

**Water Act
Part 9
Appeals**

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Appeal to Board

114 A notice of appeal submitted under this Part initiates an appeal of the decision to which an objection has been made to the Environmental Appeals Board.

RSA 2000 cW-3 s114;2003 c42 s6

Notice of appeal

115(1) A notice of appeal under this Act may be submitted to the Environmental Appeals Board by the following persons in the following circumstances:

(a) if the Director issues or amends an approval, a notice of appeal may be submitted

(i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or

(ii) by the approval holder or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application was not provided;

(b) if the Director issues or amends a preliminary certificate, a notice of appeal may be submitted

(i) by the preliminary certificate holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or

(ii) by the preliminary certificate holder or by any person who is directly affected by the Director's decision, if the Director waived the

requirement to provide notice under section 108(6) and notice of the application was not provided;

(c) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence, a notice of appeal may be submitted

(i) by the licensee or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or

(ii) by the licensee or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application or proposed changes was not provided;

(d) subject to clause (e), the applicant for the approval or licence, if the Director refuses to issue an approval or licence;

(e) if the Director issues or refuses to issue a licence to the Government under section 51(2), the applicant for the licence and any directly affected person;

(f) the applicant, if the Director refuses to amend an approval, preliminary certificate or licence;

(g) the approval holder, preliminary certificate holder, licensee or registrant, if the Director suspends or cancels an approval, licence or registration or cancels a preliminary certificate;

(h) the licensee, if the Director refuses to renew a licence;

(i) if the Director renews a licence where there has been a public review, any person who previously submitted a statement of concern in accordance with section 109;

(j) if the Minister takes over any works or undertaking, the approval holder, preliminary certificate holder or licensee or the owner of the works or undertaking;

(k) if the Director provides notice that no further applications for licences are to be accepted, a person who wishes to apply for a licence for any water that was the subject of the notice;

(l) the owner of the works, if the Minister issues an order with respect to the use of another person's works under section 52(3);

(m) if an inspector or the Director issues a water management order or amends a water management order, except an order with respect to administering priority or an order that is only for the purpose of carrying out emergency measures, the person to whom the order is directed;

(n) if an inspector or the Director issues a water management order or amends a water management order with respect to administering priority, the person to whom the order is directed, or any person whose rights to divert water may be affected by the issuance of the order with respect to who has priority;

(o) a person who is entitled to divert water pursuant to section 21 and who is affected by a declaration by the Director that a diversion of water must cease;

(p) the person to whom an enforcement order is directed, if the Director issues an enforcement order directing

(i) the suspension or cancellation of an approval or licence or the cancellation of a preliminary certificate,

(ii) the stopping or shutting down of any activity, diversion of water or operation of a works if the activity, diversion or operation is the subject-matter of an approval or licence,

(iii) the ceasing of construction, operation, maintenance, repair, control, replacement or removal of any works or the carrying out of an undertaking, if the works or undertaking is the subject of an approval, or

(iv) the removal or otherwise rendering ineffective of any works or obstruction;

(q) if the Director requires a person to pay an administrative penalty, the person to whom the notice of the administrative penalty is directed;

(r) if the Director approves or refuses a request for a transfer of an allocation of water, the applicant and any person who submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision.

(2) Notwithstanding subsection (1), a notice of appeal may not be submitted

(a) if, pursuant to an order of the Minister under section 34, the Director

- or
 - (i) refuses to issue an approval, preliminary certificate or licence,
 - (ii) refuses to approve a transfer of an allocation of water under a licence;
- (b) with respect to any matter relating to a licence for the temporary diversion of water;
 - (c) with respect to an amendment
 - (i) to correct a clerical error,
 - (ii) of a monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence, or
 - (iii) to extend the expiry date of an approval, preliminary certificate or licence;
 - (d) with respect to an amendment to reflect a disposition of land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant.

RSA 2000 cW-3 s115;2003 c42 s6

Submission of notice of appeal

116(1) A notice of appeal must be submitted to the Environmental Appeals Board

- (a) not later than 7 days after
 - (i) receipt of a copy of a water management order or enforcement order, or
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from,
- or
- (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.

(2) The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that

period, if the Board is of the opinion that there are sufficient grounds to do so.

(3) A notice of appeal must contain the information and be made in the manner provided for in the *Environmental Protection and Enhancement Act* and the regulations under that Act.

RSA 2000 cW-3 s116;2003 c42 s6

No damages, no compensation

117 If an inspector or the Director issues a water management order with respect to administering priority and that order or part of the order is successfully appealed by any person, no action for damages may be commenced and no compensation may be paid with respect to any impact on or losses incurred with respect to any person's priority as a result of the issuance or appeal of the water management order.

1996 cW-3.5 s117