



Environmental Appeals Board

# The Environmental Appeals Board (The EAB)

May 3, 2006

Dr. Steve Hrudehy, Chair

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## Environmental Appeals Board

### **Alberta Environmental Appeals Board**

- The creation and jurisdiction of the EAB.
- Types of decisions that can be appealed.
- Filing an appeal with the EAB.
- Processing an appeal: preliminary meetings, hearings, and mediation meetings.
- EAB decisions.
- Costs.



## Environmental Appeals Board

### Creation and Jurisdiction of the Board

- The EAB was created in September 1993 with proclamation of the *Environmental Protection and Enhancement Act* (EPEA).
- The EAB is separate and distinct from Alberta Environment.
- Cases heard by the EAB include decisions regarding approvals, water licenses, enforcement actions, administrative penalties, reclamation certificates, and other matters under section 91 of EPEA and section 115 of the *Water Act*.





## Environmental Appeals Board

### **Board Members**

- 11 Board Members (includes Chair and Vice-Chair).
- Appointed by the Provincial Cabinet based on specialized expertise and technical competence.
- Collectively offer a variety of expertise, knowledge, and experience in environmental matters.



## Filing an Appeal with the Board

- Anyone who is directly affected by a potential decision of Alberta Environment can submit a statement of concern once the project has been advertised.
- A person who is directly affected by a decision and who has filed a statement of concern can file a Notice of Appeal with the EAB. (Usually you will receive notice of the decision from Alberta Environment.)
- Filing an appeal does not Stay Alberta Environment's decision.



## Filing an Appeal with the Board

- Important for the appellant to provide substance in their Notice of Appeal.
  - What specifically is being appealed?
  - How is the appellant directly affected?
  - What elements of the Alberta Environment decision are questioned?
  - Why are these elements questioned?
  - What remedies are requested?





## Environmental Appeals Board

### Preliminary Matters

- Strict timelines for filing an appeal (from 7 days to 1 year day depending on decision type) are specified. Most are 30 days.
- Valid statement of concern must be filed with Alberta Environment.
- Appellant must be “*directly affected*” by Alberta Environment’s decision (affected beyond the ordinary Albertan).
- Concurrent jurisdiction between the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) and the EAB.



## Groups Filing an Appeal

- The “*directly affected*” test is required by the EAB’s legislation and is difficult to apply to a group as a whole.
- Individual members who are directly affected should file an appeal, in addition to the group that they may belong to.
- Group can represent the appellants in the appeal process.
- Provided one or more persons who are directly affected to establish an appeal right, a relevant group then can make an application for intervenor status to participate on its own behalf.





## Environmental Appeals Board

### Mediation

- The EAB uses a voluntary mediation program.
- The mediator is a Board Member who has been trained as a mediator.
- Participants' Agreement to Mediate signed to ensure the participants understand their rights and responsibilities.
- Mediation discussions are confidential.
- Mediator will not serve on a hearing panel and is isolated from any other Board Members on the file.
- Ground rules promote open and full discussion.

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## Environmental Appeals Board

### Why Mediate?

- Reduces administrative and legal costs for all parties.
- Reduces time to process and resolve appeals.
- Promotes a dialogue between industry, citizens, and Alberta Environment.
- Often helps to restore relationships.
- Promotes creative results through an informal and flexible dialogue.





## Environmental Appeals Board

### Hearing Process

- The parties to the hearing are: the appellant, the director, the approval or license holder (if not the appellant).
- Preliminary meetings and hearings can be conducted via written submissions or orally as determined by the Board.
- Written submissions are required for all preliminary meetings and hearings.
- Legal representation is not required, but experienced advice on presenting a case is often helpful.
- Each party presents opening remarks.
- Each party presents their evidence.

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## Environmental Appeals Board

### Hearing Process

- Appellant who bears the burden of proof goes first, followed by cross examination.
- Alberta Environment and approval (or license) holder present evidence each followed by cross examination.
- The Board Members may ask questions of each party after cross examination.
- Each party has a closing statement (appellant first), with the last word offered to the appellant.
- Timelines are strictly imposed.



## Environmental Appeals Board

### Board Decisions

- Board makes final decision on preliminary matters.
- Acting in the public interest is always implicit in the Board's decision-making.
- Appellants must be realistic about the decisions they seek from the Board; absolute positions will require compelling evidence to be sustained.
- On the substantive issues, the Board recommends to the Minister to reverse, confirm, or vary Alberta Environment's decision.



## Environmental Appeals Board

### Costs

- A party to an appeal can apply for costs.
- Costs are not based on loser pay principle of the courts.
- Board reviews whether the costs are associated with the preparation and presentation of submissions, and whether the evidence materially assisted the Board.





## Environmental Appeals Board

### Summary

- The EAB provides a mechanism for those who are directly affected by various decisions of Alberta Environment to appeal.
- The EAB must adhere to the jurisdiction provided by EPEA and the *Water Act*.
- The EAB must follow rules of administrative fairness and natural justice.
- The EAB must seek the inherent balancing required by its enabling legislation.