



Province of Alberta

ENVIRONMENTAL PROTECTION AND
ENHANCEMENT ACT

**ENVIRONMENTAL APPEAL
BOARD REGULATION**

Alberta Regulation 114/1993

With amendments up to and including Alberta Regulation 251/2001

Office Consolidation

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(Consolidated up to 251/2001)

ALBERTA REGULATION 114/93

Environmental Protection and Enhancement Act

ENVIRONMENTAL APPEAL BOARD REGULATION

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Definitions

1 In this Regulation,

- (a) “Act” means the *Environmental Protection and Enhancement Act*;
- (b) “Board” means the Environmental Appeal Board established under section 90 of the Act;
- (c) “chair” means the chair of the Board;

- (d) “notice of appeal” means a notice of appeal filed pursuant to section 91 of the Act or pursuant to any other enactment;
- (e) “panel” means a panel of the Board;
- (f) “party” means
 - (i) the person who files a notice of appeal that results in an appeal,
 - (ii) the person whose decision is the subject of the notice of appeal,
 - (ii.1) where the subject of the notice of appeal is an approval or reclamation certificate under the Act or an approval, licence, preliminary certificate or transfer of an allocation of water under the *Water Act*, the person who holds the approval, licence or preliminary certificate, the person to whom the reclamation certificate was issued or the person to whom the allocation was transferred, and
 - (iii) any other person the Board decides should be a party to the appeal.

AR 114/93 s1;212/96;106/99;251/2001

Application

2 This Regulation applies to all appeals conducted by the Board pursuant to Part 4 of the Act or pursuant to any other enactment.

AR 114/93 s2;212/96;251/2001

Combining notices of appeal

3 Where the Board receives more than one notice of appeal in respect of a decision, it may combine the notices of appeal for the purposes of dealing with them under this Regulation.

AR 114/93 s3;106/99

Chair and quorum

4(1) The chair may act for and in the name of the Board in the execution, performance and carrying out of any act, matter or thing that is within the power of the Board.

(2) The chair may appoint a Board member as acting chair.

(3) The acting chair has and may exercise and perform the powers and duties conferred or imposed on the chair by the Act and this Regulation at any time during which the office of chair is vacant or

the chair is absent or is for any reason incapable of exercising and performing the powers and duties of the chair.

(4) Repealed AR 212/96 s4.

AR 114/93 s4;212/96;106/99

Notice of appeal

5(1) A notice of appeal submitted pursuant to section 91 of the Act shall contain the following:

- (a) the provision of the Act under which the notice of appeal is submitted;
- (b) the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision being appealed;
- (c) a description of the relief requested by the person appealing;
- (d) the signature of the person appealing, or the person's lawyer or other agent;
- (e) an address for service for the person appealing.

(2) A notice of appeal submitted pursuant to any enactment other than section 91 of the Act shall contain the following:

- (a) the section number and the name of the other enactment pursuant to which the notice of appeal is submitted, and
- (b) the information referred to in subsection (1)(b), (c), (d) and (e).

AR 114/93 s5;212/96;106/99;251/2001

Panel

6(1) The Board may convene a panel at any time prior to the hearing of the appeal.

(2) A panel shall consist of one, 3 or 5 Board members.

(3) Where a panel consists of more than one person, a majority of the panel shall constitute a quorum.

(4) No Board member who has an interest in the subject matter of a notice of appeal, whether directly or because of his position, affiliation or involvement in or with an organization, firm or business, shall participate in the panel that will conduct the hearing of the appeal.

AR 114/93 s6;106/99

Notices

7(1) Subject to section 95(2) and (5) of the Act, where the Board makes a determination to proceed with a notice of appeal, it shall

- (a) where the Board decides to conduct the hearing of the appeal by means of an oral hearing,
 - (i) fix a date for the hearing of the appeal, and
 - (ii) subject to subsection (3), give written notice to the parties of the date of the hearing and the date by which the parties must file their written submissions with the Board, and publish a notice containing the information specified in subsection (2) in any manner the Board considers appropriate at least
 - (A) 7 days before the date of the hearing, where the notice of appeal is one referred to in section 115(1)(a), (d), (f) or (g) of the *Water Act* and is in respect of an approval, or
 - (B) 21 days before the date of the hearing in all other cases;
- (b) where the Board decides to conduct the hearing of the appeal on the basis of written submissions,
 - (i) give written notice to the parties stating that the hearing of the appeal will be conducted on the basis of written submissions, and setting out the date by which the parties must file their written submissions with the Board, and
 - (ii) publish a notice containing the information specified in subsection (2) in any manner that the Board considers appropriate.

(2) A published notice referred to in subsection (1)(a)(ii) or (b)(ii) must contain the following:

- (a) the date, time and place of the hearing, in a case where an oral hearing is to be held;
- (b) a summary of the subject matter of the notice of appeal;
- (c) a statement that any person who is not a party to the appeal and wishes to make representations on the subject matter of the notice of appeal must submit a request in writing to the Board;

- (d) the deadline for submitting a request in writing under clause (c);
- (e) the mailing address of the Board;
- (f) the location and time at which any material filed with the Board will be available for examination by interested persons.

(3) Notwithstanding anything in this section, where the Board is of the opinion that an emergency situation exists that is resulting or could result in an adverse effect, the Board may give or publish notice under this section in any manner and within any time that the Board considers appropriate.

AR 114/93 s7;212/96;106/99;251/2001

8 Repealed AR 212/96 s6.

Request to attend

9(1) A request in writing referred to in section 7(2)(c) shall

- (a) contain the name, address and telephone number of the person submitting the request,
- (b) indicate whether the person submitting the request intends to be represented by a lawyer or other agent and, if so the name of the lawyer or other agent,
- (c) contain a summary of the nature of the person's interest in the subject matter of the notice of appeal, and
- (d) be signed by the person submitting the request.

(2) Where the Board receives a request in writing in accordance with section 7(2)(c) and subsection (1), the Board shall determine whether the person submitting the request should be allowed to make representations in respect of the subject matter of the notice of appeal and shall give the person written notice of that decision.

(3) In a notice under subsection (2) the Board shall specify whether the person submitting the request may make the representations orally or by means of a written submission.

AR 114/93 s9;212/96;106/99

Written submissions

10(1) A party to an appeal shall file a written submission with the Board

- (a) not later than the date specified for that purpose in the written notice given to the party under section 7(1)(a)(ii), in a case where there will be an oral hearing, or
 - (b) not later than the date specified in a notice under section 7(1)(b)(i), where the Board has decided that the hearing of the appeal will be conducted on the basis of written submissions.
- (2)** Where a person, other than a party, has received a notice under section 9(2), that person shall file a written submission with the Board by the date specified for doing so in the notice.
- (3)** A written submission, whether filed by a party or a person referred to in section 9(2), shall contain
- (a) a summary of the facts and evidence to be relied on by the person filing the submission,
 - (b) the name, address and telephone number of the lawyer or other agent acting on behalf of the person filing the submission, and
 - (c) in a case where there will be an oral hearing, a list of witnesses to be called by the party filing the submission.
- (3.1)** A written submission shall be signed by the person filing it or by that person's lawyer or other agent.
- (4)** The Board shall make available to any person for the purposes of examination only, a copy of all written submissions received by the Board.
- (5)** Subsection (4) does not apply where the notice of appeal was submitted under section 91(1)(l) of the Act.

AR 114/93 s10;212/96;106/99;251/2001

Mediation

11 Where the Board has determined the parties to the appeal, the Board may, prior to conducting the hearing of the appeal, on its own initiative or at the request of any of the parties, convene a meeting of the parties and any other interested persons the Board considers should attend, for the purpose of

- (a) mediating a resolution of the subject matter of the notice of appeal, or
- (b) determining any of the matters referred to in section 13.

AR 114/93 s11;212/96;106/99

Resolution of notice of appeal

12(1) Where the parties agree to a resolution of a notice of appeal filed pursuant to section 91(1)(a) to (j) of the Act or section 115(1)(a) to (i), (k), (m) to (p) or (r) of the *Water Act*, the Board shall within 15 days

- (a) prepare a report and recommendations that are signed by the parties and reflect the agreed upon resolution,
- (b) submit the report and recommendations to the Minister to be dealt with under section 100 of the Act, and
- (c) send a copy of the report and recommendations to each party.

(2) Where the parties agree to a resolution of a notice of appeal filed pursuant to section 91(1)(k) or (l) of the Act or section 115(1)(i), (j), (l) or (q) of the *Water Act*, the Board shall within 15 days

- (a) make its written decision reflecting the agreed upon resolution,
- (b) obtain the signatures of all the parties to the appeal consenting to the written decision,
- (c) send a copy of the written decision to each party, and
- (d) give notice as required under section 98(3)(a) of the Act to all other persons who the Board considers should receive notice of the decision.

AR 114/93 s12;212/96;106/99;251/2001

No resolution of notice of appeal

13 Where the parties do not agree to a resolution of the subject matter of a notice of appeal, the presiding Board member, in consultation with the parties, may

- (a) determine a date for a future meeting,
- (b) admit any facts agreed to by the parties,
- (c) admit any evidence agreed to by the parties,
- (d) determine the matters to be included in the hearing of the appeal pursuant to section 95(2) and (3) of the Act,
- (e) determine any matter of procedure,
- (f) have the parties exchange documents and written submissions, and

- (g) where an oral hearing is to be held, determine
 - (i) the order of witnesses,
 - (ii) the day-to-day conduct of the hearing, and
 - (iii) any other matter necessary for the hearing.

AR 114/93 s13;212/96;106/99;251/2001

Questions

14 The Board

- (a) shall give each party an opportunity to direct questions to other parties in attendance at an oral hearing, and
- (b) may give a party an opportunity to direct written questions to other parties where a hearing of the appeal is conducted on the basis of written submissions.

AR 114/93 s14;212/96;106/99

Closing remarks

- 15 The Board shall provide each party with an opportunity for closing remarks at an oral hearing.

AR 114/93 s15;212/96

Adjournments

- 16 An oral hearing shall continue from day to day, except Saturdays and holidays, unless the Board adjourns the hearing.

AR 114/93 s16;212/96

Decisions, reports and recommendations

- 17(1) The decision under section 98 of the Act and the recommendations under section 99 of the Act of a majority of the members who heard the appeal are the decision and recommendations of the Board.

- (2) All members of the Board who hear an appeal must sign the written decision under section 98 of the Act or the report and recommendations under section 99 of the Act.

- (3) A report under section 99 of the Act and a decision under section 98 of the Act must contain the following:

- (a) a summary of the evidence;
- (b) a statement of the issues to be decided;

- (c) the recommendations or the decision, including any dissent;
- (d) the reasons for the recommendations or the decision.

(4) The Board shall make its decision under section 98(1) of the Act available for inspection by any person at the offices of the Board during normal business hours.

AR 114/93 s17;251/2001

Electronic hearing

17.1 The Board may, with the consent of the parties, conduct an oral hearing by electronic means where not all of the participants are in the same room, as long as it is physically possible for each of the participants to hear and respond to the comments of the other participants at the time the comments are made.

AR 212/96 s14

Costs

18(1) Any party to a proceeding before the Board may make an application to the Board for an award of costs on an interim or final basis.

(2) A party may make an application for all costs that are reasonable and that are directly and primarily related to

- (a) the matters contained in the notice of appeal, and
- (b) the preparation and presentation of the party's submission.

AR 114/93 s18;106/99

Interim costs

19(1) An application for an award of interim costs may be made by a party at any time prior to the close of a hearing of the appeal but after the Board has determined all parties to the appeal.

(2) An application for an award of interim costs shall contain sufficient information to demonstrate to the Board that the interim costs are necessary in order to assist the party in effectively preparing and presenting its submission.

(3) In deciding whether to grant an interim award of costs in whole or in part, the Board may consider the following:

- (a) whether the submission of the party will contribute to the meeting or hearing of the appeal;
- (b) whether the party has a clear proposal for the interim costs;

- (c) whether the party has demonstrated a need for the interim costs;
 - (d) whether the party has made an adequate attempt to use other funding sources;
 - (e) whether the party has attempted to consolidate common issues or resources with other parties;
 - (f) any further criteria the Board considers appropriate.
- (4)** In an award of interim costs the Board may order the costs to be paid by either or both of
- (a) any other party to the appeal that the Board may direct;
 - (b) the Board.
- (5)** An award of interim costs is subject to redetermination in an award of final costs under section 20.

AR 114/93 s19;212/96

Final costs

20(1) Where an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing of the appeal at a time determined by the Board.

(2) In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following:

- (a) whether there was a meeting under section 11 or 13(a);
- (b) whether interim costs were awarded;
- (c) whether an oral hearing was held in the course of the appeal;
- (d) whether the application for costs was filed with the appropriate information;
- (e) whether the party applying for costs required financial resources to make an adequate submission;
- (f) whether the submission of the party made a substantial contribution to the appeal;
- (g) whether the costs were directly related to the matters contained in the notice of appeal and the preparation and presentation of the party's submission;

(h) any further criteria the Board considers appropriate.

(3) In an award of final costs the Board may order the costs to be paid in whole or in part by either or both of

(a) any other party to the appeal that the Board may direct;

(b) the Board.

(4) The Board may make an award of final costs subject to any terms and conditions it considers appropriate.

AR 114/93 s20;212/96;106/99

Fees

20.1 The Board may charge fees for services or materials provided by the Board or things done by the Board under the Act in accordance with the Schedule of Fees prescribed by the Minister.

AR 212/96 s17

Repeal

21 The *Stop Order Appeal Regulations* (Alta. Reg. 9/74) are repealed.

Coming into force

22 This Regulation comes into force on September 1, 1993.



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