Act* was not a prerequisite to obtaining a permit under the *Permit Regulation* and the *Wildlife Act*, based on the language in the legislation.

Finally, the Board held that there was no evidence that the boat ramp posed a risk to public safety, or that allowing it to remain in place under a permit would expose the Province to liability. Moreover, any risks to the public could be addressed by imposing reasonable conditions in a permit, such as requiring the Appellant to post signs around the boat ramp, or to indemnify the Province for any loss that the Province may suffer as a result of liability arising from permitting the boat ramp.

For all of those reasons, the Board sent the matter back to the Regional Manager with directions to issue a permit for the boat ramp subject to certain conditions.

Accordingly, the appeal was allowed.

Hunting licence suspension period increased by the Board

2016-WIL-004(a) Derek Pitt v. Deputy Director of Fish, Wildlife and Habitat Management

Decision Date: October 28, 2016

Panel: David Searle, Q.C., C.M.

Derek Pitt appealed a decision of the Deputy Director of Fish, Wildlife and Habitat Management (the "Deputy Director"), Ministry of Forests, Lands and Natural Resource Operations. The Deputy Director cancelled the Appellant's hunting licence and suspended Mr. Pitt's hunting licence privileges for two years commencing on June 1, 2016. In addition, the Deputy Director required Mr. Pitt to successfully complete the Conservation and Outdoor Recreation Education program before his hunting licence privileges may be reinstated.

The Deputy Director's decision arose from the following circumstances. From 2008 to 2015, Mr. Pitt was either warned or fined for several contraventions of the law regarding his hunting and angling activities. Mr. Pitt was a constable in the Royal Canadian Mounted Police ("RCMP") when the contraventions occurred, and he had many years of experience with hunting and fishing. The Deputy Director concluded that Mr. Pitt had committed seven contraventions of the *Wildlife Act* and one contravention of a regulation under the BC *Fisheries Act*, during four separate incidents. The contraventions included using two fishing lines, failing to cancel a species licence after killing a black bear, discharging a firearm in a "no shooting" area, unlawfully possessing meat from a bear, failing to retrieve the edible portions of two bears, and hunting without a valid limited entry hunting authorization. The Conservation Officer Service ("COS") recommended a five-year suspension of Mr. Pitt's hunting licence. One of the contraventions resulted in an automatic one-year hunting prohibition. The Deputy Director found that an additional year of suspension was warranted for the other violations.

Mr. Pitt appealed on the grounds that the two-year suspension was overly harsh, as he did not intend to contravene the law, he had no training in BC's hunting legislation, he had learned from his mistakes, and the licensing action had a significant effect on his life. He also asserted that the COS acted in a retaliatory nature by recommending that the Deputy Director take licensing action. Mr. Pitt requested that the Board rescind the two-year suspension, and impose a one-year suspension.

The Deputy Director opposed the appeal, and requested that the Board award costs against Mr. Pitt on the basis that his appeal was frivolous and vexatious.

The Board confirmed that the evidence established that Mr. Pitt committed eight contraventions in total during four incidents. The Board reviewed the circumstances of each incident, and Mr. Pitt's explanations and submissions regarding the incidents. The Board found that several of the violations were serious in nature, and Mr. Pitt is an

experienced hunter. The violations occurred over several years, but five violations stemmed from one hunting trip. Mr. Pitt expressed remorse, but the Board found that he minimized the importance of learning the hunting laws in BC, and blamed the licensing action on retaliation by the COS rather than accepting that it was a consequence of his prior actions. The Board also found that deterrence was a significant factor in this case. Mr. Pitt knowingly and intentionally committed several of the violations. Finally, as an RCMP officer, the Board found that Mr. Pitt had a greater responsibility to know the law and set a good example for hunters and citizens, but he failed to do. In all of the circumstances, the Board concluded that an appropriate administrative penalty would be a four-year suspension of Mr. Pitt's hunting privileges.

Finally, the Board found that, although the appeal was without merit, it was neither vexatious nor frivolous, and the circumstances did not warrant an order for costs against Mr. Pitt.

Accordingly, the appeal was dismissed, and the Deputy Director's application for costs was denied.

No basis to justify increasing guide outfitter's quota of Roosevelt elk

2016-WIL-003(b) Darren Deluca v. Deputy Regional Manager (Wildlife Stewardship Council, Participant)

Decision Date: September 21, 2016

Panel: Jeffrey Hand

Darren Deluca appealed a decision of the Deputy Regional Manager (the "Regional Manager"), West Coast Region, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). Mr. Deluca is a guide outfitter who is authorized to take hunters on guided hunts in his guiding territory which covers parts of Vancouver Island. Each year, Mr. Deluca receives a guide outfitter licence from the Ministry, which specifies the number of particular game species that his clients may kill in his guiding territory. The Regional Manager provided Mr. Deluca with an annual quota of two Roosevelt elk for the 2016/2017 guiding season.

The Provincial government has designated Roosevelt elk as a species of "special concern", and hunting of these elk is closely monitored and managed. Limited hunting of Roosevelt elk is permitted only in special hunting zones where the elk population is considered sufficient to support hunting.

Mr. Deluca appealed on the grounds that his quota was incorrectly determined, and that the Regional Manager provided inadequate reasons for his decision. Mr. Deluca submitted that in 2013, the Ministry gave him a five-year allocation of four Roosevelt elk for the period from 2012 to 2016, but his clients only harvested one elk from 2012 to 2015. Mr. Deluca requested that his quota for the 2016/2017 season be increased to three Roosevelt elk.

The Board found that the Regional Manager provided detailed evidence regarding how he calculated Mr. Deluca's five-year allocation, previous annual quotas, and the quota under appeal. The Regional Manager identified the elk population estimates and hunter harvest rates that he relied on, and the Ministry policies and procedures that he applied. The Board found that the Regional Manager had provided Mr. Deluca with two emails that clearly set out the reasons for his decision. Although the emails were provided shortly after the quota was issued, the Regional Manager complied with the requirement in section 101(1) of the *Wildlife Act* to provide written reasons for his decision. Moreover, the Appellant's appeal submissions showed that he understood the reasons for the Regional Manager's decision. The appeal process cured any minor defect in the timing of issuing the reasons.

Turning to the merits of the Regional Manager's decision, the Board found that the Regional

Manager has broad discretion under the relevant legislation to set quotas. Based on the Ministry's procedure for setting quotas, Mr. Deluca would have received a quota of only one Roosevelt elk in the 2016/2017 season, as well as the two previous seasons, but the Regional Manager had considered the relevant legislation and Ministry policies, and exercised his discretion to increase Mr. Deluca's quota to two Roosevelt elk. Furthermore, the Board found that the Regional Manager properly calculated the quota based on Mr. Deluca's guiding territory, and not based on elk hunting zones within his guiding territory. The Board also found that the Regional Manager properly took into account conservation concerns regarding the Roosevelt elk population. After considering all of the evidence, relevant legislation, and relevant Ministry policies and procedures, the Board concluded that the Regional Manager properly calculated Mr. Deluca's quota, and properly exercised his discretion in setting the quota.

Accordingly, the appeal was dismissed.

Costs Decisions

Water Act/Water Sustainability Act

The Board has the power to order a party to pay all or part of the costs of another party in connection with an appeal. The Board's policy is to only award costs in special circumstances. In addition, if the Board considers that the conduct of a party has been frivolous, vexatious or abusive, it may order that party to pay all or part of the expenses of the Board in connection with the appeal.

Appellants' conduct during the appeal process leads to an order to pay costs

2015-WAT-008(b) Thomas Hobby and SC Ventures Inc. v. Assistant Regional Water Manager (0716880 B.C. Ltd., Malahat First Nation and several numbered companies, Participants)

Decision Date: March 20, 2017

Panel: Alan Andison, Cindy Derkaz, James Mattison

The Assistant Regional Water Manager (the "Regional Manager"), Ministry of Forests, Lands and Natural Resource Operations, and the Participants in this appeal, requested an order of costs against the Appellants after the conclusion of the appeal hearing. The appeal was filed by Mr. Hobby and SC Ventures Inc. against a decision of the Regional Manager denying an apportionment of water rights held under various water licences on Oliphant Lake and Spectacle Creek. Mr. Hobby owns SC Ventures Inc.

In 2005, SC Ventures Inc. became the registered owner of Lot 74 in the Malahat District. In 2007, Mr. Hobby became the registered owner of Lot 75 in the Malahat District.

On May 12, 2015, the Regional Manager issued a new conditional water licence apportioning water, which was previously assigned to a number of historical licences, to certain property owners that had used the water. He also cancelled portions of the water licences that were appurtenant to properties that had not used the water and did not have any agreement to connect to the infrastructure used to convey the water. Lots 74 and 75 were among the properties that had their water licences cancelled.

Mr. Hobby and SC Ventures Inc. appealed the Regional Manager's decision. They requested that some water be apportioned to Lots 74 and 75.

The Board scheduled a nine-day hearing of the appeal, commencing on June 20, 2016.

On June 1, 2016, the Regional Manager advised that he would be challenging the Appellants' standing to appeal the decision in relation to Lot 75. He advised that Lot 75 had been sold, and neither of the Appellants had any legal interest in the property.

On June 13, 2016, seven days before the start of the hearing, the Appellants applied to postpone the hearing on the basis that they were involved in a Supreme Court action "to take back the Malahat District Lot 75 property." If successful in court, the Appellants stated that they would continue to pursue their appeal before the Board in relation to Lot 75. The Board granted the postponement.

On September 22, 2016, the Regional Manager advised the Board that the Appellants' court proceedings regarding Lot 75 had been dismissed. The Regional Manager requested that the Board schedule a teleconference to address the status of the appeal. During the teleconference, all of the Parties and Participants consented to an oral hearing of the appeal commencing at 9:00 am on January 3, 2017. In a subsequent letter, the Board confirmed the hearing date, and that the appeal would be restricted to Lot 74. A Notice of Hearing was sent to all Parties and Participants.

On January 3, 2017, the hearing commenced at the scheduled time. The Appellants were not in attendance. The Board adjourned the hearing until 10:30 a.m. while the Board's staff attempted to locate Mr. Hobby. At 10.01 a.m., the Board's staff contacted Mr. Hobby by telephone. He advised that he would not be attending the hearing. He was notified that the appeal would be dismissed if he did not appear by 10:30 am. The Board reconvened the hearing at 10:30 a.m. The Appellants failed to appear, and the Board dismissed the appeal.

After the hearing ended, the Regional Manager learned that the Appellants had not held an ownership interest in Lot 74 since November 18, 2016. The Regional Manager advised the Board and the Participants of that fact.

Subsequently, the Regional Manager and the Participants requested that the Board order costs against Mr. Hobby. They submitted that costs were warranted because Mr. Hobby's conduct in the appeal process was improper and abusive. In particular, he failed to advise the Board or the Parties and Participants that the Appellants no longer had an ownership interest in Lot 74, which was the only basis for the Appellants' standing to appeal after Lot 75 was sold, and he failed to notify the parties or the Board that he would not be attending the hearing.

In response, Mr. Hobby apologized for his failure to attend the hearing, and submitted that he had suffered financial and emotional stress over the past several years. He also submitted that the issues in the appeal had merit.

The Board found that there were special circumstances in this case that warranted an award of costs, and costs should be awarded against both of the Appellants jointly and severally. Specifically, the Board found that the Appellants failed to advise the Board or the Parties and Participants that the Appellants no longer had an ownership interest in Lots 74 or 75. By failing to provide that information, Mr. Hobby knowingly or recklessly misled the Board and caused prejudice to the Regional Manager and the Participants. In addition, Mr. Hobby provided no reasonable explanation for his failure to provide notice that he would not be attending the appeal hearing. The Board found that Mr. Hobby is a sophisticated self-represented party who was familiar with the appeal process and the court litigation process. He knew, or should have known, that his failure to disclose the sale of Lots 74 and 75, and his failure to attend the hearing, was conduct that fell below acceptable standards.

Regarding the quantity of costs, the Board found that the appeal involved matters of ordinary

difficulty, and therefore, costs should be awarded based on Scale B of the BC Supreme Court Civil Rules. If an agreement could not be reached on the quantum of costs, the Board requested that the Regional Manager and the Participants file claims for their appeal-related costs from May 20, 2016, which was when the Appellants filed their Statement of Points without disclosing the sale of Lot 75, up to January 3, 2017. The applications for costs were granted.

Summaries of Court Decisions Related to the Board

During this reporting period, the BC Supreme Court issued three decisions on judicial reviews of Board decisions. A summary of one of those decisions is provided below.

Court confirms the Board's decision was reasonable and consistent with the law

Harrison Hydro Project Inc., et al v. Deputy Comptroller of Water Rights and Environmental Appeal Board

Decision date: February 27, 2017
Court: B.C.S.C., Justice B.D. MacKenzie
Citation: 2017 BCSC 320

Harrison Hydro Project Inc. ("Harrrison") and five limited partnerships (collectively, the "Petitioners") sought a judicial review by the BC Supreme Court of a decision issued by the Board in 2015. Harrison is the general partner of the five limited partnerships. Each of the limited partnerships is the beneficial owner of a "run of river" hydro project near Harrison Lake, BC. Each hydro project operates under a water licence authorizing the diversion and use of water from a stream for power production. The powerhouse and works for each hydro project are situated on Crown land, and each water licence is appurtenant to that Crown land.

From 2005 through 2006, the water licences were issued under the *Water Act* to a corporate predecessor of the Petitioners which had received licences of occupation over the Crown land needed for each hydro project. In 2007, the limited partnerships were created with Harrison as the general partner. The licence of occupation for each hydro project was then assigned to the limited partnership that held the respective water licence. Between 2008 and 2009, the licences of occupation were replaced by leases over the same Crown land. All of the leases were issued to Harrison, and Harrison was named in the Land Title Office registry as the lease holder in each case.

From 2009 to 2012, the Ministry's records listed each limited partnership as the holder of the relevant water licence, and the Ministry billed each limited partnership individually for water rentals. However, when the Ministry discovered that Harrison held the leases for the Crown land to which the water licences were appurtenant, the Ministry launched an investigation. Ministry staff decided that Harrison should be named as the licensee for each water licence, and that water rentals should be billed collectively to Harrison. The water rental rate for each of the projects, if charged on an aggregate basis, is much higher than if each limited partnership is the licensee and is charged on an individual basis.

Harrison and the limited partnerships raised concerns with the Ministry about its new approach to billing, and whether Harrison was properly named as the licensee for all five licenses. The Deputy

Comptroller of Water Rights (the "Comptroller") reviewed the matter, and concluded that naming Harrison as the licensee for all five hydro projects, and billing water rentals for the five licences collectively to Harrison, was in accordance with the *Water Act* and the *Water Regulation*.

The Petitioners appealed the Comptroller's decision to the Board. The main issue was whether Harrison is the proper licensee for all five water licences, as opposed to each limited partnership being the licensee for its respective water licence.

The Board found that section 16(1) of the *Water Act*, which states that a water licence will "pass with a conveyance or other disposition of the land", implies that the Ministry simply records a change of licensee in the Ministry's records upon receipt of notification from the licensee, which the licensee must provide under section 16(2) of the *Water Act*. Regarding the meaning of "disposition", the Board applied the definition in the *Land Act*, given that the appurtenant lands in this case were Crown lands subject to the *Land Act*.

Turning to the facts, the Board held that a conveyance or disposition of the appurtenant lands, from the limited partnerships to Harrison, occurred when the Crown land leases were issued in replacement for the licences of occupation. From 2009 to 2012, there was an inconsistency between the water licence holders recorded in the Ministry's records (i.e., the limited partnerships) and the holder of the leases over the appurtenant Crown lands (i.e., Harrison), due to the licensee's failure to notify the Ministry of the conveyance or disposition of the appurtenant lands.

The Board also considered the language in the Limited Partnership Agreements, and concluded that only Harrison was entitled to physical possession, occupancy and control of the appurtenant lands, and was capable of carrying out the rights and obligations of a licensee as described in the *Water Act*. Therefore, Harrison was the "owner" of the appurtenant land for the purposes of the *Water Act*, and was properly named as the holder of the water licences. In addition, section 16(4)(c) of the *Water Regulation* requires that water rental rates be based on the total output from all projects that are owned or operated by a licensee. Given that Harrison was the proper licensee for all five water licences, the power produced at the hydro projects should be aggregated when calculating water rentals.

The Petitioners sought a judicial review of the Board's decision. The Petitioners argued that the Board failed to grasp the powers and capacities of the limited partnerships, and improperly interpreted the word "owner" under the *Water Act*.

The BC Supreme Court held that the Petitioners failed to establish that the Board's decision fell outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and law. On the contrary, the Board's decision was reasonable, and accorded with the statutory and common law principles concerning limited partnerships. Accordingly, the petition was dismissed, and the Board's decision was confirmed.

Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this reporting period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

Reproduced below are the sections of the *Environmental Management Act* and the *Environmental Appeal Board Procedure Regulation* which establish the Board and set out some of its general powers and procedures. As specified in section 93.1 of the *Environmental Management Act*, many of the Board's powers are also provided in the *Administrative Tribunals Act*. A link to the *Administrative Tribunals Act* and its regulations can be found on the Board's website (www.eab.gov.bc.ca).

Also included are the appeal provisions contained in each of the statutes which provide for an appeal to the Board: the *Environmental Management Act*, the *Greenhouse Gas Industrial Reporting and Control Act*, the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, the *Integrated Pest Management Act*, the *Mines Act*, the *Water Sustainability Act*, and the *Wildlife Act*. Some appeal provisions are also found in the regulations made under the *Greenhouse Gas Industrial Reporting and Control Act*, the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, and the *Mines Act*. The appeal provisions in the *Water Sustainability Act* apply to appeals under the *Water Users' Communities Act*.

The legislation contained in this report is the legislation in effect at the end of the reporting period (March 31, 2017). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Although not provided below, it should be noted that, in addition to decisions of government officials, Part 3 of the *Environmental Management Act* gives district directors and officers appointed by the Greater Vancouver Regional District certain decision-making powers that can then be appealed to the Board under the appeal provisions in the *Environmental Management Act* referenced below. In addition, the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36 (not reproduced) allows the Oil and Gas Commission to make certain decisions under the *Water Sustainability Act* and the *Environmental Management Act*, and those decisions may be appealed in the usual way under the appeal provisions of the *Water Sustainability Act* and *Environmental Management Act*, as set out below.

Environmental Management Act, (SBC 2003, c. 53)

Part 8 – Appeals

Division 1 – Environmental Appeal Board

Environmental Appeal Board

93 (1) The Environmental Appeal Board is continued to hear appeals that under the provisions of any enactment are to be heard by the appeal board.

(2) In relation to an appeal under another enactment, the appeal board has the powers given to it by that other enactment.

(3) The appeal board consists of the following individuals appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(4) [Repealed 2015-10-60.]

(5 and 6) [Repealed 2003-47-24.]

(7) to (11) [Repealed 2015-10-60.]

Application of *Administrative Tribunals Act*

93.1 (1) Subject to subsection (2), for the purposes of an appeal, the following provisions of the *Administrative Tribunals Act* apply to the appeal board:

(a) Part 1 [*Interpretation and Application*];

(b) Part 2 [*Appointments*];

(c) Part 3 [*Clustering*];

(d) Part 4 [*Practice and Procedure*], except the following:

(i) section 23 [*notice of appeal (exclusive of prescribed fee)*];

(ii) section 24 [*time limit for appeals*];

(iii) section 33 [*interveners*];

(iv) section 34 (1) and (2) [*party power to compel witnesses and require disclosure*];

(e) Part 6 [*Costs and Sanctions*];

(f) Part 7 [*Decisions*];

(g) Part 8 [*Immunities*];

(h) section 57 [*time limit for judicial review*];

(i) section 59.1 [*surveys*];

(j) section 59.2 [*reporting*];

(k) section 60 [*power to make regulations*].

(2) A reference to an intervener in a provision of the *Administrative Tribunals Act* made applicable to the appeal board under subsection (1) must be read as a reference to a person or body to which both of the following apply:

(a) the appeal board has given the person or body the right to appear before it;

(b) the person or body does not have full party status.

Parties and witnesses

94 (1) In an appeal, the appeal board or panel

(a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body, whose decision is the subject of the appeal or review, must give that person or body full party status.

(2) and (3) [Repealed 2015-10-62.]

Repealed

95 [Repealed 2015-10-62.]

Decision of appeal board

96 If the appeal board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of appeal board

97 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the appeal board.

Appeal board power to enter property

98 The members of the appeal board have, for the purposes of an appeal, the right to enter any property except a private residence.

Division 2 – Appeals from Decisions under this Act

Definition of "decision"

99 For the purpose of this Division, **"decision"** means

(a) making an order,

(b) imposing a requirement,

(c) exercising a power except a power of delegation,

(d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

(e) including a requirement or a condition in an order, permit, approval or operational certificate,

(f) determining to impose an administrative penalty, and

(g) determining that the terms and conditions of an agreement under section 115 (4) [*administrative penalties*] have not been performed.

Appeals to Environmental Appeal Board

100 (1) A person aggrieved by a decision of a director or a district director may appeal the decision to the appeal board in accordance with this Division.

(2) For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

Time limit for commencing appeal

101 The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

Procedure on appeals

102 (1) Division 1 [*Environmental Appeal Board*] of this Part applies to an appeal under this Division.

(2) The appeal board may conduct an appeal under this Division by way of a new hearing.

Powers of appeal board in deciding appeal

103 On an appeal under this Division, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

Appeal does not operate as stay

104 [Repealed 2015-10-64.]

Division 3

105 [Repealed 2015-10-64.]

Environmental Appeal Board Procedure Regulation,
(BC Reg. 240/2015)

Interpretation

1 In this regulation:

"Act" means the *Environmental Management Act*;

"appealed decision" means an action, decision or order that is the subject of an appeal to the board;

"board" means the Environmental Appeal Board established under the Act;

"notice of appeal" means a notice a person is required, under an enactment or rule, to give in order to begin an appeal to the board.

Notice of Appeal

2 (1) A notice of appeal must be accompanied by a fee, in the amount of $25 for each appealed decision, payable to the minister responsible for the administration of the *Financial Administration Act*.

(2) The board must deliver a notice of appeal to

(a) the minister responsible for the administration of the Act,

(b) the minister responsible for the administration of the enactment under which the appeal arises, and

(c) the official who made the appealed decision.

(3) For certainty, nothing in this section affects the power of the board to make rules requiring that a notice of appeal be delivered to persons in addition to those enumerated in subsection (2).

Providing reasons for orders or decisions

3 The board must provide an order or decision, other than an unwritten order or decision made in the course of a hearing, and any reasons for the order or decision to

(a) the parties, and

(b) the minister responsible for the administration of the enactment under which the appeal arises.

Transcripts

4 (1) A person may request a transcript of any proceedings before the board or a panel.

(2) A person who makes a request under subsection (1) must pay the cost of preparing the transcript.

Greenhouse Gas Industrial Control and Reporting Act, (SBC 2014, c. 29)

Part 5 – Appeals to Environmental Appeal Board

What decisions may be appealed, who may appeal and the appeal process

40 (1) For the purposes of this Part, "decision" means any of the following:

(a) a determination of non-compliance under section 24 [imposed administrative penalties: inaccurate report or failure to report] or of the extent of that non-compliance, as set out in an administrative penalty notice;

(b) a determination of non-compliance under section 25 [imposed administrative penalties in relation to other matters], of the extent of that non-compliance or of the amount of the administrative penalty, as set out in an administrative penalty notice;

(c) a prescribed decision or a decision in a prescribed class.

(2) A person who is served with

(a) an administrative penalty notice referred to in subsection (1) (a) or (b), or

(b) a document evidencing a decision referred to in subsection (1) (c)

may appeal the applicable decision to the appeal board.

(3) Subject to this Act, Division 1 of Part 8 [*Appeals*] of the *Environmental Management Act* applies in relation to appeals under this Act.

Greenhouse Gas Emission Administrative Penalties and Appeal Regulation,
(BC Reg. 248/2015)

Part 2 – Appeals

Appeals to Environmental Appeal Board

12 (1) Decisions made under the following sections of the *Greenhouse Gas Emission Reporting Regulation* are prescribed for the purposes of section 40 (1) (c) [*what decisions may be appealed*] of the Act:

(a) section 16 (2) (a) or (3) (a) [*choice between direct measurement and mass balanced-based methodology*];

(b) section 26 (3) (b) [*verification bodies*].

(2) Decisions made under the following sections of the *Greenhouse Gas Emission Control Regulation* are prescribed for the purposes of section 40 (1) (c) of the Act:

(a) section 10 (1), (3) or (4) [*suspension or cancellation of accounts*];

(b) section 13 (4) (b) [*validation bodies and verification bodies*];

(c) section 17 (2) [*acceptance of project plan*];

(d) section 23 (2) [*issuance of offset units*].

(3) After making a decision referred to in subsection (1) or (2), the director must serve notice of the decision in accordance with section 41 [*notice and service under this Act*] of the Act.

(4) The following provisions of the *Environmental Management Act* apply in relation to appeals under the Act:

(a) section 101 [*time limit for commencing appeal*];

(b) section 102 (2) [*procedure on appeals*];

(c) section 103 [*powers of appeal board in deciding appeal*].

(5) For the purposes of subsection (4) (a) and (c), a reference to a decision in section 101 or 103 of the *Environmental Management Act* is to be read as a reference to a decision under section 40 (1) of the Act.

Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act,
(SBC 2008, c. 16)

Part 5 – Appeals to Environmental Appeal Board

What decisions may be appealed, who may appeal, the process of appeal

14 (1) For the purposes of this Part, **"decision"** means any of the following:

(a) the determination of non-compliance under section 11 [*imposed administrative penalties: fuel requirements*] or of the extent of that non-compliance, as set out in an administrative penalty notice;

(b) the determination of non-compliance under section 12 [*administrative penalties in relation to other matters*], of the extent of that non-compliance or of the amount of the administrative penalty, as set out in an administrative penalty notice;

(c) a refusal to accept an alternative calculation of carbon intensity under section 6(5) (d) (ii) (B) [*low carbon fuel requirement*];

(d) a prescribed decision or a decision in a prescribed class.

(2) A person who is served with
   (a) an administrative penalty notice referred to in subsection (1) (a) or (b),
   (b) a refusal referred to in subsection (1) (c), or
   (c) a document evidencing a decision referred to in subsection (1) (d)

may appeal the applicable decision to the appeal board.

(3) Subject to this Act, Division 1 of Part 8 [*Appeals*] of the *Environmental Management Act* applies in relation to appeals under this Act.

Renewable and Low Carbon Fuel Requirements Regulation, (B.C. Reg. 394/2008)

Part 4 – Appeals

Time limit for commencing appeal

21 The time limit for commencing an appeal is 30 days after the notice of administrative penalty to which it relates is served.

Procedures on appeal

22 An appeal must be
   (a) commenced by notice of appeal in accordance with the *Environmental Appeal Board Procedure Regulation*, and
   (b) conducted in accordance with Part 5 [*Appeals to Environmental Appeal Board*] of the Act and the *Environmental Appeal Board Procedure Regulation*.

Powers of appeal board on appeal

23 (1) On an appeal, the appeal board may
   (a) send the matter back to the person who made the decision with directions,
   (b) confirm, reverse or vary the decision being appealed, or
   (c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

(2) The appeal board may conduct an appeal by way of a new hearing.

Integrated Pest Management Act, (SBC 2003, c. 58)

Part 4 – Appeals to the Environmental Appeal Board

14 (1) For the purposes of this section, **"decision"** means any of the following:
   (a) making an order, other than an order under section 8 [*minister's orders*];
   (b) specifying terms and conditions, except terms and conditions prescribed by the administrator, in a licence, certificate or permit;
   (c) amending or refusing to issue, amend or renew a licence, certificate or permit;
   (d) revoking or suspending a licence, certificate, permit or confirmation;
   (e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;
   (f) determining to impose an administrative penalty;

(g) determining that the terms and conditions of an agreement under section 23(4) [*administrative penalties*] have not been performed.

(2) A declaration, suspension or restriction under section 2 [*Act may be limited in emergency*] is not subject to appeal under this section.

(3) A person may appeal a decision under this Act to the appeal board.

(4) The time limit for commencing an appeal of a decision is 30 days after the date the decision being appealed is made.

(5) [Repealed 2015-10-109.]

(6) Subject to this Act, Division 1 of Part 8 of the *Environmental Management Act* applies to an appeal under this Act.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(9) [Repealed 2015-10-109.]

Mines Act,
(RSBC 1996, c. 293)

Appeal

36.7 (1) In this section, **"appeal tribunal"** means a tribunal identified by regulation for the purposes of this section.

(2) A person to whom a notice has been given under section 36.3 may appeal to the appeal tribunal a decision that is the subject of the notice.

(3) The time limit for a person to commence an appeal is 30 days after the date on which the notice under section 36.3 is given to the person.

(4) On an appeal under subsection (2), the appeal tribunal

(a) may confirm, vary or rescind the decision that is the subject of the notice, and

(b) must notify the person of the decision made under paragraph (a) of this subsection.

Administrative Penalties (Mines) Regulation,
(B.C. Reg. 47/2017)

Part 3 – Appeals

Definition

8 In this Part, **"appeal"** means an appeal under section 36.7 [*appeal*] of the Act.

Appeal tribunal

9 For the purposes of section 36.7 of the Act and this Part, the appeal tribunal is the Environmental Appeal Board continued under the *Environmental Management Act*.

Application of *Administrative Tribunals Act* to appeal tribunal

10 The following provisions of the *Administrative Tribunals Act* apply to the appeal tribunal:

(a) Part 1 [*Interpretation and Application*];

(b) Part 2 [*Appointments*];

(c) Part 3 [*Clustering*];

(d) Part 4 [*Practice and Procedure*], except the following:

(i) section 23 [*notice of appeal (exclusive of prescribed fee)*];

(ii) section 24 [*time limit for appeals*];

(iii) section 25 [*appeal does not operate as stay*];

(iv) section 34 (1) and (2) [*power to compel witnesses and order disclosure*];

(e) Part 6 [*Costs and Sanctions*];

(f) Part 7 [*Decisions*];

(g) Part 8 [*Immunities*];

(h) Part 9 [*Accountability and Judicial Review*] except section 58 [*standard of review with privative clause*].

Water Sustainability Act,
(SBC 2014, c. 15)

Division 3 – Appeals

Appeals to appeal board

105 (1) Except as otherwise provided in this Act, an order resulting from an exercise of discretion of the comptroller, a water manager or an engineer may be appealed to the appeal board by any of the following:

(a) the person who is subject to the order;

(b) subject to subsection (2), an owner whose land is or is likely to be physically affected by the order;

(c) the owner of the works that are the subject of the order;

(d) the holder of an authorization, a riparian owner or an applicant for an authorization who considers that his or her rights are or will be prejudiced by the order.

(2) In the case of the issuance of a drilling authorization, a person whose consent has been given for the purposes of section 62 (4) (c) [*drilling authorizations*] has no right of appeal unless the order respecting the drilling authorization in respect of which the consent was given is inconsistent with that consent.

(3) The time limit for a person to commence an appeal is 30 days after the date on which notice of the order being appealed is delivered to the person.

(4) Subject to this Act, Division 1 of Part 8 of the *Environmental Management Act* applies to an appeal under this Act.

(5) The appeal board may conduct an appeal by way of a new hearing.

(6) On an appeal, the appeal board may

(a) send the matter back, with directions, to the comptroller, water manager or engineer who made the order being appealed,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is being appealed could have made and that the board considers appropriate in the circumstances.

(7) [Repealed 2015-10-192.]

Water Users' Communities Act,
(RSBC 1996, c. 483)

Application of *Water Sustainability Act*

100.1 (1) The following provisions of the *Water Sustainability Act* apply for the purposes of this Act:

…

(b) section 105 [*appeals to appeal board*];

Wildlife Act, (RSBC 1996, c. 488)

Reasons for and notice of decisions

101 (1) The regional manager or the director, as applicable, must give written reasons for a decision that affects

(a) a licence, permit, registration of a trapline or guiding territory certificate held by a person, or

b) an application by a person for anything referred to in paragraph (a).

(1.1) The regional manager must give written reasons for a decision made under section 61 (1.1) (a) or (b).

(2) Notice of a decision referred to in subsection (1) or (1.1) must be given to the affected person.

(3) Notice required by subsection (2) may be by registered mail sent to the last known address of the person, in which case, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(4) For the purposes of applying this section to a decision that affects a guiding territory certificate, if notice of a decision referred to in subsection (1) is given in accordance with this section to the agent identified in the guiding territory certificate, the notice is deemed to have been given to the holders of the guiding territory certificate as if the agent were an affected person.

Appeals to Environmental Appeal Board

101.1 (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board continued under the *Environmental Management Act*.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101 (2), or

(b) in accordance with the regulations.

(3) Subject to this Act, Division 1 of Part 8 of the *Environmental Management Act* applies to an appeal under this Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) [Repealed 2015-10-197.]

BRITISH
COLUMBIA