

Environmental Protection and Enhancement Act
Part 4
Environmental Appeals Board

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Environmental Appeals Board established

90(1) There is hereby established the Environmental Appeals Board consisting of persons appointed by the Lieutenant Governor in Council.

(2) The Board shall hear appeals as provided for in this Act or any other enactment.

(3) The Board may convene a panel of Board members to conduct a hearing of an appeal and appoint a person to chair the panel.

(4) Where a panel is convened, the panel has all the powers of the Board and is subject to all the same duties the Board is subject to, and a reference in this Act to the Board is to be read as a reference to the panel.

RSA 2000 cE-12 s90;2003 c42 s6

Notice of appeal

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

(a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or

makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted

(i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or

(ii) by the approval holder or by any person who is directly affected by the Director's decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 72(3);

(b) where the Director refuses

(i) to issue an approval, or

(ii) to make an amendment, addition or deletion in respect of an approval pursuant to an application under section 70(1)(a),
the applicant may submit a notice of appeal;

(c) where the Director cancels or suspends an approval under section 70(3)(b) or (4), the approval holder may submit a notice of appeal;

(d) where the Director cancels a certificate of qualification under section 83(1)(b), the holder of the certificate of qualification may submit a notice of appeal;

(e) where the Director issues an enforcement order under section 210(1)(a), (b) or (c), the person to whom the order is directed may submit a notice of appeal;

(f) where an inspector issues an environmental protection order regarding conservation and reclamation under section 140 or 141, the person to whom the order is directed may submit a notice of appeal;

(g) where the Director issues an environmental protection order under section 129,

(i) the person to whom the order is directed, and

(ii) any person who is directly affected by the designation of the contaminated site

may submit a notice of appeal;

(h) where the Director issues an environmental protection order, except an environmental protection order directing the performance of emergency measures under section 114, 151 or 160 and an environmental protection order referred to in clause (g), the person to whom the order is directed may submit a notice of appeal;

(i) where an inspector issues a reclamation certificate under section 138, or the Director or an inspector amends a reclamation certificate under section 139, the operator and any person who receives a copy of the certificate or amendment under section 145 may submit a notice of appeal;

(j) where the Director or an inspector cancels a reclamation certificate, the operator may submit a notice of appeal;

(k) where the Director or an inspector refuses to accept an application for a reclamation certificate or an inspector refuses to issue a reclamation certificate, the operator may submit a notice of appeal;

(l) where the Director issues or amends a remediation certificate under section 117, any person who receives notice of the issuance or amendment as provided for in the regulations may submit a notice of appeal;

(m) where the Director designates an area as a contaminated site under section 125, any person who is directly affected by the designation may submit a notice of appeal;

(n) where the Director requires a person to pay an administrative penalty under section 237, the person to whom the notice is directed may submit a notice of appeal;

(o) where the Director refuses a request for confidentiality under section 35(5)(b), the person to whom the notice is directed under section 35(6) may submit a notice of appeal;

(p) persons authorized under Part 9 of the *Water Act*, in accordance with Part 9 of the *Water Act*.

(2) Notwithstanding subsection (1)(b), where the Director refuses to issue an approval pursuant to an order of the Minister under section 64, no notice of appeal may be submitted in respect of that refusal.

(3) Where an activity prescribed in the regulations for the purposes of this subsection is the subject of an approval and is carried out in stages, and where the Director issues an approval in respect of a stage, no notice of appeal may be submitted in respect of a stage that is already covered by the approval.

(4) A notice of appeal must be submitted to the Board

(a) not later than 7 days after receipt of a copy of the enforcement order or the environmental protection order, in a case referred to in subsection (1)(e), (f) or (h),

(b) not later than one year after receipt of a copy of the reclamation certificate, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate, and

(c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case.

(5) The Board may, on application made before or after the expiry of the appeal period referred to in subsection (4), extend that period, where the Board is of the opinion that there are sufficient grounds for doing so.

(6) A notice of appeal submitted to the Board under this Act or in accordance with the *Water Act* must contain the information and be made in the manner provided for in the regulations.

(7) A notice of appeal initiates an appeal of the decision objected to.

RSA 2000 cE-12 s91;2002 c4 s1;2003 c37 s14;2003 c42 s6

Additional information

92 Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.

1992 cE-13.3 s85;1998 c15 s9

Extension of time

93 The Board may, before or after the expiry of the prescribed time, advance or extend the time prescribed in this Part or the regulations for the

doing of anything where the Board is of the opinion that there are sufficient grounds for doing so.

1996 c17 s21

Hearing of appeal

94(1) On receipt of a notice of appeal under this Act or under the *Water Act*, the Board shall conduct a hearing of the appeal.

(2) In conducting a hearing of an appeal under this Part, the Board is not bound to hold an oral hearing but may instead, and subject to the principles of natural justice, make its decision on the basis of written submissions.

(3) The Board may, with the consent of the parties to an appeal, make its decision under section 98 or its report to the Minister without conducting a hearing of the appeal.

1992 cE-13.3 s86;1994 c15 s33;1996 cW-3.5 s175;

1996 c17 s22;1998 c15 s9

Powers and duties of Board

95(1) The Board has all the powers of a commissioner under the *Public Inquiries Act*.

(2) Prior to conducting a hearing of an appeal, the Board may, in accordance with the regulations, determine which matters included in notices of appeal properly before it will be included in the hearing of the appeal, and in making that determination the Board may consider the following:

(a) whether the matter was the subject of a public hearing or review under Part 2 of the *Agricultural Operation Practices Act*, under the *Natural Resources Conservation Board Act* or under any Act administered by the Energy Resources Conservation Board and whether the person submitting the notice of appeal received notice of and participated in or had the opportunity to participate in the hearing or review;

(b) whether the Government has participated in a public review in respect of the matter under the *Canadian Environmental Assessment Act* (Canada);

(c) whether the Director has complied with section 68(4)(a);

(d) whether any new information will be presented to the Board that is relevant to the decision appealed from and was not available to the person who made the decision at the time the decision was made;

(e) any other criteria specified in the regulations.

(3) Prior to making a decision under subsection (2), the Board may, in accordance with the regulations, give to a person who has submitted a notice of appeal and to any other person the Board considers appropriate, an opportunity to make representations to the Board with respect to which matters should be included in the hearing of the appeal.

(4) Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing.

(5) The Board

(a) may dismiss a notice of appeal if

(i) it considers the notice of appeal to be frivolous or vexatious or without merit,

(ii) in the case of a notice of appeal submitted under section 91(1)(a)(i) or (ii), (g)(ii) or (m) of this Act or section 115(1)(a)(i) or (ii), (b)(i) or (ii), (c)(i) or (ii), (e) or (r) of the *Water Act*, the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,

(iii) for any other reason the Board considers that the notice of appeal is not properly before it,

(iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92, or

(v) the person who submitted the notice of appeal fails to provide security in accordance with an order under section 97(3)(b),

and

(b) shall dismiss a notice of appeal if in the Board's opinion

(i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under Part 2 of the *Agricultural Operation Practices Act*, under the

Natural Resources Conservation Board Act or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were adequately dealt with, or

(ii) the Government has participated in a public review under the *Canadian Environmental Assessment Act* (Canada) in respect of all of the matters included in the notice of appeal.

(6) Subject to subsections (4) and (5), the Board shall, consistent with the principles of natural justice, give the opportunity to make representations on the matter before the Board to any persons who the Board considers should be allowed to make representations.

(7) The Board shall discontinue its proceedings in respect of a notice of appeal if the notice of appeal is withdrawn.

(8) Subject to the regulations, the Board may establish its own rules and procedures for dealing with matters before it.

RSA 2000 cE-12 s95;2001 c16 s6;2003 c42 s6

Costs

96 The Board may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid.

1992 cE-13.3 s88

Stay of decision

97(1) Subject to subsection (2), submitting a notice of appeal does not operate to stay the decision objected to.

(2) The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted.

(3) Where an application for a stay relates to the issuing of an enforcement order or an environmental protection order or to a water management order or enforcement order under the *Water Act* and is made by the person to whom the order was directed, the Board may, if it is of the opinion that an immediate and significant adverse effect may result if certain terms and conditions of the order are not carried out,

(a) order the Director under this Act or the Director under the *Water Act* to take whatever action the Director considers to be necessary to carry out those terms and conditions and to determine the costs of doing so, and

(b) order the person to whom the order was directed to provide security in accordance with the regulations under this Act or under the *Water Act* in the form and amount the Board considers necessary to cover the costs referred to in clause (a).

(4) Notwithstanding subsections (1) and (2), the Environmental Appeals Board or any court shall not grant a stay with respect to a water management order respecting the administering priority under the *Water Act*.

RSA 2000 cE-12 s97;2003 c42 s6

Decision of Board

98(1) In the case of a notice of appeal submitted under section 91(1)(n) or (o) of this Act or a notice of appeal submitted under section 115(1)(j), (l) or (q) of the *Water Act*, the Board shall, within 30 days after the completion of the hearing of the appeal, make a written decision on the matter.

(2) In its decision, the Board may

(a) confirm, reverse or vary the decision appealed and make any decision that the Director whose decision was appealed could make, and

(b) make any further order the Board considers necessary for the purposes of carrying out the decision.

(3) On making its decision, the Board shall immediately

(a) give notice of the decision to all persons who submitted notices of appeal or made representations to the Board and to all other persons who the Board considers should receive notice of the decision, and

(b) make the written decision available in accordance with the regulations.

1992 cE-13.3 s90;1996 cW-3.5 s175;1996 c17 s24;1998 c15 s9

Report to Minister

99(1) In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the

appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it.

(2) The Minister may extend the 30-day period referred to in subsection (1) on application by the Board before or after the expiry of the period.

1992 cE-13.3 s91;1996 cW-3.5 s175;1998 c15 s9

Decision by Minister

100(1) On receiving the report of the Board, the Minister may, by order,

- (a) confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could make,
- (b) make any direction that the Minister considers appropriate as to the forfeiture or return of any security provided under section 97(3)(b), and
- (c) make any further order that the Minister considers necessary for the purpose of carrying out the decision.

(2) The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall, immediately on receipt of notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision.

1992 cE-13.3 s92;1996 c17 s25;1998 c15 s9

Reconsideration by Board

101 Subject to the principles of natural justice, the Board may reconsider, vary or revoke any decision, order, direction, report, recommendation or ruling made by it.

1996 c17 s26

Privative clause

102 Where this Part empowers or compels the Minister or the Board to do anything, the Minister or the Board has exclusive and final jurisdiction to do that thing and no decision, order, direction, ruling, proceeding, report or recommendation of the Minister or the Board shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings

taken in any court to question, review, prohibit or restrain the Minister or the Board or any of its proceedings.

1996 c17 s26

Publication of Board's report

103 On complying with section 100(2), the Board shall publish or otherwise make available the Board's report and recommendations, or a summary of them, and a notice of the Minister's decision in the manner the Board considers appropriate.

1992 cE-13.3 s93;1996 c17 s27

Filing of order

104 An order of the Board under section 96 or 97, a decision of the Board under section 98 and a decision of the Minister under section 100 may be filed with the clerk of the Court of Queen's Bench and, on filing, are enforceable as if they were judgments of the Court.

1996 c17 s28

Ministerial regulations

105 The Minister may make regulations

- (a) respecting the form and content of a notice of appeal;
- (b) respecting the conduct of proceedings before the Board;
- (c) determining what constitutes "hearing of the appeal" for the purposes of Part 4, including making different procedures applicable in that regard for the purposes of different provisions of Part 4;
- (d) prescribing the criteria to be considered by the Board in directing interim or final costs to be paid;
- (e) respecting the manner in which written decisions of the Board are to be made available for the purposes of section 98(3);
- (f) authorizing the Board to charge fees for services or materials provided by the Board or things done by the Board under this Act, and prescribing the amounts of those fees or the manner in which the amounts are to be determined;
- (g) generally, for regulating the conduct and work of the Board.

1992 cE-13.3 s94;1994 c15 s35;1996 c17 s29;1998 c15 s9

Lieutenant Governor in Council regulations

106 The Lieutenant Governor in Council may make regulations

- (a) respecting the appointment and membership of the Board and providing for the remuneration and travel and living expenses that are payable to members of the Board;
- (b) prescribing additional criteria to be considered by the Board for the purposes of section 95(2)(e);
- (c) prescribing the activities to which section 91(3) applies;
- (d) respecting financial or other security for the purposes of section 97(3)(b).

1992 cE-13.3 s95