

WAC 223-08-087 Commencing an appeal—Temporary suspension or discontinuance (stay). Any county appealing under RCW 76.09.050(8) or any person aggrieved appealing under RCW 76.09.205 may seek a stay of the department's approval, in whole or in part, pending such appeal. Any operator, timber owner, or forest land owner appealing under RCW 76.09.080 may seek a stay of the stop work order, in whole or in part, pending such appeal. The following procedure shall apply:

(1) The appellant shall file with the appeals board a motion, supported by affidavit setting forth specific facts supporting a stay. Such motion may be filed with the notice commencing the appeal or at any time thereafter prior to the final decision of the appeal by the appeals board.

(2) Upon receipt of said motion, the presiding officer shall schedule a conference and serve notice of the conference on all parties to the appeal. At the conference, a briefing schedule will be established to address the motion. Before or after the commencement or completion of briefing the presiding officer may determine that an evidentiary hearing is required. The hearing of the merits of the appeal may be consolidated with said hearing.

(3) After the briefing is completed, the appeals board or the presiding officer may stay the department's approval or a stop work order, in whole or in part, or decline to stay. Such action shall be based solely on the record, and shall be embodied in a written order. Orders issued under this subsection shall remain effective until the final decision of the appeals board unless sooner dissolved for good cause shown.

(4) In emergency situations, a stay in whole or in part may be granted by the presiding officer without a conference and/or briefing, only if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party before any adverse party can be heard in opposition. A stay granted without briefing shall be embodied in a written order and shall expire by its terms within such time after entry, not to exceed fourteen days, as provided therein unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. On two days' notice to the party who obtained the stay without notice or on such shorter notice to that party as the presiding officer may prescribe, the adverse party may appear and move its dissolution or modification and in that event the presiding officer or appeals board shall proceed to review and determine such motion as expeditiously as the ends of justice require.

(5) Every order staying the department's approval of an application or a stop work order, whether issued before or after briefing, shall set forth the reasons for its issuance and shall describe in reasonable detail the scope of the stay and shall be filed at the principal office of the appeals board and shall be binding upon all parties to the appeal, their officers, agents, servants, employees, and attorneys and upon those persons in active concert of participation with them who receive actual notice of the order.

(6) Except as otherwise provided by statute, no stay shall issue except upon the giving of security by the moving party, in such sum as the presiding officer deems proper, for payment of such costs and damages as may be incurred or suffered by any party who is found to have wrongfully obtained the stay. No such security shall be required of

the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington.

[Statutory Authority: RCW 43.21B.170, 43.21B.110 (1)(j), 34.05.422(4), and 34.05.479. WSR 19-19-054, § 223-08-087, filed 9/13/19, effective 10/14/19. Statutory Authority: RCW 76.09.230(4). WSR 90-23-093, § 223-08-087, filed 11/21/90, effective 12/22/90.]