

Chapter 43.21B RCW
ENVIRONMENTAL AND LAND USE HEARINGS OFFICE—POLLUTION CONTROL HEARINGS BOARD

Sections

- 43.21B.001 Definitions.
- 43.21B.005 Environmental and land use hearings office created—
Composition—Administrative appeals judges—Contracts
for services—Public access to rulings, decisions, and
orders.
- 43.21B.010 Pollution control hearings board created—Purpose.
- 43.21B.020 Members—Qualifications—Appointment.
- 43.21B.030 Members—Terms—Filling vacancies, term.
- 43.21B.040 Removal of member, procedure—As disqualification for
reappointment.
- 43.21B.050 Governor to determine basis for operation—Compensation
if part-time basis, limitation—Reimbursement of travel
expenses.
- 43.21B.060 Restrictions upon conduct while member and upon
termination of membership.
- 43.21B.080 Chair, biennial election of.
- 43.21B.090 Principal office—Quorum—Hearings—Board powers and
duties.
- 43.21B.100 Board to make findings of fact and written decisions on
each case considered—Effective upon signing and filing
—Public information.
- 43.21B.110 Pollution control hearings board jurisdiction.
- 43.21B.130 Administrative procedure act to apply to appeal of board
rules and regulations—Scope of board action on
decisions and orders of others.
- 43.21B.160 Appeals—Generally.
- 43.21B.170 Proceedings conducted in accordance with published board
rules and regulations.
- 43.21B.175 Mediation.
- 43.21B.180 Judicial review—Right of review of decisions pursuant to
RCW 43.21B.110.
- 43.21B.230 Appeals of agency actions.
- 43.21B.240 Department—Air authorities—Adjudicative proceedings,
may not conduct.
- 43.21B.250 Challenges to consistency of rules adopted pursuant to
RCW 43.21C.110 and 43.21C.120—Procedure—Finality.
- 43.21B.260 Regulations and amendments of activated air pollution
control authorities—Filing with hearings board
authorized—Evidence.
- 43.21B.300 Penalty procedures.
- 43.21B.305 Appeals that involve penalties of fifteen thousand
dollars or less or that involve a derelict or
abandoned vessel under RCW 79.100.120.
- 43.21B.310 Appeal of orders.
- 43.21B.320 Stays of orders.
- 43.21B.330 Summary procedures.
- 43.21B.900 Savings—Other powers and duties not affected—Permits,
standards not affected—Severability—Effective date—
1970 ex.s. c 62.

RCW 43.21B.001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Business days" means Monday through Friday exclusive of any state or federal holiday.

(2) "Date of receipt" 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) "Department" means the department of ecology.

(4) "Director" means the director of ecology.

(5) "Environmental boards" means the pollution control hearings board created in RCW 43.21B.010 and the shorelines hearings board created in RCW 90.58.170.

(6) "Land use board" means the growth management hearings board created in RCW 36.70A.250. [2010 c 210 § 2; 2004 c 204 § 1; 1987 c 109 § 4.]

Intent—2010 c 210: "It is the intent of the legislature to reduce and consolidate the number of state boards that conduct administrative review of environmental and land use decisions and to make more uniform the timelines for filing appeals with such boards. The legislature intends to eliminate the hydraulics appeals board and the forest practices appeals board by transferring their duties to the pollution control hearings board. The legislature further intends to eliminate certain preliminary informal appeals heard internally by agencies. The legislature also intends to consolidate administratively and physically collocate the growth management hearings boards into the environmental and land use hearings office by July 1, 2011." [2010 c 210 § 1.]

Effective dates—2010 c 210: "(1) Sections 1, 3, 5, 7, 9 through 14, and 16 through 42 of this act take effect July 1, 2010.

(2) Sections 2, 4, 6, 15, 43, and 46 of this act take effect July 1, 2011. The chief executive officer of the environmental hearings office may take the necessary steps to ensure that these sections are implemented on their effective date.

(3) Section 8 of this act takes effect June 30, 2019." [2010 c 210 § 44.]

Application—Pending cases and rules—2010 c 210: "(1) This act applies prospectively only and not retroactively. It applies only to appeals that are commenced on or after July 1, 2010. The repeals in section 41 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceeding instituted under them.

(2) All pending cases before the forest practices appeals board and the hydraulics appeals board shall be continued and acted upon by those boards. All existing rules of the forest practices appeals board shall remain in effect and be used by the pollution control hearings

board until the pollution control hearings board adopts superseding rules for forest practices appeals." [2010 c 210 § 42.]

Purpose—1987 c 109: "The purposes of this act are to:

(1) Simplify and clarify existing statutory and administrative procedures for appealing decisions of the department of ecology and air pollution control authorities in order to (a) expedite those appeals, (b) insure that those appeals are conducted with a minimum of expense to save state and private resources, and (c) allow the appellate authorities to decide cases on their merits rather than on procedural technicalities.

(2) Clarify existing statutes relating to the environment but which refer to numerous agencies no longer in existence.

(3) Eliminate provisions no longer effective or meaningful and abbreviate statutory provisions which are unnecessarily long and confusing." [1987 c 109 § 1.]

Short title—1987 c 109: "This act may be referred to as the "ecology procedures simplification act of 1987." [1987 c 109 § 2.]

Construction—1987 c 109: "Unless otherwise specifically intended, this act shall not be construed to change existing substantive or procedural law; it should only clarify and standardize existing procedures." [1987 c 109 § 3.]

Rules—1987 c 109: "The department of ecology shall amend its rules by June 30, 1988, to effect the purposes of this act." [1987 c 109 § 160.]

Severability—1987 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 109 § 161.]

Captions—1987 c 109: "As used in this act, bill headings and section captions constitute no part of the law." [1987 c 109 § 162.]

RCW 43.21B.005 Environmental and land use hearings office created—Composition—Administrative appeals judges—Contracts for services—Public access to rulings, decisions, and orders. (1) There is created an environmental and land use hearings office of the state of Washington. The environmental and land use hearings office consists of the pollution control hearings board created in RCW 43.21B.010, the shorelines hearings board created in RCW 90.58.170, and the growth management hearings board created in RCW 36.70A.250. The governor shall appoint a director of the environmental and land use hearings office during the term of the governor. Membership, powers, functions, and duties of the pollution control hearings board, the shorelines hearings board, and the growth management hearings board shall be as provided by law.

(2) The director of the environmental and land use hearings office may appoint one or more administrative appeals judges in cases before the environmental boards and, one or more hearing examiners in cases before the land use board comprising the office. The administrative appeals judges shall possess the powers and duties

conferred by the administrative procedure act, chapter 34.05 RCW, have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. The hearing examiners possess the powers and duties provided for in RCW 36.70A.270.

(3) Administrative appeals judges are not subject to chapter 41.06 RCW. The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the director of the environmental and land use hearings office. Upon written request by the person so disciplined or terminated, the director of the environmental and land use hearings office shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The director of the environmental and land use hearings office may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The director of the environmental and land use hearings office may also contract for required services.

(6) The director of the environmental and land use hearings office must ensure that timely and accurate board rulings, decisions, and orders are made available to the public through searchable databases accessible through the environmental and land use hearings office websites. To ensure uniformity and usability of searchable databases and websites, the director must coordinate with the relevant boards, the department of commerce, and other interested stakeholders to develop and maintain a rational system of categorizing board rulings, decisions, and orders. The environmental and land use hearings office websites must allow a user to search growth management hearings board decisions and orders by topic, party, and geographic location or by natural language. All rulings, decisions, and orders issued before January 1, 2019, must be published by June 30, 2021. [2020 c 214 § 5; 2019 c 452 § 1; 2018 c 22 § 10. Prior: 2010 1st sp.s. c 7 § 39; 2010 c 210 § 4; (2010 c 210 § 3 expired July 1, 2011); prior: 2003 c 393 § 18; 2003 c 39 § 22; 1999 c 125 § 1; 1990 c 65 § 1; 1986 c 173 § 3; 1979 ex.s. c 47 § 2.]

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Expiration dates—2010 c 210 §§ 3, 5, and 7: See note following RCW 43.21B.110.

Intent—1979 ex.s. c 47: "It is the intent of the legislature to consolidate administratively the pollution control hearings board, the forest practices appeals board, and the shorelines hearings board into one agency of state government with minimum disturbance to these boards. It is not the intent of the legislature in consolidating these boards to change the existing membership of these boards.

All full-time employees of the pollution control hearings board and the full-time employee of the forest practices appeals board shall be full-time employees of the environmental hearings office without loss of rights. Property and obligations of these boards and the shorelines hearings board shall be property and obligations of the environmental hearings office." [1979 ex.s. c 47 § 1.]

RCW 43.21B.010 Pollution control hearings board created—

Purpose. There is hereby created within the environmental and land use hearings office a pollution control hearings board of the state of Washington.

The purpose of the pollution control hearings board is to provide for a more expeditious and efficient disposition of designated environmental appeals as provided for in RCW 43.21B.110. [2010 c 210 § 6; (2010 c 210 § 5 expired July 1, 2011); 1979 ex.s. c 47 § 3; 1970 ex.s. c 62 § 31.]

Intent—Effective dates—Application—Pending cases and rules—

2010 c 210: See notes following RCW 43.21B.001.

Expiration dates—2010 c 210 §§ 3, 5, and 7: See note following RCW 43.21B.110.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

RCW 43.21B.020 Members—Qualifications—Appointment.

The hearings board shall consist of three members qualified by experience or training in pertinent matters pertaining to the environment, and at least one member of the hearings board shall have been admitted to practice law in this state and engaged in the legal profession at the time of his or her appointment. The hearings board shall be appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their term shall be members of the same political party. [2009 c 549 § 5091; 1970 ex.s. c 62 § 32.]

RCW 43.21B.030 Members—Terms—Filling vacancies, term.

Members of the hearings board shall be appointed for a term of six years and until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs: PROVIDED, That the terms of the first three members of the hearings board shall be staggered so that one member shall be appointed to serve until July 1, 1972, one member until July 1, 1974, and one member until July 1, 1976. [1970 ex.s. c 62 § 33.]

RCW 43.21B.040 Removal of member, procedure—As disqualification for reappointment.

Any member of the hearings board may be removed for inefficiency, malfeasance and misfeasance in office, under specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a

tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the hearings board by the tribunal shall disqualify such member for reappointment. [1970 ex.s. c 62 § 34.]

RCW 43.21B.050 Governor to determine basis for operation— Compensation if part-time basis, limitation—Reimbursement of travel expenses. The hearings board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the hearings board shall operate on a full-time basis, each member of the hearings board shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined the hearings board shall operate on a part-time basis, each member of the hearings board shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his or her duties but such compensation shall not exceed ten thousand dollars in a fiscal year. Each hearings board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [2009 c 549 § 5092; 1975-'76 2nd ex.s. c 34 § 101; 1970 ex.s. c 62 § 35.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

RCW 43.21B.060 Restrictions upon conduct while member and upon termination of membership. Each member of the hearings board: (1) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his or her duty as a member of the hearings board, nor shall he or she serve on or under any committee of any political party; and (2) shall not for a period of one year after the termination of his or her membership on the hearings board, act in a representative capacity before the hearings board on any matter. [2009 c 549 § 5093; 1970 ex.s. c 62 § 36.]

RCW 43.21B.080 Chair, biennial election of. The hearings board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect such a chair. [2009 c 549 § 5094; 1970 ex.s. c 62 § 38.]

RCW 43.21B.090 Principal office—Quorum—Hearings—Board powers and duties. The principal office of the hearings board shall be at the state capitol, but it may sit or hold hearings at any other place in the state. A majority of the hearings board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position

of the hearings board be vacant. One or more members may hold hearings and take testimony to be reported for action by the hearings board when authorized by rule or order of the hearings board. The hearings board shall perform all the powers and duties specified in this chapter or as otherwise provided by law. [1990 c 65 § 2; 1974 ex.s. c 69 § 1; 1970 ex.s. c 62 § 39.]

RCW 43.21B.100 Board to make findings of fact and written decisions on each case considered—Effective upon signing and filing—Public information. The hearings board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decisions shall be effective upon being signed by two or more members of the hearings board and upon being filed at the hearings board's principal office, and shall be open for public inspection at all reasonable times. [1970 ex.s. c 62 § 40.]

RCW 43.21B.110 Pollution control hearings board jurisdiction.

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any

dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department 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).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of 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 by the hearings board under RCW 79.100.120.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2023 c 455 § 5; 2023 c 434 § 20; 2023 c 344 § 5; 2023 c 135 § 6; 2022 c 180 § 812. Prior: 2021 c 316 § 41; 2021 c 313 § 16; prior: 2020 c 138 § 11; (2020 c 138 § 10 expired June 30, 2021); 2020 c 20 § 1035; (2020 c 20 § 1034 expired June 30, 2021); prior: 2019 c 344 § 16; 2019 c 292 § 10; 2019 c 290 § 12; 2013 c 291 § 34; (2013 c 291 § 33 expired June 30, 2019); prior: 2010 c 210 § 8; (2010 c 210 § 7 expired June 30, 2019); 2010 c 84 § 3; (2010 c 84 § 2 expired June 30, 2019); prior: 2009 c 456 § 16; 2009 c 332 § 18; (2009 c 183 § 17 expired June 30, 2021); 2003 c 393 § 19; 2001 c 220 § 2; prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

Reviser's note: This section was amended by 2023 c 135 § 6, 2023 c 344 § 5, 2023 c 434 § 20, and by 2023 c 455 § 5, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2023 c 135: See note following RCW 19.27.590.

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Short title—2021 c 316: See RCW 70A.65.900.

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

Effective date—2020 c 138 § 11: "Section 11 of this act takes effect June 30, 2021." [2020 c 138 § 15.]

Expiration date—2020 c 138 § 10: "Section 10 of this act expires June 30, 2021." [2020 c 138 § 14.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

Effective date—2020 c 20 § 1035: "Section 1035 of this act takes effect June 30, 2021." [2020 c 20 § 106.]

Expiration date—2020 c 20 § 1034: "Section 1034 of this act expires June 30, 2021." [2020 c 20 § 105.]

Short title—2019 c 292: See RCW 70A.350.900.

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

Effective date—2013 c 291 § 34: "Section 34 of this act takes effect June 30, 2019." [2013 c 291 § 47.]

Expiration date—2013 c 291 § 33: "Section 33 of this act expires June 30, 2019." [2013 c 291 § 46.]

Expiration dates—2010 c 210 §§ 3, 5, and 7: "(1) Sections 3 and 5 of this act expire July 1, 2011.
(2) Section 7 of this act expires June 30, 2019." [2010 c 210 § 45.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Effective date—2010 c 84 § 3: "Section 3 of this act takes effect June 30, 2019." [2010 c 84 § 6.]

Expiration date—2010 c 84 § 2: "Section 2 of this act expires June 30, 2019." [2010 c 84 § 5.]

Application—2009 c 332: See note following RCW 90.03.110.

Expiration date—2019 c 78; 2009 c 183: See note following RCW 90.03.380.

Intent—2001 c 220: "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

Construction—2001 c 220: "Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court." [2001 c 220 § 6.]

Effective date—2001 c 220: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2001]." [2001 c 220 § 7.]

Effective date—1998 c 262: See RCW 90.64.900.

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

Effective date—1993 c 387: See RCW 18.104.930.

Effective dates—1992 c 73: See RCW 82.23B.902.

Effective date—1989 c 175: See note following RCW 34.05.010.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.

RCW 43.21B.130 Administrative procedure act to apply to appeal of board rules and regulations—Scope of board action on decisions and orders of others. The administrative procedure act, chapter 34.05 RCW, shall apply to the appeal of rules and regulations adopted by the board to the same extent as it applied to the review of rules and regulations adopted by the directors and/or boards or commissions of the various departments whose powers, duties and functions were transferred by section 6, chapter 62, Laws of 1970 ex. sess. to the

department. All other decisions and orders of the director and all decisions of air pollution control boards or authorities established pursuant to chapter 70A.15 RCW shall be subject to review by the hearings board as provided in this chapter. [2020 c 20 § 1036; 1990 c 65 § 3; 1970 ex.s. c 62 § 43.]

RCW 43.21B.160 Appeals—Generally. In all appeals, the hearings board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW, the Administrative Procedure Act. The hearings board, and each member thereof, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. In the case of appeals within the jurisdiction of the hearings board, the hearings board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director as the hearings board, or any member thereof, may deem necessary or appropriate. Any communication, oral or written, from the staff of the director to the hearings board shall be presented only in an open hearing. [1995 c 382 § 2; 1990 c 65 § 5; 1989 c 175 § 103; 1974 ex.s. c 69 § 3; 1970 ex.s. c 62 § 46.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 43.21B.170 Proceedings conducted in accordance with published board rules and regulations. All proceedings before the hearings board or any of its members shall be conducted in accordance with such rules of practice and procedure as the hearings board may prescribe. The hearings board shall publish such rules and arrange for the reasonable distribution thereof. [1995 c 382 § 3; 1970 ex.s. c 62 § 47.]

RCW 43.21B.175 Mediation. In all appeals, upon request of one or more parties and with the consent of all parties, the environmental hearings boards may schedule a conference for the purpose of attempting to mediate the case. Mediation must be conducted by 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. [2010 c 210 § 9.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

RCW 43.21B.180 Judicial review—Right of review of decisions pursuant to RCW 43.21B.110. Any party aggrieved by a final decision and order of the pollution control hearings board may obtain judicial review of the final decision and order as provided in RCW 34.05.510 through 34.05.598. The state or local agency that issued the decision appealed to the board shall have the same right of review from a decision made pursuant to RCW 43.21B.110 as does any person. [2010 c 210 § 10; 1994 c 253 § 6; 1989 c 175 § 104; 1970 ex.s. c 62 § 48.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 43.21B.230 Appeals of agency actions. (1) Unless otherwise provided by law, any person with standing may commence an appeal to the pollution control hearings board by filing a notice of appeal with the board within thirty days from the date of receipt of the decision being appealed.

(2) The appeal is timely if it is filed with the board and served upon the state or local agency whose action is being appealed within the same thirty-day period. Proof of service must be filed with the clerk of the hearings board to perfect the appeal.

(3) The appeal must contain the following in accordance with the rules of the hearings board:

(a) The appellant's name and address;

(b) The date and docket number of the order, permit, license, or decision appealed;

(c) A copy of the order, permit, license, or decision that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought. [2010 c 210 § 11; 2004 c 204 § 3; 1997 c 125 § 2; 1994 c 253 § 8; 1990 c 65 § 6; 1970 ex.s. c 62 § 53.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

RCW 43.21B.240 Department—Air authorities—Adjudicative proceedings, may not conduct. The department and air authorities shall not have authority to hold adjudicative proceedings pursuant to the Administrative Procedure Act, chapter 34.05 RCW. Such hearings shall be held by the pollution control hearings board. [1989 c 175 § 105; 1987 c 109 § 9; 1970 ex.s. c 62 § 54.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 43.21B.250 Challenges to consistency of rules adopted pursuant to RCW 43.21C.110 and 43.21C.120—Procedure—Finality. (1)

All challenges in regard to the consistency of the rules adopted pursuant to RCW 43.21C.120 and with the rules and guidelines adopted pursuant to RCW 43.21C.110 shall be initiated by filing a petition for review with the pollution control hearings board in accordance with rules of practice and procedures promulgated by the hearings board.

(2) All challenges to the hearings board provided under this section shall be decided on the basis of conformance of rules, with the applicable rules and guidelines adopted pursuant to RCW 43.21C.110. The board may in its discretion require briefs, testimony, and oral arguments.

(3) The decisions of the hearings board authorized under this section shall be final. [1974 ex.s. c 179 § 9.]

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

RCW 43.21B.260 Regulations and amendments of activated air pollution control authorities—Filing with hearings board authorized—Evidence. Activated air pollution control authorities, established under chapter 70A.15 RCW, may file certified copies of their regulations and amendments thereto with the pollution control hearings board of the state of Washington, and the hearings board shall take judicial note of the copies so filed and the said regulations and amendments shall be received and admitted, by reference, in all hearings before the board, as prima facie evidence that such regulations and amendments on file are in full force and effect. [2020 c 20 § 1037; 1974 ex.s. c 69 § 5.]

RCW 43.21B.300 Penalty procedures. (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.555.110, 70A.560.020, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within 30 days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority 30 days after the date of receipt by the person penalized of the notice imposing the penalty or 30 days after

the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) 30 days after receipt of the notice imposing the penalty;

(b) 30 days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) 30 days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within 30 days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within 30 days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 and 70A.245.050, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, 70A.555.110, and 70A.560.020, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090. [2023 c 455 § 6; 2023 c 434 § 21; 2023 c 135 § 7; 2022 c 180 § 813. Prior: 2021 c 316 § 42; 2021 c 313 § 17; 2020 c 20 § 1038; 2019 c 64 § 19; prior: 2010 c 210 § 12; 2010 c 84 § 4; prior: 2009 c 456 § 17; 2009 c 178 § 2; 2007 c 147 § 9; 2004 c 204 § 4; 2001 c 36 § 2; 1993 c 387 § 23; 1992 c 73 § 2; 1987 c 109 § 5.]

Reviser's note: This section was amended by 2023 c 135 § 7, 2023 c 434 § 21, and by 2023 c 455 § 6, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2023 c 135: See note following RCW 19.27.590.

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Short title—2021 c 316: See RCW 70A.65.900.

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

~~Intent—Effective dates—Application—Pending cases and rules—~~
2010 c 210: See notes following RCW 43.21B.001.

~~Effective date—1993 c 387:~~ See RCW 18.104.930.

~~Effective dates—1992 c 73:~~ See RCW 82.23B.902.

~~Purpose—Short title—Construction—Rules—Severability—Captions—~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 43.21B.305 Appeals that involve penalties of fifteen thousand dollars or less or that involve a derelict or abandoned vessel under RCW 79.100.120. (1) In an appeal that involves a penalty of fifteen thousand dollars or less or that involves a derelict or abandoned vessel under RCW 79.100.120, the appeal may be heard by one member of the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite appeals involving penalties of fifteen thousand dollars or less or involving a derelict or abandoned vessel. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

(2) For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 only, an administrative law judge employed by the board may be substituted for a board member under this section. [2013 c 291 § 44; 2005 c 34 § 2; 1994 c 253 § 5.]

RCW 43.21B.310 Appeal of orders. (1) The issuing agency in its discretion may stay the effectiveness of any order that has been appealed to the board during the pendency of such an appeal.

(2) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.

(3) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to ensure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(4) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the issuing agency within thirty days of the date of receipt. [2010 c 210 § 13. Prior: 2009 c 456 § 18; 2009 c 178 § 3; 2004 c 204 § 5; prior: 2001 c 220 § 4; 2001 c 36 § 3; 1992 c 73 § 3; 1989 c 2 § 14 (Initiative Measure No. 97, approved November 8, 1988); (1987 3rd ex.s. c 2 § 49 repealed by 1989 c 2 § 24, effective March 1, 1989); 1987 c 109 § 6.]

~~Intent—Effective dates—Application—Pending cases and rules—~~
2010 c 210: See notes following RCW 43.21B.001.

~~Intent—Construction—Effective date—2001 c 220~~: See notes following RCW 43.21B.110.

~~Effective dates—1992 c 73~~: See RCW 82.23B.902.

~~Short title—Construction—Existing agreements—Effective date—1989 c 2~~: See RCW 70A.305.900 and 70A.305.902 through 70A.305.904, respectively.

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109~~: See notes following RCW 43.21B.001.

RCW 43.21B.320 Stays of orders. (1) A person appealing to the hearings board an order, not stayed by the issuing agency, may obtain a stay of the effectiveness of that order only as set forth in this section.

(2) An appealing party may request a stay by including such a request in the appeal document, in a subsequent motion, or by such other means as the rules of the hearings board shall prescribe. The request must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which request is based. The hearings board shall hear the request for a stay as soon as possible. The hearing on the request for stay may be consolidated with the hearing on the merits.

(3) The applicant may make a prima facie case for stay if the applicant demonstrates either a likelihood of success on the merits of the appeal or irreparable harm. Upon such a showing, the hearings board shall grant the stay unless the issuing agency demonstrates either (a) a substantial probability of success on the merits or (b) likelihood of success on the merits and an overriding public interest which justifies denial of the stay.

(4) Unless otherwise stipulated by the parties, the hearings board, after granting or denying an application for a stay, shall expedite the hearing and decision on the merits.

(5) Any party or other person aggrieved by the grant or denial of a stay by the hearings board may petition the superior court for Thurston county for review of that decision pursuant to chapter 34.05 RCW pending the appeal on the merits before the board. The superior court shall expedite its review of the decision of the hearings board. [2010 c 210 § 14; 1987 c 109 § 7.]

~~Intent—Effective dates—Application—Pending cases and rules—2010 c 210~~: See notes following RCW 43.21B.001.

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109~~: See notes following RCW 43.21B.001.

RCW 43.21B.330 Summary procedures. The hearings board shall develop procedures for summary procedures, consistent with the rules of civil procedure for superior court on summary judgment, to decide cases before it. Such procedures may include provisions for determinations without an oral hearing or hearing by telephonic means. [1987 c 109 § 8.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 43.21B.900 ~~Savings—Other powers and duties not affected—~~
~~Permits, standards not affected—Severability—Effective date—1970~~
ex.s. c 62. See notes following RCW 43.21A.010.