

Annual Report 2023/2024



**Environmental
Appeal Board**





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Dear Ministers:

Please find enclosed the 2023/2024 Annual Report for the Environmental Appeal Board.

Yours Truly,

A handwritten signature in blue ink, reading "D. Le Houillier". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Darrell Le Houillier
Chair
Environmental Appeal Board

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Message from the Chair

I am pleased to present the 2023/2024 Annual Report of the Environmental Appeal Board (the “Board”).

The Board’s principal responsibility is to resolve appeals. It received 77 new appeals related to 65 separate statutory decisions in the 2023/2024 reporting period. This represents a high since the 2016/2017 reporting period, exceeding last year’s intake, which had also been a recent historical high. The Board closed 68 appeals over the same time, resulting in an increase in the Board’s appeal inventory, from 85 appeals to 94. The average age of appeals increased from 622 days to 751 days, as the Board could not keep up with continued and sustained high intake of appeals.

While the Board had projected to resolve many of its oldest (pre-2020) appeals in this past reporting period, the parties to these appeals required additional time to complete their submissions, which were not provided until after the close of the 2023/2024 reporting period. As a result, the Board expects to resolve many of its oldest appeals in this reporting period. The Board expects to reduce the age of its appeal inventory over the next reporting period, although intake rates remain high and an increase in appeal inventory is again likely.

The factual and legal complexity of many appeals heard by the Board also continues to increase year over year. The Board also faces an increasing number of preliminary applications which require significant resources and often do not resolve appeals. These tendencies are unsurprising given that the financial implications of many appeals are significant, and parties are motivated to present robust cases before the Board and to concede little. By contrast, many appeals are advanced by those without significant resources available for legal processes, and access to justice remains an issue. The Board is focusing on ways to modernize our operations to improve access to justice; however, the ongoing struggle to address appeal volumes given current resourcing remains a barrier to systemic improvements.

Most appeals that were closed in the 2022/2023 reporting period were decided without a decision on their merits. Roughly 44% of appeals were summarily dismissed or rejected, while roughly 32% were settled, withdrawn, or abandoned. The remaining 24% were resolved by a final decision. These proportions are consistent with the previous reporting period.

The appeal process took, on average, 298 days to complete. This is a decrease from the previous reporting period (386 days), the lowest since 2021/2022, and the second lowest since the Board began reporting on this metric in 2016/2017. Where appeals were resolved by a decision on the merits, they took, on average, 503 days (an increase from the previous reporting period’s average, 447 days, and the second highest since the Board began reporting on this metric in 2016/2017). Where appeals were resolved without a decision on the merits, the average time taken was 201 days (a decrease from 372 days in the previous reporting period and the lowest since the Board began reporting on this metric in 2016/2017).

Beyond handling appeals, the Board has continued its efforts to improve the efficiency and user-focus of its operations. Its service delivery realignment project, a multi-year effort aimed at a cover-to-cover redesign of its appeal processes, continued throughout the 2023/2024 reporting period with little progress, given the Board's extremely limited capacity for such discretionary work.

This redesign follows a period of stakeholder engagement and a survey of system-users, and emphasizes more active appeal management by the Board, greater preparation of parties for hearings, and more efficient assignment of appeals to panel members. The Board has adjusted its processes as much as possible to reflect the feedback received during early phases of this project. The next project phase requires adjustments to its rules and procedures and engagement with stakeholders. This will remain a focus of the Board's available capacity for discretionary work over the coming reporting period(s).


The Board also completed an overhaul of its website during the reporting period. Unfortunately, a server migration done by government, without prior consultation of the Board, resulted in a significant data loss and the Board has been unable to prioritize repairing the damage done within the reporting period. The Board has worked with representatives from the Ministry of the Attorney General to identify causes for this unfortunate loss and is working with governmental partners to safeguard against similar losses in the future.

The Board also advanced on its path toward reconciliation and the fulfilment of its obligations under the Truth and Reconciliation Commission's 94 Calls to Action. Its Reconciliation Advisory Committee, comprised of legal experts, representatives from the Board, and Indigenous leaders in British Columbia met in the reporting period and, I expect, will provide recommendations which will inform the Board's reconciliation plan.

The Board hopes to continue to improve the experience of parties that appear before it, to modernize its operations, and to progress along its path toward reconciliation with Indigenous Peoples; however, resourcing is a limiting factor. Facing increasing volumes of appeals, which are projected to continue to increase, and with additional areas of responsibility being added this reporting period to the scope of the Board's authority, the Board is unlikely to have any significant capacity for discretionary work. Additional resourcing is needed to allow the Board to manage its increasing responsibilities and maintain or improve the quality of its services to British Columbians.

The Board has also identified two areas in which British Columbians face significant barriers to exercising their appeal rights to the Board: British Columbians who wish to appeal permits issued under the *Integrated Pest Management Act* for the eradication of spongy moths, and those who wish to appeal hunting quotas under the *Wildlife Act*. The Board is working at adjusting its processes to respond to these challenges; however, discussions with stakeholders are ongoing and this process is likely to extend into the next reporting period. The Board is unlikely to be able to resolve this issue on its own, but is committed to streamlining its processes in these areas as best it can.

The last development to report from this reporting period is that the Board welcomed Norman Tarnow as a new member. Mr. Tarnow brings a wealth of relevant legal knowledge to the Board and has been lending that experience to a variety of appeals.



The Board's expenditures in the reporting period totalled roughly \$1,766,200. This was approximately \$169,000 more than the average from the five preceding fiscal years (\$1,597,161). The increase relates entirely to increased staffing at the Board. With increasing appeal volumes and complexities, and new areas of legislated responsibility, the Board anticipates requiring more resources to fulfill its mandate in upcoming reporting periods.



Darrell Le Houillier
Chair

Introduction

The Board was established in 1981, when the *Environment Management Act* came into force. The Board exists primarily to provide an independent level of appeal from some decisions made by government officials. It currently hears appeals from certain categories of decision made under nine statutes and their associated regulations. The Board addresses issues related to the use and stewardship of natural resources and to the environment.

In deciding appeals, the Board weighs evidence and makes findings of fact. It interprets both relevant legislation and common law principles and applies those sources of law to its factual findings. The Board may compel the production of evidence and must ensure that its processes are procedurally fair to those involved in appeals.

Cabinet may, in the public interest, vary or rescind an order or decision of the Board.

Many significant decisions made by the Board are available on the website, www.bceab.ca. The Board's website also has other resources including its Rules, its Practice and Procedure Manual, and information sheets aimed at helping self-represented parties.

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Review of Board Operations

The principal work of the Board is deciding appeals from certain authorized decisions made under 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*, the *Water Users' Communities Act*, the *Wildlife Act*, and the *Zero-Emission Vehicles Act*.

The Board, through its annual reports, also provides the ministers responsible for its oversight with information gathered over the preceding reporting year: a review of its operations, performance indicators, its appeal inventory, the results of any surveys undertaken, a forecast of the upcoming workload for the tribunal, any foreseen trends or special problems, and plans for improving operations in the future.

PIDA Disclosures

In the 2023/2024 reporting period, there were no disclosures, as defined in the *Public Interest Disclosure Act*, submitted to the Board. The Board is aware of no disclosures pertaining to it or its staff (past or present), that would have been submitted in the 2023/2024 reporting period.

Appeal Procedures

An appeal begins when a notice of appeal is filed against a particular decision made by a decision-maker under any of the nine statutes listed above. The Board assesses whether the appeal meets threshold requirements: that the appellant has standing to appeal the decision, that the decision is appealable, that the appeal was filed within the 30-day statutory timeframe allowed, and whether the Board has the authority to grant the requested outcome of the appeal. Decisions that can be appealed and who can appeal those decisions depends on the statute under which the decision was made.

The Board may conduct appeals in writing, through an oral hearing (in person, electronic, or both), or a hybrid of the two, depending on the needs of the parties and based on principles of procedural fairness. Written evidence and arguments are exchanged in either case. In written hearings, only written material is exchanged; in oral hearings, written summaries of the arguments to be presented precede the oral hearing itself.

A summary follows, outlining the nine statutes allowing for appeals to the Board.

Environmental Management Act

The *Environmental Management Act* governs the disposal and dispersal of solid, gaseous, and liquid waste into the environment of British Columbia, including through regulation of landfills and contaminated sites. Governmental decision-makers may issue permits, approvals, operational certificates, orders, and administrative penalties to accomplish the aims of the Act.

The *Environmental Management Act* is broad legislation divided into 13 parts:

- Introductory Provisions;
- Prohibitions and Authorizations, which contains general provisions for the protection of the environment and governmental authority to allow the release of contaminants into the environment;
- Municipal Waste Management;
- Contaminated Site Remediation;
- Remediation of Mineral Exploration Sites and Mines;
- Clean Air Provisions;

- Greenhouse Gas Reduction, which applies to waste management facilities;
- Powers in Relation to Managing the Environment, including provisions dealing with pollution assessment, prevention, and abatement, as well as spill preparedness, response, and recovery;
- Appeals;
- Conservation Officer Service;
- Compliance, including authorization of government decision-makers to carry out inspections and seizures, make inquiries, and issue administrative penalties;
- General, which relates to offences, penalties, immunity of conservation officers from provincial offences, miscellaneous administrative provisions, provisions related to the ownership of waste, and powers to make regulations; and
- Transitional Provisions and Consequential Amendments.

Any person “aggrieved by a decision” of a director or district director named under the *Environmental Management Act* can appeal that decision to the Board. The definition of “decision” under the Act is broad, and includes:

- making orders;
- imposing requirements;
- exercising any power other than delegation;
- issuing, amending, renewing, suspending, refusing, cancelling, or refusing to amend a permit, approval, or operational certificate;
- including requirements or conditions in orders, permits, approvals, or operational certificates;
- imposing an administrative penalty; and
- determining that the terms and conditions of an agreement for the reduction or cancellation of an administrative penalty have not been met.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal pending the final outcome of the case.

Greenhouse Gas Industrial Reporting and Control Act

The *Greenhouse Gas Industrial Reporting and Control Act* enables the government to set performance standards for industrial facilities or sectors by listing them within a Schedule to the Act. Presently, the Schedule sets a greenhouse gas emissions benchmark for liquified natural gas facilities.

The Act is divided into seven parts:

- Interpretation, which provides definitions for the legislative scheme;
- Emission Reporting;
- Emission Control, including use of offsets and credits to be applied to emissions;
- Compliance and Enforcement;
- Appeals to the Environmental Appeal Board;

- General, which discusses procedures, responsibility for operators of facilities or sectors regulated by the Act, and regulatory powers; and
- Transitional Provision, Repeal and Consequential Amendments.

A person who is served with a determination to impose an administrative penalty for non-compliance with requirements to accurately report emissions may appeal the determination or extent of non-compliance to the Board. A person who is served with a determination to impose an administrative penalty for non-compliance with other requirements of the Act or regulations may appeal the determination or extent of non-compliance, and/or the amount of the penalty, to the Board. The Act also allows other decisions to be designated as appealable, by regulation.

The *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation* provides that certain decisions a director makes under the *Greenhouse Gas Emission Reporting Regulation* are appealable:

- approvals of changes in emissions measurement methodology, and
- decisions refusing to accept a verification statement of an emissions report.

The *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation* also allows for appeals of certain decisions by a director, under the *Greenhouse Gas Emission Control Regulation* and the *Greenhouse Gas Emission and Reporting Regulation*:

- suspension or cancellation of an account in the emissions cap-and-trade registry;
- refusal of a validation or verification statement;
- refusal of an emissions offset project;
- refusal to credit offset units based on an offset project report;
- approval of a change in the methodology used to quantify emissions; and
- refusal of a verification statement relating to an emissions report on the grounds that verifications performed by the verification body do not comply with the regulation or certain standards.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.

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

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

The *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* allows appeals to the Board of certain decisions by a director, under the Act:

- where an administrative penalty has been imposed for failure to meet fuel requirements, the underlying determination of non-compliance or the extent of non-compliance;

- where an administrative penalty has been imposed for non-compliance with other requirements, the underlying determination of non-compliance, the extent of non-compliance, or the amount of the penalty;
- refusal to accept a proposed, alternative calculation of the carbon intensity of certain fuels; and
- other decisions prescribed by regulation.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board does not have the discretion to stay any other decisions under appeal from the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*.

Integrated Pest Management Act

The *Integrated Pest Management Act* regulates the sale, transportation, storage, preparation, mixing, application, and disposal of pesticides in British Columbia. It requires permits for certain pesticide uses and certification for individuals seeking to apply pesticides in certain circumstances. It also prohibits the use of pesticides in a way that would cause an unreasonable adverse effect on the environment, and empowers government decision-makers to impose administrative penalties for non-compliance.

The *Integrated Pest Management Act* is divided into seven parts:

- Introduction, including definitions and emergency provisions;
- Prohibitions and Authorizations of Pesticide Use and Sale;
- Administration, including provisions relating to inspection and monitoring;
- Appeals to the Environmental Appeal Board;
- Compliance;
- General, including provisions relating to offences, sentencing orders, notice provisions, and authorizations to make regulations; and
- Transitional and Consequential Provisions.

The *Integrated Pesticide Management Act* allows a “person” to appeal a decision to the Board. Decisions, for the purposes of that Act, include:

- orders, other than those made by the Minister;
- specification of terms and conditions in a licence, certificate, or permit, other than those prescribed by the administrator appointed under that Act;
- amendments or refusals to issue, amend, or renew a licence, certificate, or permit;
- revocations or suspension of a licence, certificate, permit, or confirmation;
- restrictions on the ability of a holder of a licence, certificate, permit, or pest management plan to apply for another licence, certificate or permit, or to receive confirmation of receipt, by the administrator, of a pesticide use notice or amended pesticide use notice;
- determinations to impose an administrative penalty; and
- determinations that the terms and conditions of agreements between the administrator and a person subject to an administrative penalty have not been performed.

Certain decisions made in emergency situations cannot be appealed to the Board.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.

Mines Act

The *Mines Act* regulates mining in British Columbia through a system of permits, regulations, and the Health, Safety and Reclamation Code. The *Mines Act* and associated Code applies to mining operations through exploration, development, construction, production, closure, reclamation, and abandonment. The *Mines Act* allows for inspections, investigations, orders, and enforcement by the Chief Inspector of Mines and inspectors appointed by him or her.

The *Mines Act* allows appeals to an “appeal tribunal” of decisions by the Chief Inspector of Mines, for which notice must be given under section 36.3. That section applies to the imposition of an administrative penalty by the Chief Inspector of Mines and the Chief Inspector’s finding that someone has contravened or failed to comply with provisions related to:

- orders made under the Mines Act;
- terms or conditions imposed in permits, permit exemptions, cancellations of notices of government debt applied to abandoned mines, and orders for the recommencement or reopening of certain mining operations following closures as a result of regulatory actions;
- prescribed provisions of the Act, regulations, or Health, Safety and Reclamation Code.

The *Administrative Penalties (Mines) Regulation* provides that administrative penalties can be imposed for a wide variety of contraventions or non-compliances under the legislation, regulations, *Workplace Hazardous Materials Information System Regulation (Mines)*, and the Health, Safety and Reclamation Code. The *Administrative Penalties (Mines) Regulation* also defined the Board as the “appeal tribunal” referred to under the *Mines Act*.

Deadlines for payment of administrative penalties are automatically postponed upon appeal to the Board, although the Board cannot stay decisions under the *Mines Act*. The administrative penalty must be paid within 40 days after the date that the Board’s decision is given to the parties unless the Board overturns the penalty.

Water Sustainability Act

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

The *Water Sustainability Act* is divided into eight parts:

- Interpretation and Application;
- Licensing, Diversion and Use of Water;
- Protecting Water Resources;
- Enforcement;

- General;
- Regulations;
- Transitional Provisions; and
- Consequential and Related Amendments.

The *Water Sustainability Act* allows, subject to some exceptions created in that Act, any order (defined to include a decision or a direction, whether or not it is in writing, but not a request) resulting from an exercise of discretion by the comptroller, water managers, or engineers designated under the Act to be appealed by:

- the person who is the subject of the order;
- an owner whose land is likely to be physically affected by the order;
- the owner of works that are subject to an order; and
- the holder of an authorization, riparian owner, or an applicant for an authorization who considers that his or her rights are or will be prejudiced by the order.

The exceptions created by the *Water Sustainability Act* that do not allow for appeals to the Board relate to certain:

- certain decisions affecting power operators;
- directions that licences that have lasted 30 years or more must be reviewed;
- directions related to information or declarations of beneficial use of water;
- certain orders related the creation of water sustainability plans;
- orders for determining critical environmental flow thresholds for streams in certain circumstances;
- cancellation of authorizations, in whole or part, due to non-payment of fees;
- decisions as to whether to enter into, and on what terms to enter into, compliance agreements made in relation to administrative penalties;
- certain orders made consistent with consents given for drilling authorizations; and
- certain decisions related to compensation to be paid by the government, if defined by regulation.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.

Water Users' Communities Act

The *Water Users' Communities Act* allows for the creation of water users' communities, which are groups of six or more licensees under the *Water Sustainability Act*, who create and maintain a system to store and deliver water. The *Water Users' Communities Act* defines rights of and obligations on water users' communities, and empowers the comptroller to make certain decisions affecting water users' communities.

The *Water Users' Communities Act* uses the general appeal provisions from the *Water Sustainability Act*, which includes appeals of decisions by the comptroller to cancel a water users' community and dispose of its assets.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions under appeal.



Wildlife Act

The *Wildlife Act* regulates the use, allocation, import and export of fish and wildlife in British Columbia, including activities such as hunting, angling in non-tidal waters, guide outfitting, and trapping. The Act empowers government officials to issue licences, permits, certificates, and orders, and to impose administrative penalties for non-compliance.

The *Wildlife Act* grants rights of appeal to applicants for and holders of licences, permits, registrations for traplines, and certificates for guiding territories. Those individuals may appeal to the Board any decision by a regional manager or director that affects their licence, permit, registration for a trapline or guiding territory certificate.

The Board has the discretion to stay decisions under appeal.

Zero-Emission Vehicles Act

The *Zero-Emission Vehicles Act* requires automakers to meet an increasing annual percentage of new light-duty zero emission vehicle sales and leases, starting with 10% in 2025 and reaching 100% by 2040. Compliance with these directives is monitored by requiring vehicle suppliers to submit annual, auditable reports to the director appointed under the Act, who then issues assessments and possible reassessments in reply. The Act empowers government officials to impose administrative penalties for non-compliance.

The Act allows appeals to the Board of certain decisions made by a director under the Act:

- an assessment or reassessment of a report from a vehicle supplier;
- a determination of non-compliance, the extent of that non-compliance, or of the amount of an administrative penalty; and
- other decisions prescribed by regulation.

So far, no other appealable decisions have been prescribed by regulation.

Decisions to impose administrative penalties are automatically stayed on appeal. The Board has the discretion to stay all other decisions that may be appealed under the *Zero Emission Vehicles Act*.

Statutory Framework

The statutory framework governing the operation of the Board is generally found in Part 8 of the *Environmental Management Act*, sections 93 to 98. The following sections of the *Administrative Tribunals Act* apply to the Board:

- Parts 1, 2, 3, 4 (except sections 23, 24, 33, 34(1), and 34(2)), 6, 7, and 8; as well as
- Sections 57, 59.1, 59.2, and 60.

For appeals filed under the *Mines Act*, the applicable sections of the *Administrative Tribunals Act* are slightly different. The sections that apply to appeals filed under the *Mines Act* are:

- Parts 1, 2, 3, 4 (except sections 23, 24, 25, 34(1), and 34(2)), 6, 7, 8, and 9 (except section 58).

Performance Indicators

Board Processes

In the 2023/2024 reporting period, the appeal process took, on average, 298 days to complete (a decrease from the previous reporting period's average of 386 days). Where decisions were issued on the merits of an appeal, the average was 503 days (an increase from the previous reporting period's average of 447 days). Where appeals were resolved without a decision on the merits (by rejection, abandonment, withdraw, consent order, or dismissal), the average was 201 days (a decrease from the average in the previous reporting period of 372 days).

The Board was encouraged by the shortened average time required to resolve appeals both in the reporting period generally (the lowest since 2021/2022 and the second lowest since the Board began reporting on this metric in 2016/2017) and without a decision on the merits (the lowest since the Board began reporting on this statistic in 2016/2017). The increased time to resolve appeals on their merits (the highest since 2020/2021) relates mostly to one appeal, which took over four years to resolve. Without that appeal, the average would have been 423 days (a low since 2021/2022, and the second lowest since 2017/2018).

In last year's annual report, the Board projected resolving 22 of its oldest 24 appeals in this reporting period. Unfortunately, only two were resolved during the reporting period. Two more were closed early in the 2024/2025 reporting period and the parties to 17 more of these appeals completed submissions to date since April 1, 2024. The Board expects these 19 appeals to all be resolved within the following reporting period and its metrics will be skewed higher as a result. There will likely be, however a considerable decrease in the average age of appeals in the Board's inventory, with only two remaining from 2020 or before, once those 17 appeals are completed. The Board anticipates, however, that the continued high volumes of appeals will likely result in an increase in the size of that inventory.

Most appeals closed in the 2023/2024 reporting period were decided without a decision on their merits. Roughly 44% were summarily dismissed or rejected, roughly 32% were settled, withdrawn, or abandoned, and roughly 24% were concluded by a final decision. These proportions are consistent with those from the previous reporting period.

Judicial Reviews

Three judicial reviews of Board decisions were active in the 2023/2024 reporting period.

Chief Inspector of Mines v. Sunrise Resources Ltd. **(BC Supreme Court)**

This judicial review arises from a preliminary decision of the Board, in which it concluded that one of two administrative penalties levied against Sunrise Resources Ltd. was not issued within a legislated timeframe. The Court heard the appeal during the 2022/2023 reporting period and, in this reporting period, determined that the Board erred in concluding that one of the decisions was not issued within the statutory timeframe. The matter was returned to the Board for further decision-making.

Director, Environmental Management Act et al v. Canadian National Railway Company et al (BC Court of Appeal)

Three railways appealed orders issued by the Director of the Environmental Emergency Program (the "Director"), requiring them to report shipping information about crude oil through the province, from 2018 to 2020. The orders required that the information would be published unless it could not be disclosed under the *Freedom of Information and Protection of Privacy Act*.

The orders were issued under Division 2.1 of the *Environmental Management Act*, which authorizes the Director to request information about certain substances transported by a "regulated person". The *Spill Response, Preparedness and Recovery Regulation* includes those shipping a certain volume of crude oil by railway. All the railways in these appeals met that threshold.

The railways argued that the legislation used to issue the orders is unconstitutional or inapplicable to the railways as federal undertakings. The railways also argued that the orders were unnecessary and unreasonable.

The Board concluded that the Director lacked the constitutional authority to make the orders that the railways had appealed. Furthermore, the railways must be allowed to manage their security and safety without provincial interference, under the principle of interjurisdictional immunity. The Board allowed the railways' appeals and rescinded the orders.

While these appeals were underway, the Board also issued confidentiality orders that required certain security-related evidence and testimony to be kept from the public.

The Director requested a judicial review of both the confidentiality orders and the Board's decision on the constitutional issues. On January 28, 2022, the Supreme Court of British Columbia determined that the Board unreasonably issued the confidentiality orders by concluding there was an overlap between the railways' private interest in keeping security information confidential and the public interest, and by providing insufficient discussion about the public interest in open hearings. The Board also misstated the position of the Director on the scope of security-related evidence that would be tendered by the railways.

The Court also found, with respect to the Board's final decision, that the Board erred in finding the Director lacks the constitutional authority to issue the orders

and that the railways were exempt because of interjurisdictional immunity.

The railways and the Director appealed the decision of the Supreme Court of British Columbia to the Court of Appeal. The appeal was heard in the 2022/2023 reporting period, but the decision was not issued in the reporting period.

District Director, Metro Vancouver v. Environmental Appeal Board et al. (BC Supreme Court)

This case relates to composting operations conducted in Delta, British Columbia, by GFL Environmental, Inc. ("GFL"). In 2018, the District Director of Metro Vancouver issued a permit to GFL, allowing it to emit certain air contaminants as part of its composting operations. The permit covered the existing, open-air operation in place in 2018, a transition to an enclosed facility, and composting occurring entirely in the enclosed facility (scheduled to start in March 2020). The permit allowed GFL to emit air contaminants for less than three years, once operating only in the enclosed facility.

The District Director set various terms and conditions on the permit. GFL appealed the permit, arguing that the District Director had exceeded his authority and imposed unnecessary conditions on the permit. Seventeen local residents from Delta also appealed, arguing for tighter controls in the permit, particularly involving the release of odours. The City of Delta, the municipality in which the composting facility was located, was granted third-party status in the appeals.

While the appeals were underway, GFL twice applied for interim relief, seeking to vary dates in the permit as a result of delays in constructing the enclosed facility. The Board granted those applications. Shortly before the end of the appeal hearing the District Director asked two of the three Board members hearing the appeal to recuse themselves because of actual or perceived bias against him. The Board denied that application and the panel completed the hearing.

The Board issued the decision in due course. It determined that it owed no deference to the District Director regarding any aspect of the permit. The Board concluded that the District Director's decision-making process was unfair because he did not provide written reasons when issuing the permit, although the unfairness was cured through the appeal process.

The Board also concluded that several terms and conditions were not appropriate for the permit or were beyond the authority of the Director. The Board directed, however, that the District Director amend the permit to require GFL to create an odour management plan, subject to the District Director's approval. The Board made recommendations for that plan. The Board also ordered certain contaminants, known to be odorous, be monitored at their point of discharge from the enclosed facility. Further, the Board recommended that the permit be amended to require GFL to submit an operational monitoring plan, to assist in the definition of contaminant emissions sources and the treatment of emissions. Lastly, the Board extended the term of the permit.

The District Director sought a judicial review of this decision. Referencing several procedural rulings throughout the 44-day oral hearing convened for these appeals, the District Director argued that two of the three Board panel members showed bias or a reasonable apprehension of bias during the hearing. The Court heard this appeal in the 2022/2023 reporting period, but a decision was not issued in the reporting period.

Cabinet Reviews

Cabinet did not vary or rescind any decisions of the Board in this reporting period.



Applications and Appeals in the 2023/2024 Reporting Period

The Board is responsible for considering appeals on a broad range of subjects. The diversity of appeals was less in the 2022/2023 reporting period than experienced previously.

One of the largest proportion of appeals filed under the *Environmental Management Act* during the reporting period (nine decisions or 32%) relate to Part 9.1 of that Act (Compliance). Of those appeals, the contraventions underlying the appealed enforcement actions relate to permits issued under the *Environmental Management Act* (4), the *Municipal Wastewater Regulation* (3), the *Recycling Regulation* (1), and an order issued under the *Environmental Management Act* (1).

Nine of the appeals (32%) filed under the *Environmental Management Act* relate to Part 2 (Prohibitions and Authorizations). Five appeals (18%) relate to decisions made under the *Recycling Regulation*. Three appeals (11%) relate to decisions made under the *Municipal Wastewater Regulation*. Two (7%) relate to decisions made under Part 4 of the *Environmental Management Act* (Contaminated Site Remediation).

All ten appeals filed under the *Integrated Pest Management Act* related to Part 2 (Prohibitions and Authorizations of Pesticide Use and Sale).

Of the 22 appeals filed under the *Water Sustainability Act*, 14 were from decisions made under Part 4 (Enforcement). Seven appeals were from decisions made under Part 2 (Licencing, Diversion and Use of Water). One was of an unappealable information-only letter.

There were two appeals filed under the *Mines Act*. These related to the only provision for which appeals may be brought to the Board under the *Mines Act*: the imposition of an administrative penalty.

All 23 appeals under the *Wildlife Act* related to Part 1 (General), which covers nearly the whole of that statute.

The table below summarizes the number of appeals in the Board's inventory at the start of the 2023/2024 reporting period, as well as those filed in, and those completed in, the reporting period. These figures are broken down by the legislation under which each appeal was filed. The number of appeals appears as the first number in each field, while the second number (in parentheses) provides the number of government decision letters that were the subject of appeals (as one decision letter may generate one or more appeals).

	Inventory (Start of Period)	New Appeals in Period	Matters Resolved via...				Inventory (End of Period)
			Rejection or Dismissal	Abandonment or Withdraw	Consent Orders	Final Decisions	
Environmental Management Act							
	45 (29)	28 (23)	1 (1)	5 (5)	1 (1)	8 (8)	58 (37)
Greenhouse Gas Industrial Reporting and Control Act							
	0	0	0	0	0	0	0
Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act							
	0	0	0	0	0	0	0
Integrated Pest Management Act							
	5 (2)	10 (3)	14 (4)	0	0	0	1 (1)
Mines Act							
	3 (3)	2 (2)	1 (1)	0	0	0	4 (4)
Water Sustainability Act							
	9 (9)	22 (22)	2 (2)	11 (11)	1 (1)	1 (1)	16 (16)
Water Users' Communities Act							
	0	0	0	0	0	0	0
Wildlife Act							
	23 (23)	15 (15)	12 (12)	3 (3)	1 (1)	7 (7)	15 (15)
Zero Emission Vehicles Act							
	0	0	0	0	0	0	0
TOTAL	85 (66)	77 (65)	30 (20)	19 (19)	3 (3)	16 (16)	94 (73)

The Board convened three oral hearings in the 2023/2024 reporting period:

- eleven days of an in-person hearing in respect of 19 appeals, grouped together, of a permit authorizing a galvanizing plant to release of air contaminants into the environment;
- one day of an electronic hearing with respect to an \$809,000 penalty issued against a corporate party for discharging unauthorized water contaminants into the environment; and
- nine days of an electronic hearing with respect to the transfer of a (then-named) "Indian trapline" that had been jointly owned by two individuals upon the death of one and disagreement as to whether and to whom the deceased trapline holder's rights should pass.

The Board did not convene any mediations in the reporting period.



Forecast of Workload

In the five years before this reporting period, from 2018/2019 to 2022/2023, the Board received between 53 and 73 appeals each year, for an average of roughly 61 per year. In 2023/2024, the Board received 77. The Board expects to see continued, elevated appeal intake in 2024/2025, as recent years have shown an increasing trend. Furthermore, two new administrative penalty regimes in British Columbia have associated appeal rights to the Board: one under the *Water Sustainability Act* and one under the *Greenhouse Gas Industrial Reporting and Control Act*. These new regimes are projected to generate significant numbers of appeals, including high-complexity appeals. The Board is likely to face significant operational challenges if resources are not increased in time to manage these expanded responsibilities and increasing volumes of work. The Board projects that 90 to 100 appeals will be filed during the upcoming reporting period.

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Forecast of Trends and Special Problems

As detailed above, the Board projects its current trend of increasing volumes of appeals to continue. Additionally, with added areas of purview, the Board is facing the potential for critical resource shortages at current levels of funding.

As noted in last year's annual report, the Board has observed ongoing difficulties with the availability of appeal rights pertaining to the annual spongy moth eradication program carried out in British Columbia, as authorized under the *Integrated Pest Management Act*. For three consecutive years, permits have been issued under that legislation without enough time for British Columbians to exercise their appeal rights before the permitted treatments complete. The short-notice nature of these permits relates, in part, to the required prescribed public notification and comment periods. The Board again recommends that the government consider what judicial or quasi-judicial recourse the public should have where they disagree with the issuance of permits authorizing pesticide use to combat spongy moths. The government may facilitate appeals to the Board by requiring either earlier decision-making on the permits (including, perhaps, by lessening prescribed procedure leading up to the issuance of those permits) or multi-year permits with annually variable treatment areas. The government may, instead, opt to exempt spongy moth treatment with Foray 48B from permitting requirements under the *Integrated Pest Management Act* or authorize such treatment by regulation, either of which would make clear that appeal rights to the Board would not exist.

The Board has also noted a similar compression of timeframes between the issuance of annual hunting quotas and the opening (and closing) of some hunting seasons in British Columbia. The difficulty is particularly extreme for British Columbia's guide outfitters, who are faced with planning business operations around unknown hunting quotas each year. Often, quotas are not issued until days or weeks before the start of a hunting season. Where quotas are reduced, in particular, there are significant pressures on the guide outfitters, who are often forced to choose between managing their appeals of quota decisions or running their business with what quota they have available. These individuals and businesses are caught in a difficult situation, in which they face severe challenges to the exercise of their legislated appeal rights under the *Wildlife Act*. The Board is working with stakeholders to create an expedited appeal process for the British Columbians but cannot offer a complete solution without earlier decision-making by the statutory decision-makers in first instance. The Board urges the government to consider ways in which these annual quota decisions can be issued further in advance of the start of the hunting seasons to which they pertain.

Surveys

There were no surveys undertaken in the reporting period.



Plans for Improving Board Operations

The Board has four central aims for improving its operations in the upcoming reporting period.

First, the Board will complete an Operational Records Classification System schedule, which will allow it to identify records for retention and disposal, in line with governmental requirements. This schedule will be crucial for the Board to modernize its operations in a variety of ways in the future, and for reducing costs associated with the maintenance of unnecessary records.

Second, the Board aims to continue its service delivery realignment in the 2024/2025 reporting period and beyond. Based on feedback the Board has received from stakeholders, and upon review of its 2020 survey of historical system-users, the Board is reworking its appeal processes to focus on several objectives:

- encouraging better preparation of parties to present evidence and participate in hearings,
- improving the efficiency of hearings,
- ensuring that self-represented and layperson-represented parties receive appropriate levels of assistance throughout the life of their appeals while maintaining the impartiality of the Board,
- improving the clarity and responsiveness of the Board's rules and correspondence,
- ensuring that in-person hearings are offered where feasible and appropriate,
- increasing active case management by the Board throughout appeals,
- training panels in the consistent and fair application of rules and procedures,
- emphasizing clarity and responsiveness in decision-writing, and
- fostering more professional, respectful, and culturally aware oral hearings.

Third, the Board seeks to continue to improve its internal processes and leverage recent improvements in its case management software to accomplish many of these aims. The Board will continue to train its members and create more robust materials to assist the public in navigating the appeal process.

Fourth, the Board seeks to continue its work with its Reconciliation Advisory Committee to identify meaningful steps, both within the service delivery realignment project and outside of it, to foster reconciliation with British Columbia's Indigenous population. The Reconciliation Advisory Committee is likely to make recommendations in the 2024/2025 reporting period, and the Board looks forward to incorporating the Committee's feedback into a reconciliation plan.

As identified above, however, the Board lacks the resources to carry out much of this discretionary work outside of trying to complete appeals in as timely a fashion as possible. Its ability to make meaningful progress on many of these objectives requires further resourcing. Absent significant increases in resourcing, the Board is unlikely to make significant steps in most of these areas as it prioritizes the most time-sensitive appeals in its growing appeal inventory.

Board Membership

Members of the Board are appointed by the Lieutenant Governor in Council under Part 2 of the *Administrative Tribunals Act*. The Board has diverse, highly qualified members, including biologists, engineers, and agrologists. The Board also has lawyers with expertise in natural resource and administrative law. Members are appointed from across British Columbia and the Board is committed to soliciting applications to foster a membership reflects the diversity of British Columbians, while ensuring members have the requisite expertise and experience to carry out their responsibilities to the highest standards.

The following tables summarize the membership of the Board as of March 31, 2024, as well as changes in membership during the 2023/2024 reporting period.

Members of the Environmental Appeal Board with Special Duties as of March 31, 2024

Name	End of Term
Darrell Le Houillier (Chair)	July 29, 2027
David Bird (Vice Chair, Service Delivery)	December 31, 2028

Members of the Environmental Appeal Board as of March 31, 2024

Name	End of Term	Name	End of Term
Maureen Baird, K.C.	December 31, 2026	Ian Miller	December 31, 2024
Shannon Bentley	December 31, 2024	Bijan Pourkarimi	December 31, 2024
James Carwana	December 24, 2026	Daphne Stancil	December 31, 2025
Subodh Chandra	December 31, 2024	Norman Tarnow	December 13, 2025
Jeffrey Hand	December 31, 2025	R. Michael Tourigny	December 31, 2025
Dr. Kuo-Ching Lin	December 31, 2024	Dr. Diana Valiela	December 24, 2026
Cynthia Lu	December 31, 2025	Reginald Whiten	December 31, 2024
Linda Michaluk	December 31, 2026		

New and Former Members of the Environmental Appeal Board

New Members	Start of Term	Former Members	End of Term
Norman Tarnow	December 13, 2023	n/a	n/a

The Board Office and Use of Resources

The Board provides administrative support for seven other appeal bodies: the Community Care and Assisted Living Appeal Board, the Financial Services Tribunal, the Forest Appeals Commission, the Health Professions Review Board, the Hospital Appeal Board, the Energy Resource Appeal Tribunal, and the Skilled Trades BC Appeal Board. Administrative support includes registry services, legal advice, research support, systems support, financial and administrative services, professional development, and communications support.

Some expenses associated with the Board’s operations are shared with the other appeal bodies. Such shared expenses include professional services for information technology, information systems, office expenses, and small-scale miscellaneous expenses.

With that limitation in mind, I have provided a summary of the Board’s direct expenses in the 2023/2024 reporting period and historically. The figures below account for administrative support offered to the other appeal bodies, but do not account for shared expenses proportionately distributed among those appeal bodies.

The following table summarizes the Board’s expenditures, rounded to the nearest hundred dollars, for both the reporting period and the average of the five preceding reporting periods (2018/2019 to 2022/2023, inclusive).

Area of Expenditure	Fiscal Years 2018 to 2023, Averaged	2023/2024 Fiscal Year
Staff Salary and Benefits	\$1,123,000	\$1,472,221
Member Fees and Expenses	\$193,000	\$175,341
Staff Travel	\$9,400	\$7,802
Professional Services	\$49,300	\$19,519
Office Expenses	\$221,700	\$91,268
Other Expenses	\$0	\$0
TOTAL	\$1,597,200	\$1,766,151

