

Title 371 WAC

ENVIRONMENTAL HEARINGS OFFICE (POLLUTION CONTROL HEARINGS BOARD)

Chapters

371-08 Practice and procedure.

Chapter 371-08 WAC

PRACTICE AND PROCEDURE

WAC

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WAC 371-08-315 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of agriculture pursuant to chapters 90.48 and 90.64 RCW, the department of ecology, from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110, the decisions of the department of natural resources, the department of fish and wildlife, and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7); forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180; decisions of the department of fish and wildlife to issue, deny, condition or modify a hydraulic project approval permit under chapter 77.55 RCW; decisions of the department of natural resources that are reviewable under RCW 78.44.270 and 78.44.380, and decisions of a state agency that is an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(a) Civil penalties imposed pursuant to RCW 18.104.-155, 70.94.431, 70.105.080, 70.105.095, 70.107.050, 76.09.-170, section 10, chapter 130, Laws of 2010, section 11, chapter 130, Laws of 2010, RCW 77.55.291, 78.44.250, section 1, chapter 84, Laws of 2010, RCW 86.16.081, 88.46.090, 90.03.600, 90.48.144, 90.56.310, 90.56.320, 90.56.330, 90.58.560 and chapter 90.64 RCW.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.-060, 18.104.065, 43.27A.190, 70.94.211, 70.94.332, 70.105.-095, 70.107.060, 88.46.070, 90.14.130, 90.14.190, 90.48.120 and chapter 90.64 RCW.

(c) The issuance, modification, termination or denial of any permit certificate or license by the department of ecology or any air pollution control authority.

(d) The granting, denial, revocation, or suspension of a water right examiner certificate issued by the department under chapter 285, Laws of 2010.

(e) Decisions by the department disapproving a comprehensive solid waste management plan or any amendments to that plan that are appealed by the submitting entity pursuant to RCW 70.95.094.

(f) Decisions of local health departments regarding the grant or denial of solid waste permits or of biosolid permits pursuant to chapter 70.95 RCW.

(g) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

(h) Any other decision by the department of ecology, the administrator of marine safety or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285, 10-18-021, § 371-08-315, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 34.05.360 and 2003 c 325, 04-03-001, § 371-08-315, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.21B.170, 96-15-003, § 371-08-315, filed 7/3/96, effective 8/3/96.]

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board is initiated by filing a notice of appeal with the board at the environmental hearings office and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision unless otherwise provided by law. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, facsimile, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal, not the date that the notice is mailed. Upon receiving the

notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-335, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. 07-03-074, § 371-08-335, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. 05-15-017, § 371-08-335, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170 and 1997 c 125. 97-19-064, § 371-08-335, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). 96-17-016, § 371-08-335, filed 8/12/96, effective 9/12/96.]

WAC 371-08-395 Mediation. In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the environmental hearings boards must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-395, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-395, filed 7/3/96, effective 8/3/96.]

WAC 371-08-400 Subpoenas. (1) **Issuance.** Subpoenas may be issued by any member of the board, the presiding officer assigned to the case or an attorney of record, as provided in the Administrative Procedure Act. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by the presiding officer or a board member shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, shall prepare the subpoenas for issuance, shall send them to the board's office for signature at least ten days before the hearing, and, upon return, shall make arrangements for service.

(2) **Form.** Every subpoena shall name the pollution control hearings board and the title of the proceedings, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.

(3) **Service.** Service of subpoenas to a witness who is not a party to the case shall be made by personally serving a copy of the subpoena to such person, in accordance with civil rule 45, and tendering on demand, where entitled to make such a demand, the fees for one day's attendance and the mileage allowed by law. All costs shall be paid by the party seeking the attendance of the witness.

(4) **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with

the board or presiding officer of the case. Failure to make proof of service does not affect the validity of the service.

(5) **Quashing.** Upon motion made promptly (at or before the time specified in the subpoena for compliance) by the person subpoenaed and upon notice to the party for whom the subpoena was issued, the presiding officer may:

(a) Quash; or

(b) Modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or

(c) Condition denial of the motion upon just and reasonable conditions.

(6) **Geographical scope.** Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-400, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-400, filed 7/3/96, effective 8/3/96.]

WAC 371-08-555 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days from the date of service of the final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. 10-18-021, § 371-08-555, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW and RCW 43.21B.190. 06-07-088, § 371-08-555, filed 3/15/06, effective 4/15/06. Statutory Authority: RCW 43.21B.170 and SHB 1314. 97-19-064, § 371-08-555, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-555, filed 7/3/96, effective 8/3/96.]