

A scenic view of a river flowing through a forest. The river is filled with large, smooth stones and rocks. The banks are covered in dense green trees and foliage. The water is a clear, light blue color, reflecting the surrounding environment. The overall atmosphere is peaceful and natural.

# Annual Report 2024/2025



**Environmental  
Appeal Board**





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Dear Ministers:

Please find enclosed the 2024/2025 Annual Report for the Environmental Appeal Board.

Yours Truly,

A handwritten signature in blue ink that reads "D. Le Houillier".

Darrell Le Houillier  
Chair  
Environmental Appeal Board

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# Message from the Chair

**D**uring the 2024/2025 reporting period, the Board faced a challenging operational environment. With such challenges, however, comes the opportunity to re-evaluate how work is done and to seek novel efficiencies.

The Board's principal responsibility is to resolve appeals. It received 65 new appeals related to 58 separate statutory decisions in the 2024/2025 reporting period. While this is less than the high intake over the previous two reporting periods (averaging 75 per year), it is still significantly above the preceding five-year average (55 appeals per year). The Board closed 68 appeals over the same time, resulting in a decrease in the appeal inventory, from 94 appeals to 91. The average age of appeals increased from 751 days to 844 days, as the Board could not resolve older appeals as intended, given high appeal volumes and resource constraints.

Most appeals that were closed in the 2024/2025 reporting period were decided without a decision on their merits. Half of the appeals closed in the reporting period were settled or withdrawn. Roughly 29% of appeals were summarily dismissed or rejected. The remaining 21% were resolved by a final decision. These proportions are broadly consistent with the previous reporting periods, with the most significant changes being an increase in the proportion of withdrawn appeals and a decrease in the proportion of appeals summarily dismissed or rejected.

The appeal process took, on average, 435 days to complete. This is an increase from the previous three years, but below the two years before that. This increase reflects elevated appeal volumes over the last two reporting periods and ongoing resource constraints in challenging financial times for the Province. The time to resolve appeals on their merits was 646 days, a high since the 2020/2021 reporting period. The time to resolve appeals without a hearing on the merits was 380 days, also a high since the 2020/2021 reporting period. These elevated processing times likely reflect the increasing volume of appeals the Board deals with, and constrained resourcing through much of the year.

While the Board had projected to resolve many of its oldest (pre-2020) appeals in this past reporting period, it has been unable to do so. These appeals are a priority. The Board hopes to close these oldest appeals within the next reporting period. This would, however, further increase the average time to complete appeals, but would be necessary for the resolution of these oldest appeals and the reduction of the age of the appeal inventory. Additionally, the Board projects a year-over-year increase in this metric, as resource constraints mean that it is scheduling hearings years in advance, with appeals likely to be booked into 2028 or 2029 in the next reporting period.

As reported previously, the appeals before the Board are often highly factually and legally complex. The Board also faces many preliminary applications which require significant resources and often do not resolve appeals. These trends 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. On the other end of the spectrum, some appeals are advanced by those without significant resources available for legal processes, and access to justice remains an issue with which the Board regularly grapples.

The Board also anticipates an increase in appeal volumes next reporting period. An increase had been projected for this reporting period due to the

creation of authority for administrative monetary penalties to be issued under the *Water Sustainability Act* and under the *Greenhouse Gas Industrial Reporting and Control Act*. No such appeals have been received; however, I understand that the implementation of penalties under the *Water Sustainability Act* is ongoing, and related appeals are expected in the next reporting period.

Furthermore, in this reporting period the Board was also given authority to hear appeals from administrative monetary penalties imposed under the *Ecological Reserve Act* and the *Park Act*. It is unknown how many appeals will be brought under these statutes; however, operational impacts associated with those statutes are likely less than under the increased volume of appeals under the *Water Sustainability Act*.

The pressures that the Board is facing present an opportunity to reevaluate the manner in which it manages and decides appeals. Over the reporting period, the Board engaged with stakeholders to devise an expedited appeal process that aims to dramatically improve the efficiency of certain appeals and to provide timely decision-making. This system is being designed to address one type of appeal that suffers most from burdensome appeal management and delayed decision-making: appeals of quota decisions under the *Wildlife Act*. The Board hopes to implement this expedited appeal process for quota appeals in the next reporting period and will seek to learn how it can fairly manage appeals in a more efficient and timely way.

This innovation will allow the Board gauge how to best approach its continuing efforts to improve the efficiency and user-focus of its operations through its service delivery realignment project. This project is a multi-year effort aimed at a cover-to-cover redesign of its appeal processes that will continue into the future and capitalize on experiences gained from the Board's forthcoming expedited appeal process, as well as engagement with its Reconciliation Advisory Committee, historical stakeholder engagements, and a survey of historical system-users.

The Board will also increase efficiency by relocating its offices in the next reporting period. It spent considerable effort preparing for this through the 2024/2025 reporting period, by creating an Organizational Records Classification System schedule with the support of the Ministry of the Attorney General's Tribunals and Agencies Support Division. This has enabled the Board to reduce the volume of outdated paper records in its office and to better prepare for relocation. To coincide with its relocation, the Board will update and repair the data loss from its website as a result of a botched migration in the 2023/2024 reporting period.

The Board's expenditures in the reporting period totalled roughly \$1,993,000. This was approximately \$404,000 more than the average from the five preceding fiscal years (roughly \$1,589,000). The increase relates predominantly to increased staffing at the Board, relative to historical levels. 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 ten 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](http://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 its establishing legislation, the *Environmental Management Act*, as well as nine other statutes: the *Ecological Reserve Act*, the *Greenhouse Gas Industrial Reporting and Control Act*, the *Integrated Pest Management Act*, the *Mines Act*, the *Park 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

**I**n the 2024/2025 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 2024/2025 reporting period.

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## Appeal Procedures

**A**n appeal begins when a notice of appeal is filed against a particular decision made by a decision-maker under any of the ten 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.

## ***Ecological Reserve Act***

The *Ecological Reserve Act* grants the Minister of the Environment and Parks the authority to impose an administrative monetary penalty on a person for contravening the regulations of the *Ecological Reserve Act* or the terms of a permit issued under that statute. The Minister may also enter into “compliance agreements” with those liable to pay such an administrative penalty, but if that person fails to satisfy the terms and conditions of the agreement by a date specified in the agreement, the administrative penalty becomes payable.

A person liable to pay an administrative penalty under this statute may appeal to the Board the decision to impose a penalty or the determination that they failed to satisfy the terms and conditions of a compliance agreement.

## 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.

## 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.

## Park Act

The *Park Act* grants the Minister of the Environment and Parks the authority to impose an administrative monetary penalty on a person for contravening the regulations of the *Park Act* or the terms of a permit issued under that statute. The Minister may also enter into “compliance agreements” with those liable to pay such an administrative penalty, but if that person fails to satisfy the terms and conditions of the agreement by a date specified in the agreement, the administrative penalty becomes payable.

A person liable to pay an administrative penalty under this statute may appeal to the Board the decision to impose a penalty or the determination that they failed to satisfy the terms and conditions of a compliance agreement.

## 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 2024/2025 reporting period, the appeal process took, on average, 435 days to complete (an increase from the previous reporting period's average of 298 days). Where decisions were issued on the merits of an appeal, the average was 646 days (an increase from the previous reporting period's average of 503 days). Where appeals were resolved without a decision on the merits (by rejection, abandonment, withdraw, consent order, or dismissal), the average was 380 days (an increase from the average in the previous reporting period of 201 days).

While the Board has made advances to resolve appeals in a timely manner in recent years, resource constraints, coupled with highly complex appeals, have extended those timeframes back to more historical averages. The Board will attempt to resolve its oldest appeals in the next reporting period and so expects the time to resolve appeals to increase. Furthermore, resource constraints have required the Board to begin booking oral hearings years in advance. In the reporting period, appeals have been booked up to and including 2028. In the next reporting period, the Board is likely to be booking oral hearings for 2028 and 2029. Processing times are accordingly unlikely to improve absent further resources. Written hearings are being concluded and adjudicated as resources permit. These resources are likely to become scarcer in the coming years.

To reflect this new reality, the Board has updated its Practice Directive that it must publish to provide estimates on typical timeframes for the resolution of appeals. This will help ensure that those bringing appeals are prepared for the likely duration of the process and that parties to appeals know to bring forward matters requiring urgent adjudication where standard timelines are not workable in the circumstances of their appeal.



Most appeals closed in the 2024/2025 reporting period were decided without a decision on their merits. Roughly 50% were settled or withdrawn, 29% were summarily dismissed or rejected, and roughly 21% were concluded by a final decision. These proportions are generally consistent with those from the previous reporting period, although there was an increase in the proportion of cases settled or withdrawn (from 32% to 50%) and a decrease in both appeals summarily dismissed or rejected (from 44% to 29%) and appeals decided on their merits (from 24% to 21%). These figures fall within expected, historical ranges for appeals to the Board.

## Judicial Reviews

Four judicial reviews of Board decisions were active in the 2024/2025 reporting period.

### ***ʔakisq̣nuk First Nation v. British Columbia Environmental Appeal Board et al. (BC Supreme Court)***

An Assistant Water Manager authorized the Tretheway Beach Society to do work in and about Windermere Lake, near Invermere, British Columbia. The ʔakisq̣nuk First Nation appealed that authorization to the Board and requested a stay of the authorization pending the outcome of the appeal. The Board denied the stay application.

The ʔakisq̣nuk First Nation sought judicial review of the Board's decision and also sought a stay of the underlying authorization by the Assistant Water Manager. The Board was not notified of this stay application and was not invited to participate in the process. The Supreme Court granted the stay sought by the ʔakisq̣nuk First Nation, without addressing the merits of the Board's stay decision.

The judicial review of the Board's decision is set to proceed within the 2025/2026 reporting period.

### ***Administrator, Integrated Pest Management Act v. MKY Holdings and the Environmental Appeal Board (BC Supreme Court)***

In this case, the Board considered MKY Holdings' use of a large quantity of laundry detergent to remove moss from a large area of roofing. The Administrator of the *Integrated Pest Management Act* imposed an administrative penalty after such a use of the detergent, the residue of which washed into a nearby watercourse after some rainfall.

The Board considered the definition of a pesticide, relied upon in issuing the administrative penalty, to be overly broad and rescinded the penalty. The Administrator filed an application for judicial review and the court quashed the Board's decision, finding that the detergent was, in that case, a pesticide. The matter has been remitted to the board for further consideration on the remaining issues.

### ***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. The Court of Appeal released its decision in the 2024/2025, confirming the judgment below. The window for a further appeal to the Supreme Court of Canada remains open as of the date of this annual report.

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

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, granting the District Director's application and setting aside the decision of the Board.

The Board appealed the decision of the British Columbia Supreme Court to the Court of Appeal. The matter was heard late in the 2024/2025 reporting period. The Court of Appeal did not release a decision in the reporting period.

### ***EVR Operations Limited v. Environmental Appeal Board and Chief Inspector of Mines (BC Supreme Court)***

This case relates to the Board dismissing an appeal of an administrative penalty imposed by the Chief Inspector of Mines under the *Mines Act*. The penalty was imposed based on a conclusion that Teck Coal Limited was responsible under section 1.11.1(1) of the Health, Safety and Reclamation Code for Mines in BC (the "Code") for ensuring that a contractor's employee at a mine site was adequately trained or supervised to carry out their job duties and had not satisfied that responsibility. The Board confirmed the penalty, concluding that the procedure followed by the Chief Inspector of Mines was fair, section 1.11.1(1) of the Code applied to Teck Coal Limited with respect to the contractor's employee, and that there was no defense of due diligence available to Teck Coal Limited in respect of it failing to meet the requirements of that section.

EVER Operations Limited sought judicial review of the Board's decision late in the reporting period and the judicial review remains in early, pre-hearing stages.

## **Cabinet Reviews**

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



# Applications and Appeals in the 2024/2025 Reporting Period

The Board is responsible for considering appeals on a broad range of subjects.

The diversity of appeals was less in the 2024/2025 reporting period than experienced previously. This marks the second consecutive reporting period in which the issues brought to the Board have been related to a narrower range of issues than in previous reporting periods.

Most appeals filed under the *Environmental Management Act* during the reporting period (fourteen decisions or 64%) 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* (five appeals), Part 2 of the *Environmental Management Act*: Prohibitions and Authorizations (three appeals), the Code of Practice for Agricultural Environmental Management (two appeals), Part 3 of the *Environmental Management Act*: Municipal Waste Management (one appeal), the *Municipal Wastewater Regulation* (one appeal), the *Recycling Regulation* (one appeal), and an order issued under the *Environmental Management Act* (one appeal).

The remaining appeals filed under the *Environmental Management Act* related to decisions under Part 4: Contaminated Site Remediation (three appeals or 14%), Part 2: Prohibitions and Authorizations (one appeal or 5%), Part 7: Powers in relation to Managing the Environment (one appeal or 5%), the *Recycling Regulation* (one appeal or 5%), the *Municipal Wastewater Regulation* (one appeal or 5%), and the *Hazardous Wastes Regulation* (one appeal or 5%).

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

Of the 21 appeals filed under the *Water Sustainability Act*, the largest proportion of appealed decisions—nine, or 43%—were of decisions made under Part 2 (Licencing, Diversion and Use of Water). There were also six appeals (29% of the total) from decisions made under Part 4 (Enforcement). Of those, two of the appeals also contained decisions made under Part 3 (Protecting Water Resources). There was also one appeal of a decision made exclusively under Part 3 and one appeal of a decision made under the *Dam Safety Regulation*. Four appeals were filed with respect to matters for which no rights of appeal to the Board existed.

All 13 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 2024/2025 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	Rejection or Dismissal	Matters Resolved via...			Inventory (End of Period)
<b>Environmental Management Act</b>	58 (37)	22 (22)	4 (4)	9 (9)	1 (1)	8 (8)	58 (37)
<b>Ecological Reserve Act</b>	0	0	0	0	0	0	0
<b>Greenhouse Gas Industrial Reporting and Control Act</b>	0	0	0	0	0	0	0
<b>Integrated Pest Management Act</b>	1 (1)	9 (3)	3 (3)	6 (2)	0	1(1)	0
<b>Mines Act</b>	4 (4)	0	0	0	0	3 (3)	1 (1)
<b>Park Act</b>	0	0	0	0	0	0	0
<b>Water Sustainability Act</b>	16 (16)	21 (20)	5 (4)	11 (11)	0	0	21 (21)
<b>Water Users' Communities Act</b>	0	0	0	0	0	0	0
<b>Wildlife Act</b>	15 (15)	13 (13)	8 (8)	7 (7)	0	2 (2)	11 (11)
<b>Zero Emission Vehicles Act</b>	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>94 (73)</b>	<b>65 (58)</b>	<b>20 (19)</b>	<b>33 (29)</b>	<b>1 (1)</b>	<b>14 (14)</b>	<b>91 (70)</b>

The Board convened two oral hearings in the 2024/2025 reporting period:

- four days of an electronic hearing in respect of one appeal regarding the amendment of a permit to discharge contaminants into the environment;
- nine days of an in-person oral hearing with respect to an appeal of a water engineer's order issued to individuals who had allegedly done unauthorized work in and about a stream.

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

# Forecast of Workload

**I**n the five years before this reporting period, from 2019/2020 to 2023/2024, the Board received between 53 and 77 appeals each year, for an average of 63 per year. In 2024/2025, the Board received 65. The Board expects to see continued, elevated appeal intake in 2025/2026, as appeal volumes in recent years have been higher than the historical average. Furthermore, while the Board has yet to receive appeals of administrative penalties imposed under the *Ecological Reserve Act*, the *Greenhouse Gas Industrial Reporting and Control Act*, the *Park Act*, or the *Water Sustainability Act*, the Board expects a significant number of appeals, including high-complexity appeals, with respect to those new areas of decision-making. The Board projects between 80 and 90 appeals will be filed during the upcoming reporting period.

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## Forecast of Trends and Special Problems

**A**s detailed above, the Board projects receiving elevated volumes of appeals in forthcoming reporting periods, relative to recent history. The Board will mitigate the impacts of increased appeal volumes with a variety of initiatives, but further resources will likely be required to avoid an increasing appeal backlog and increased time for the adjudication of appeals.

## Surveys

**T**here 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 relocate its office to share space with other appeal bodies. This will allow the Board to reduce the inefficient use of office space by government and will result in considerable savings.

Second, the Board will implement an expedited appeal process to explore more efficient appeal processes and more timely decision-making with respect to appeals of quotas assigned under the *Wildlife Act*. The Board will assess this system in operation and determine how best to adjust its processes, so that it can achieve similar gains in other streams of appeals.

Third, the Board will continue its service delivery realignment project. Based on feedback the Board has received from stakeholders, through its 2020 survey of historical system-users, and after consultation with its Reconciliation Advisory Committee, the Board is reworking its appeal processes to focus on several objectives:

- fostering reconciliation with Indigenous peoples,
- 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.

Fourth, the Board will continue to leverage case management software to improve the quality and consistency of communications. The Board will continue to train its members and create more robust materials to assist the public in navigating the appeal process.

As identified above, however, ongoing resource constraints continue to impair the Board's capacity for modernization and systemic improvement. These improvements will continue regardless; however, the Board will continue to suffer from incomplete realization of these goals as it continues to struggle to carry out its core responsibilities of efficiently managing and promptly adjudicating appeals.

# 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, 2025, as well as changes in membership during the 2024/2025 reporting period.

## Members of the Environmental Appeal Board with Special Duties as of March 31, 2025

Name	End of Term
Darrell Le Houillier (Chair)	July 29, 2027
David Bird (Vice Chair, Registrar)	December 31, 2028
Cynthia Lu (Vice Chair)	July 6, 2028

## Members of the Environmental Appeal Board as of March 31, 2025

Name	End of Term	Name	End of Term
Maureen Baird, K.C.	December 31, 2026	Nancy Moloney	July 6, 2026
James Carwana	December 24, 2026	Bijan Pourkarimi	December 31, 2026
Subodh Chandra	December 31, 2026	Daphne Stancil	December 31, 2025
Jeffrey Hand	December 31, 2025	Norman Tarnow	December 13, 2025
Dr. Kuo-Ching Lin	December 31, 2026	R. Michael Tourigny	December 31, 2025
Linda Michaluk	December 31, 2026	Dr. Diana Valiela	December 24, 2026
Ian Miller	December 31, 2026	Reginald Whiten	December 31, 2025

## New and Former Members of the Environmental Appeal Board

New Members	Start of Term	Former Members	End of Term
John Kehinde Atoyebi	July 6, 2024	John Kehinde Atoyebi	July 22, 2024
Nancy Moloney	July 6, 2024	Shannon Bentley	December 31, 2024

One member's circumstances warrant further explanation. In early 2024, Mr. Atoyebi applied to be appointed as a member of the Environmental Appeal Board. While Cabinet was considering my recommendation that he be appointed, Mr. Atoyebi began working for the Office of the Ombudsperson. Unfortunately, given the respective functions of the Ombudsperson's Office and the Board, Mr. Atoyebi could not simultaneously work for both organizations. Shortly after receiving the news of his appointment to the Board, which was delayed by staff holidays, Mr. Atoyebi resigned his position. He did not complete any training or perform any work for the Board during his brief appointment.

# 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 Energy Resource Appeal Tribunal, the Financial Services Tribunal, the Forest Appeals Commission, the Health Professions Review Board, the Hospital Appeal Board, 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 2024/2025 reporting period and historically (in fiscal years ending, or FYE, 2020 to 2024, inclusive). The figures below account for administrative support offered to the other appeal bodies, but do not account for the proportion of shared expenses proportionately distributed among those appeal bodies, funded by those 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 (2019/2020 to 2023/2024, inclusive).

Area of Expenditure	FYE 2020 to 2024, Averaged	FYE 2025
Staff Salary and Benefits	\$1,183,900	\$1,599,700
Member Fees and Expenses	\$186,400	\$198,200
Staff Travel	\$7,100	\$7,900
Professional Services	\$41,900	\$63,300
Net Office Expenses	\$169,500	\$124,100
<b>TOTAL</b>	<b>\$1,588,800</b>	<b>\$ 1,993,200</b>

