



ALBERTA
ENVIRONMENTAL APPEALS BOARD

Environmental Appeals Board
(Advisory and Adjudicative Agency)
Mandate and Roles Document

November 2009 (updated)

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- A. *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, s. 91(1).
- B. *Government Organization Act*, R.S.A. 2000, c. G-10, Schedule 5, s. 6(1).
- C. *Water Act*, R.S.A. 2000, c. W-3, s. 115(1).
- D. *Climate Change and Emissions Management Act*, S.A. 2003, c. C-16.7, s. 42(1).

Attachment 2

Memorandum of Understanding between the Minister of Environment and the Environmental Appeals Board, September 26, 2003 and Amendment to Memorandum of Understanding between the Minister of Environment and the Environmental Appeals Board, October 19, 2004.

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Position Profile for the Chair of the Environmental Appeals Board, March 2009.

Additional Information

Government of Alberta	www.alberta.ca
Environmental Appeals Board	www.eab.gov.ab.ca
Alberta Environment	www.environment.alberta.ca
Agency Governance Secretariat	www.alberta.ca/home/729.cfm
Foundation of Administrative Justice	www.foundationofadminjustice.ca
Alberta Arbitration and Mediation Society	www.aams.ab.ca
Legal Education Society of Alberta	www.lesa.org

Environmental Appeals Board

Mandate and Roles Document

I. INTRODUCTION

The *Alberta Public Agencies Governance Act*, S.A. 2009, c. A-31.5 (the APAGA) was passed on June 4, 2009, and is expected to come into force in early 2010. The APAGA is based on the “Public Agencies Governance Framework, February 2008” (the PAGF) that was adopted by the Government of Alberta following a review of agencies, boards, and commissions conducted by a task force chaired by Mr. Neil McCrank. See: *At a Crossroads: Report of the Board Governance Review Task Force*, October 2007 (the McCrank Report). The key elements underlying the APAGA, the PAGF, and the McCrank Report are the need for transparency and accountability of the Government’s agencies, boards, and commissions. To implement the APAGA, the Honourable Premier Ed Stelmach established the Agency Governance Secretariat, which reports to the Deputy Minister of Executive Council. In accordance with section 1(1)(i)(iii) of the APAGA, the Environmental Appeals Board (the EAB) is a “public agency” and subject to the provisions of the act.

Section 3 of the APAGA requires that each agency develop a “Mandate and Roles Document.” This is the EAB’s Mandate and Roles Document developed in accordance with the APAGA, the PAGF, and the McCrank Report. It was prepared jointly with the Minister of Environment (the Minister), who is responsible for the EAB.

Preamble to the Alberta Public Agencies Governance Act.

“WHEREAS Ministers of the Crown are accountable to the public for the activities and performance of public agencies in their ministries;

WHEREAS public agencies are responsible for their activities and for the fulfilment of their mandates, and are accountable to their responsible Minister respecting their activities, successes and failures;

WHEREAS public agencies require varying degrees of authority to fulfil their mandates; and

WHEREAS clear communication and transparency are desirable with respect to the governance, mandates and activities of public agencies....”

II. BACKGROUND

The EAB was established on September 1, 1993, under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (EPEA). The EAB is authorized by Part 4 of EPEA and the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93, which outline the duties, responsibilities, and procedures of the EAB and provides the EAB with the jurisdiction to accept appeals of a variety of specific regulatory decisions made by Alberta Environment.

A. EAB's Creation

The EAB's principal function is to resolve appeals, filed by business, industry, municipalities, or other directly affected persons, of certain decisions made by Alberta Environment under EPEA or other applicable legislation. The EAB's preferred method of resolving appeals is through its highly successful mediation program. However, when mediation is not appropriate or is unsuccessful, the EAB is empowered to undertake a hearing process, in accordance with the principles of natural justice and procedural fairness.

If a matter proceeds to a hearing, the EAB will usually make a number of procedural decisions leading up to the hearing. Examples of these decisions include whether a person who filed an appeal has standing and setting the issues to be heard at the hearing. With respect to such procedural matters, the EAB's decisions are final.

With respect to the substantive decision following a hearing, in the vast majority of cases the EAB's authority is to make recommendations to the Minister, who then makes the final decision. In a very limited number of cases, such as confidentiality requests and administrative penalties, the EAB makes the final decision following a hearing. Because the EAB both provides advice to the Minister in most cases and makes final decisions in a limited number of cases, the EAB performs both advisory and an adjudicative functions.

B. EAB's Mandate (EPEA)

The EAB's enabling legislation, the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, came into force on September 1, 1993. EPEA represented a major revision of environmental laws in Alberta and resulted in the repeal of a number of pieces of legislation. In general, EPEA deals with the control of the release of substances into the environment. Pursuant to section 91(1) of EPEA, matters that can be appealed to the EAB include:

1. An approval dealing with the release of substances, or an amendment to such an approval, can be appealed by the applicant or by a person who is directly affected. A refusal to issue an approval or amendment can also be appealed by the applicant.
2. The cancellation or suspension of an approval can be appealed by the holder of the approval.
3. An enforcement order or an environmental protection order can be appealed by the person to whom the order was issued.
4. The designation of a contaminated site or an environmental protection order relating to a designated contaminated site can be appealed by the person to whom the designation or order is directed and by a person who is directly affected.
5. A reclamation certificate can be appealed by any person who gets notice of the issuance of the certificate. The refusal to issue a reclamation certificate or the cancellation of a reclamation certificate can be appealed by the applicant for the reclamation certificate.
6. A remediation certificate can be appealed by any person who gets notice of the issuance of the certificate. The refusal to issue a remediation certificate or the cancellation of a remediation certificate can be appealed by the applicant for the remediation certificate.
7. An administrative penalty can be appealed by the person to whom the order was issued.

(See: Attachment 1, Part A, at Page 13.)

C. EAB's Mandate (*Government Organization Act*)

The EAB's mandate was expanded in 1994 by the *Government Organization Act*, R.S.A. 2000, c. G-10, Schedule 5, section 6(1) to allow for appeals of enforcement orders relating to Restricted Development Areas.

(See: Attachment 1, Part B, at Page 14.)

D. EAB's Mandate (*Water Act*)

In 1999, the *Water Act*, R.S.A. 2000, c. W-3, introduced a further range of regulatory decisions made by Alberta Environment that were appealable to the EAB. In general, the *Water Act* deals with the allocation of water through licences and preliminary certificates and approvals that govern work that is conducted in or near a watercourse. Pursuant section 115(1) of the *Water Act*, matters that can be appealed to the EAB include:

1. An approval, preliminary certificate, licence, and an amendment to such an approval, preliminary certificate, or licence may be appealed by the applicant or a person who is directly affected. The refusal to issue an approval, preliminary certificate, licence, or an amendment to such an approval, preliminary certificate, or licence can be appealed by the applicant. The refusal to renew a licence can also be appealed by the applicant.
2. The cancellation or suspension of an approval, preliminary certificate, or licence can be appealed to the holder of the approval, preliminary certificate, or licence.
3. A water management order or enforcement order can be appealed by the person to whom the order is directed. If the water management order relates to the administration of priority, the order can also be appealed by a person whose right to divert water may be affected by the order.

4. An administrative penalty can be appealed by the person to whom the order was issued.
5. The approval or refusal to transfer an allocation of water can be appealed by the applicant for the transfer and a person who is directly affected.

(See: Attachment 1, Part C, at Page 14.)

E. EAB's Mandate (CCEMA)

Finally, the *Climate Change and Emissions Management Act*, S.A. 2003, c. C-16.7 (the CCEMA), was amended in 2007 to provide for appeals to the EAB of compliance orders and administrative penalties under section 42(1).

(See: Attachment 1, Part D, at Page 16.)

F. Memorandum of Understanding

In response to the "Review of Agencies, Boards and Commissions and Delegated Administrative Organizations, April 2001," a Memorandum of Understanding (MOU) between the Minister of Environment and the EAB was signed in September 1993, by then Acting Chair, Dr. Frederick (Ted) Fisher and then Minister of Environment, the Honourable Dr. Lorne Taylor. The MOU was reaffirmed in 2004 when Dr. Fisher became Chair of the EAB. The EAB's Memorandum of Understanding is currently under review. (See: Attachment 2.)

G. Board Recruitment and Appointment Process

Pursuant to section 13 of the APAGA, the EAB is required to establish a transparent, non-partisan, and competency based process for recruitment and appointment of its members and Chair. In response to the Corporate Human Resources Directive dated June 1, 2006, the EAB established a transparent, non-partisan, and competency based process for recruitment and appointment. This process has been approved by the Minister and by the Office of the Deputy Minister of Executive Council and complies with the requirement of the APAGA. (See: Attachment 3. See: Attachment 4 for a recent history of appointments to the EAB.)

H. Board Member Training

When new members are appointed, they are provided an orientation manual that includes legislation applicable to the EAB, a mediation preparation guide, the Code of Conduct and Ethics of the Environmental Appeals Board, conflict of interest information, a publication entitled "Tips for Tribunal Members," the Memorandum of Understanding, and other relevant administrative

information. Where appropriate, new members are referred to the Foundation for Administrative Justice for training in the administrative law aspects of being a board member.

Further, the EAB promotes the mentoring of new members by experienced members whenever possible. New members attend hearings and mediations conducted by experienced members to observe and learn about the process. The EAB’s General Counsel and Settlement Officer attends mediations conducted by new members until the new member can conduct mediations appropriately and effectively.

The EAB notifies all members of courses relevant to their role. Members are encouraged to attend mediation courses including courses offered by the Alberta Arbitration and Mediation Society and the Legal Education Society of Alberta.

III. DELIVERING THE MANDATE

A. Environmental Appeals Board - Vision, Mission and Mandate

VISION

The Environmental Appeals Board’s vision is to promote a high quality of life in Alberta through the timely and thorough review of environmental decisions.

MISSION

The Environmental Appeals Board will advance the protection, enhancement, and wise use of Alberta’s environment by providing fair, impartial, and efficient resolution of all matters before it.

MANDATE

The Environmental Appeals Board was created by the Environmental Protection and Enhancement Act and is responsible to resolve appeals of specified decisions for regulated entities or directly affected parties as authorized under EPEA and other applicable legislation. The Environmental Appeals Board is to provide a report and recommendations to the Minister in respect of most appeals, except those where the legislation directs that the Board shall make the decision.

B. Guiding Principles for Delivering the EAB's Mandate

In conducting its business, the EAB is governed by its mandate, as established by legislation, to support and promote the protection, enhancement, and wise use of the environment. In particular, the EAB is committed to the following core values:

Ecosystem Sustainability:

Consistent with the legislation, the EAB believes that a healthy environment is essential to the integrity of ecosystems and human health and to the well being of Albertans.

Sustainable Development:

The EAB hears and processes appeals in a fair and effective manner striving to ensure the wise use of Alberta's renewable resources with the goal that future generations may benefit from them.

Shared Responsibility:

The EAB shares the responsibility of managing Alberta's natural resources by providing Albertans the opportunity to have a voice through the appeal process, as authorized in the Legislation.

Public Involvement:

The EAB ensures information on its mandate and rules and regulations is freely accessible. The EAB provides Albertans with the opportunity to become participants in appeals through mediations and hearings.

Mediation is the Preferred Means to Resolve Matters:

Mediations promote open and collaborative discussions between participants and encourages individuals to come up with their own solutions. Mediations can help increase communication, develop a better understanding of the participants' concerns, and offer win-win solutions.

Informed Findings:

The EAB hears and processes appeals based on relevant scientific, technological, socio-economic, and environmental information to make fully informed findings.

Public Service:

The EAB is dedicated to providing excellent service to Albertans.

Healthy and Supportive Work Environment:

The EAB values its employees and Board members and strives to provide a working environment where open, honest, and respectful communication is encouraged. The EAB also supports its staff in maintaining a healthy, active lifestyle.

C. Implementation and Governance for Delivering the EAB's Mandate

The EAB endorses and adopts the Governance Principles outlined in the McCrank Report:

Strategic Vision and Leadership - *“All parties have a clear understanding of the purpose of the agency and agree on the division of roles and responsibilities in support of organizational goals. The agency has effective leadership to implement its purpose and stays true to its mandate while adapting to changing circumstances.”*

Accountability - *“All parties take responsibility for their actions and operate in a transparent manner. Each person, from the minister to the board [members], understands their role and is accountable for fulfilling their duties. A clear chain of responsibility is integrated into the government's accountability structures and agencies are given those powers needed to deliver their mandate.”*

Ethics - *“All [members] of the [board] behave ethically and work to ensure that the organization as a whole behaves responsibly. As public sector organizations, agencies are committed to pursuing the public good.”*

Effectiveness - *“[M]inisters and agencies participate in regular evaluative processes and consider innovations in order to improve performance. The organization has appropriate processes and sufficient authority to successfully achieve its objectives.”*

Communications and Transparency – *“There is clear communication with stakeholders, including opportunities for meaningful feedback. Sufficient information to understand and evaluate organizational processes, aims and actions is readily available. Balance is achieved between the broad mandate of the agencies, boards or commissions and the specific needs of the community.”*

D. EAB’s Funding

The EAB is funded as part of the Department of Environment’s budget. Expenditures are overseen by the Chair and are managed to minimize costs and to stay within the allotted annual budget. However, the number of appeals is externally driven and the EAB cannot control the number of appeals received or processed in any given year. The number, location, and complexity of the appeals directly affect the EAB’s annual budget. (See: Attachment 5.)

IV. ROLES AND RESPONSIBILITIES

The EAB has clearly defined roles and responsibilities outlined in the legislation. The EAB reports to and is accountable to the Minister, through the Chair, in performing its roles and responsibilities. Beyond the specific legislation, there are broader legal requirements (i.e. natural justice, administrative fairness) and standards of practice that govern the manner in which the EAB must function.

A. Governing Body – The Minister

The Chair is accountable to the Minister of Environment and is responsible for the governance of the EAB and overseeing the management of the agency’s business and affairs. The Chair guides the agency’s strategic direction, evaluates the performance of the members and staff, and monitors the EAB’s financial matters.

B. Responsibilities of the Minister

The Minister is accountable to the Premier:

- to implement the legislation (EPEA, the *Government Organization Act*, the *Water Act*, and the CCEMA);
- for the operation of the Department of Environment and the EAB;
- to direct the development and setting of policy;
- in accordance with the legislation, to make the final decisions in response to Reports and Recommendations received from the EAB; and
- to recommend to the Lieutenant Governor-in-Council the appointment of members and the Chair of the EAB.

C. Role of the Chair

Accountable to the Minister, the Chair of the EAB is responsible for:

- providing the best possible advice to the Minister;
- supervising, mentoring, and coaching the EAB members and managing their performance;
- supervising, mentoring, and coaching the EAB staff and managing their performance;
- complying with the applicable principles of natural justice and procedural fairness;
- implementing the policies of the Government of Alberta and the Department of Environment;
- upholding the accountability of the EAB to the Minister;
- upholding the transparency and credibility of the EAB;
- acting honestly and in good faith with a view to the best interests of the EAB within its legal, statutory, and regulatory framework;
- exercising the care, diligence, and skill that a reasonable and prudent Chair would exercise in comparable circumstances;
- acting in accordance with the spirit and intent of the *Conflict of Interest Act* and in compliance with the Code of Conduct and Ethics of the Environmental Appeals Board;
- administering the Code of Conduct and Ethics of the Environmental Appeals Board;
- conduct and operation of the EAB, within the mandate;
- establishment of systems for the general administration, financial management, and conduct of the EAB;
- production of and accountability for a yearly business plan;
- production of and accountability for a yearly annual report;
- development of a yearly budget;
- effective management of the EAB's finances;
- directing communications with the media and the public regarding the EAB and its functions;
- representing the EAB to business, industry, municipalities, the environmental community, and the people of Alberta; and
- listening, through appropriate review mechanisms and consistent with the principles of natural justice and procedural fairness, to the views of business, industry, municipalities, the environmental community, and the people of Alberta.

(Attachment 6 is a Position Profile for the Chair of the Environmental Appeals Board.)

D. Role of the Board Members

Accountable to the Chair of the EAB, the members of the EAB are responsible for:

- providing the best possible advice to the Minister;
- complying with the applicable principles of natural justice and procedural fairness;
- implementing the policies of the Government of Alberta and the Department of Environment;
- upholding the accountability of the EAB to the Minister;
- upholding the transparency and credibility of the EAB;
- acting honestly and in good faith with a view to the best interests of the EAB within its legal, statutory, and regulatory framework;
- exercising the care, diligence, and skill that a reasonable and prudent member would exercise in comparable circumstances; and
- acting in accordance with the spirit and intent of the *Conflict of Interest Act* and in compliance with the Code of Conduct and Ethics of the Environmental Appeals Board.

(Attachment 7 is the Position Profile for a Member of the Environmental Appeals Board.)

E. Responsibilities of the Department

Accountable to the Minister, the Department of Environment is responsible for:

- implementing the legislation (EPEA, the *Government Organization Act*, the *Water Act*, and the *CCEMA*);
- development and implementation of policy;
- providing the Minister with the best advice possible;
- providing support and services to the EAB, including staffing, administrative support, and computer services, in conjunction with Service Alberta; and
- dealing with communication matters regarding the Department of Environment, legislation, and policy.

F. Accountability Tools

The EAB uses three primary accounting tools: the annual business plan, the annual report, and an auditing process. The EAB's MOU with the Minister provides that the annual business plan is to be provided by March 31st of each year and that the annual Report is to be provided by June 30th of each year. The funding of the EAB is included within the Department of Environment's budget.

With respect to an auditing process, the EAB currently relies on the Financial Services Branch of Alberta Environment and the Corporate Finance and Business Services Division of Service Alberta to carry out its internal auditing functions.

V. ADMINISTRATIVE MATTERS

In accordance with sections 3, 4, and 5 of the APAGA, this Mandate and Roles Document:

- (a) has been developed jointly between the Minister and the EAB;
- (b) is signed by the Minister and the Chair, on behalf of the EAB;
- (c) may be amended at any time by the Minister and the EAB, with the amendments being made in writing and signed by the Minister and the Chair, on behalf of the EAB;
- (d) shall be made publically available by posting it on the EAB's website and making it available through the EAB's office, including any amendments;
- (e) shall be reviewed by the Minister and the EAB on an annual basis, and either affirmed or amended through an agreement between the Minister and the Chair, on behalf of the EAB;

- (f) is in force for three years from the date on which it is signed; and
- (g) meets the requirements of the APAGA as detailed in the Compliance Table at page 12.

The Mandate and Roles Document (November 2009) of the Environmental Appeals Board is hereby affirmed by the Minister of the Environment and the Chair of the Environmental Appeals Board:

Minister of
Environment

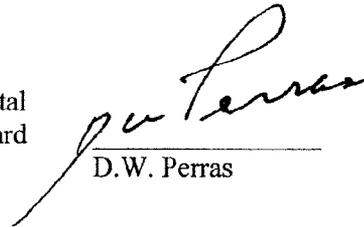


The Honourable
Rob Renner

Date:

Dec 01/09

Chair of the
Environmental
Appeals Board



D.W. Perras

Date:

December 1, 2009

Compliance Table

Sections 3, 4, and 5 of the <i>Alberta Public Agency Governance Act</i> address the requirements of a Mandate and Roles Document.	Addressed in this document at:
s. 3(1) Every public agency must ... have a Mandate and Roles Document that is jointly developed by the public agency and its responsible Minister and that includes ...	I.
s. 3(1)(a) the public agency's mandate;	II. B.; II. C.; II. D.; II. E.; and III. A.
s. 3(1)(b) the roles and responsibilities of ...	
s. 3(1)(b)(i) the public agency,	II. A.; II. F.; II. G.; II. H.; and IV. F.
s. 3(1)(b)(ii) its members,	II. F.; II. G.; II. H.; IV. D.; and IV. F.
s. 3(1)(b)(iii) its chief executive officer, if any, (the Chair)	II. F.; II. G.; II. H.; IV. C.; and IV. F.
s. 3(1)(b)(iv) the responsible Minister, (the Minister of Environment)	II. F.; II. G.; II. H.; IV. B.; and IV. F.
s. 3(1)(b)(v) any departments or employees of the Government of Alberta that provide support or services to the public agency, and	II F.; II. G.; II. H.; IV. E.; and IV. F.
s. 3(1)(b)(vi) any subsidiaries of the public agency,	The Board has no subsidiaries.
s.3(1)(b) roles and responsibilities in respect of	
s. 3(1)(b) recruitment,	II. F.; II. G.; II. H.; and IV. F.
s. 3(1)(b) orientation and training of members,	II. F.; II. G.; II. H.; and IV. F.
s. 3(1)(b) communication with the public,	II. F.; II. G.; II. H.; and IV. F.
s. 3(1)(b) evaluation of the public agency's performance,	II. F.; II. G.; II. H.; and IV. F.
s. 3(1)(b) evaluation of its members' performance;	II. F.; II. G.; II. H.; and IV. F.
s. 3(1)(c) the accountability relationships of the public agency, including its duty to account to the responsible Minister;	II. F.; IV. A.; IV. B; IV. C.; IV. D.; IV. E.; and IV. F.
s. 3(1)(d) the process for administering the public agency's code of conduct;	IV.C.
s. 3(1)(e) the public agency's and the responsible Minister's mutual expectations in respect of communication, collaboration and consultation with each other;	II. F.; and IV. F.
s. 3(1)(f) the committee structure of the public agency, if any;	The Board has no governance committees.
s. 3(1)(g) the financial, staffing and administrative arrangements for the public agency;	II. F.; III. D.; and IV. G.
s. 3(1)(h) the public agency's planning and reporting requirements;	II. F.; and IV. F.
s. 3(1)(i) any other matters specified in the regulations.	There are no regulations as of November 2009.
s. 3(2) A Mandate and Roles Document may be amended at any time by the public agency and the responsible Minister.	V.(c).
s. 3(3) A Mandate and Roles Document and any amendment made to it must be signed on behalf of the public agency and by the responsible Minister.	V.(b) and (c).
s. 4 A Mandate and Roles Document must be reviewed and renewed, amended or replaced within 3 years after the day on which (a) the Mandate and Roles Document, or (b) the most recent amendment to the Mandate and Roles Document, was signed.	V.(e) and (f).
s. 5 A Mandate and Roles Document must be made available to the public.	V.(d).

Attachment 1**A. *Environmental Protection and Enhancement Act***

Under *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the EAB has the jurisdiction to hear appeals of the following regulatory decisions:

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

(a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), 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 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or

(ii) by the approval holder or by any person who is directly affected by the Director's decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 72(3);

(b) where the Director refuses

(i) to issue an approval, or

(ii) to make an amendment, addition or deletion in respect of an approval pursuant to an application under section 70(1)(a),

the applicant may submit a notice of appeal;

(c) where the Director cancels or suspends an approval under section 70(3)(b) or (4), the approval holder may submit a notice of appeal;

(d) where the Director cancels a certificate of qualification under section 83(1)(b), the holder of the certificate of qualification may submit a notice of appeal;

(e) where the Director issues an enforcement order under section 210(1)(a), (b) or (c), the person to whom the order is directed may submit a notice of appeal;

(f) where an inspector issues an environmental protection order regarding conservation and reclamation under section 140 or 141, the person to whom the order is directed may submit a notice of appeal;

(g) where the Director issues an environmental protection order under section 129,

(i) the person to whom the order is directed, and

(ii) any person who is directly affected by the designation of the contaminated site

may submit a notice of appeal;

(h) where the Director issues an environmental protection order, except an environmental protection order directing the performance of emergency measures under section 114, 151 or 160 and an environmental protection order referred to in clause (g), the person to whom the order is directed may submit a notice of appeal;

- (i) where an inspector issues a reclamation certificate under section 138, or the Director or an inspector amends a reclamation certificate under section 139, the operator and any person who receives a copy of the certificate or amendment under section 145 may submit a notice of appeal;
- (j) where the Director or an inspector cancels a reclamation certificate, the operator may submit a notice of appeal;
- (k) where the Director or an inspector refuses to accept an application for a reclamation certificate or an inspector refuses to issue a reclamation certificate, the operator may submit a notice of appeal;
- (l) where the Director or an inspector issues, amends or cancels a remediation certificate under section 117, any person who receives notice of the issuance, amendment or cancellation as provided for in the regulations may submit a notice of appeal;
- (l.1) where the Director or an inspector refuses to accept an application for a remediation certificate or refuses to issue a remediation certificate under section 117, any person who receives notice of the refusal as provided for in the regulations may submit a notice of appeal;
- (m) where the Director designates an area as a contaminated site under section 125, any person who is directly affected by the designation may submit a notice of appeal;
- (n) where the Director requires a person to pay an administrative penalty under section 237, the person to whom the notice is directed may submit a notice of appeal;
- (o) where the Director refuses a request for confidentiality under section 35(5)(b), the person to whom the notice is directed under section 35(6) may submit a notice of appeal;
- (p) persons authorized under Part 9 of the Water Act, in accordance with Part 9 of the Water Act.

B. *Government Organization Act*

Under the *Government Organization Act*, R.S.A. 2000, c. G-10, Schedule 5, the EAB has the jurisdiction to hear appeals related to Restricted Development Areas:

6(1) A person to whom an enforcement order is directed under section 5(1)(a) or (b) may appeal the enforcement order by submitting a notice of appeal to the Environmental Appeals Board established under the Environmental Protection and Enhancement Act.

C. *Water Act*

Under the *Water Act*, R.S.A. 2000, c. W-3, the EAB has the jurisdiction to hear appeals of the following regulatory decisions:

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.

D. *Climate Change Emission Management Act*

Under the *Climate Change and Emissions Management Act*, S.A. 2003, c. C-16.7, the EAB has the jurisdiction to hear appeals of the following regulatory decisions:

42(1) A notice of appeal may be submitted to the Environmental Appeals Board by the following persons in the following circumstances:

- (a) where the director issues a compliance order under section 29, the person to whom the order is directed may submit a notice of appeal;
- (b) where the director requires a person to pay an administrative penalty under section 38, the person to whom the notice of administrative penalty is directed may submit a notice of appeal.

Attachment 2

MEMORANDUM OF UNDERSTANDING

Between:

Minister of Environment

and

Environmental Appeal Board

Whereas the principles of good government encourage continuous improvements in governance and accountability structures;

And whereas the Minister of Environment (the "Minister") and the Environmental Appeal Board (the "Board") wish to enter this Memorandum of Understanding;

And whereas the Minister of Environment and the Environmental Appeal Board wish to enhance the accountability of the Environmental Appeal Board to the citizens of Alberta;

And whereas the Environmental Appeal Board is established under section 90 of the Environmental Protection and Enhancement Act;

And whereas the provisions relating to the Environmental Appeal Board are found in Part 4 of the Environmental Protection and Enhancement Act, the Environmental Appeal Board Regulation, the Environmental Protection and Enhancement (Miscellaneous) Regulation, Part 9 of the Water Act, and Schedule 5 of the Government Organization Act;

And whereas the Government of Alberta, through these statutes and regulations, establishes policies to promote the protection, enhancement and wise use of the environment;

And whereas, in accordance with the Environmental Protection and Enhancement Act, the Water Act, and the Government Organization Act, the hearing of appeals from decisions made by statutory decision makers of the Department of the Environment (the "Department") is to be done by the Environmental Appeal Board;

And whereas the parties to this Memorandum of Understanding wish to emphasize the arms-length relationships between the Department of the Environment, the Minister of Environment, and the Environmental Appeal Board;

And whereas it is important that all government agencies, boards and commissions maintain their credibility with business, industry, the environmental community, the citizens of Alberta, and the Government of Alberta;

And whereas it is important that the Memorandum of Understanding protects the quasi-judicial role of the Environmental Appeal Board;

And acknowledging that nothing in this Memorandum of Understanding is intended or shall be allowed to interfere with the Environmental Appeal Board's proper exercise of any power authorized by any law, statute, or regulation.

Now therefore:

1. The Board undertakes, in accordance with the Environmental Protection and Enhancement Act, the Water Act, and the Government Organization Act to advance the protection, enhancement and wise use of the environment by:
 - a. maintaining and operating an efficient and responsive office;
 - b. conducting its day-to-day operations in accordance with the Environmental Protection and Enhancement Act, the Water Act, and the Government Organization Act;
 - c. retaining an appropriate number of competent staff to meet its workload;
 - d. conducting effective and efficient preliminary meetings, mediations, and hearings;
 - e. providing fair, impartial, and effective resolutions of all matters that come before the Board;
 - f. operating in accordance with the principles of natural justice and procedural fairness;
 - g. operating within its legislated mandate; and
 - h. operating within its approved budget.

2. The Chair of the Board is responsible for the conduct and operation of the Board.

3. The Board shall provide to the Minister, on or before March 31st of each year, a Business Plan that will include:
 - a. the Board's vision statement;
 - b. the Board's mission statement;
 - c. a summary of the Board's structure and organization;
 - d. a summary of the Board's core values;
 - e. a summary of the Board's core business, identifying the Board's goals, strategies, and performance measures; and
 - f. a summary of the Board's finances.

4. The Board shall provide to the Minister, on or before June 30th of each year, an Annual Report that will include:
 - a. the Board's vision statement;
 - b. the Board's mission statement;
 - c. a summary of the Board's structure and organization;
 - d. a summary of the Board's core values;
 - e. a summary of the Board's core business;
 - f. a summary of the results of the Board's business plan, including performance measures achieved;
 - g. a summary of the Board's finances;
 - h. a summary of the Board's accomplishments;
 - i. a summary of the appeals before the Board, including statistical information based on the types of appeals; and
 - j. a summary of the Board's mediation program.

5. The Members of the Board shall:
 - a. act honestly and in good faith with a view to the best interests of the Board within its legal, statutory, and regulatory framework;
 - b. exercise the care, diligence, and skill that a reasonable and prudent Member would exercise in comparable circumstances; and
 - c. act in accordance with the spirit and intent of the Conflict of Interest Act.

6. The Chair of the Board shall be accountable to the Minister in relation to the operation of the Board and such accountability shall include:
 - a. administration of the Board on a day-to-day basis, in accordance with the Environmental Protection and Enhancement Act, the Water Act, and the Government Organization Act;
 - b. establishment of systems for the general administration, financial management, and conduct of the Board;
 - c. manage the performance of the Board's staff;
 - d. production of and accountability for a yearly business plan;
 - e. establishment of a yearly budget;
 - f. production of and accountability for a yearly annual report;
 - g. production of and accountability for a yearly performance plan;
 - h. preparation of a business resumption strategy and support the Government of Alberta's plans related to security and emergency preparedness;
 - i. effectively manage the finances of the Board;
 - j. represent the Board to business, industry, the environmental community, and the citizens of Alberta;
 - k. listen, through appropriate review mechanisms and consistent with the principles of natural justice and procedural fairness, to the views of business, industry, the environmental community, the citizens of Alberta, and the Government of Alberta; and

- I. carry out the mandate provided to the Board in accordance with all relevant legislation, which for greater certainty includes but is not limited to issues related to:
 - A. Establishment and Jurisdiction of the Environmental Appeal Board:
 1. Environmental Protection and Enhancement Act;
 2. Water Act; and
 3. Government Organization Act.
 - B. Practice and Procedure:
 1. common law principles applicable to the Board, including principles of administrative law, natural justice, and procedural fairness;
 2. Interpretation Act;
 3. Judicature Act;
 4. Administrative Procedures Act (in principle);
 5. Public Inquiries Act;
 6. Alberta Evidence Act;
 7. Canada Evidence Act; and
 8. Alberta Bill of Rights.
 - C. Finance and Personnel Administration:
 1. Financial Administration Act;
 2. Public Service Act; and
 3. Employment Standards Code.
 - D. General Administration:
 1. Freedom of Information and Protection of Privacy Act;
 2. Conflict of Interest Act (in principle);
 3. common law principles of conflicts of interest as applicable to the Board; and
 4. Ombudsman Act.

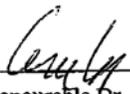
7. The Minister of the Environment shall assess the performance of the Board by receiving and reviewing:
 - a. the Annual Business Plan;
 - b. the Annual Budget;
 - c. the Annual Report; and
 - d. the Annual Performance Plan.

8. The Minister shall:
 - a. meet with the Chair as often as is necessary to discuss the matters outlined in this Memorandum of Understanding;
 - b. communicate to his colleagues, as appropriate, the mandate and purpose of the Board;
 - c. recommend to Cabinet the appointment of Members to the Board;
 - d. inform all appointed Members of their role according to the legislation;
 - e. approve or recommend to Standing Policy Committee and Treasury Board the Annual Business Plan and Annual Budget of the Board;
 - f. monitor the activities of the Board to ensure that its statutory mandate is being fulfilled, including in a timely fashion;
 - g. report annually to the Legislature on the affairs of the Board, including the tabling of Board's Annual Business Plan and Annual Report, and answering questions regarding the Board;
 - h. through the office of the Deputy Minister, provide the Board with information, comments, and recommendations in relation to the Annual Business Plan, the Annual Budget, the Annual Report, all administration matters, and reviews of the mandate of the Board, as established by legislation.

9. The Government shall:
 - a. establish, through statutes and regulations, the mandate, including the degree of autonomy, and purpose of the Board and ensure that the mandate and purpose is communicated through the Minister to the Chair of the Board;

- b. respect the statutory role of the Board and the degree of autonomy the Board is given by legislation and judicial decisions interpreting the Board's jurisdiction;
 - c. respect that the roles and responsibilities of the Minister, the Department (both as an administrative body and as a litigant before the Board), and the Board (in carrying out its administrative and quasi-judicial function with respect to all affected parties) are critical to the establishment of good working relationships;
 - d. establish a broad framework for financial, administrative, and operational controls; and
 - c. through statutes and regulations, provide for the terms and conditions (which may include remuneration and full disclosure in financial statements) of appointments to the Board; and
 - f. review, consistent with the legislative sunset clauses for all tribunals, on an ongoing basis the need for the continued existence of the Board.
10. The Minister and the Chair of the Board will review this Memorandum of Understanding each year.

Dated at the City of Edmonton, in the Province of Alberta this 26 day of September, 2003.



Honourable Dr. Lorne Taylor
Minister of Environment



Frederick C. Fisher
Acting Chair
Environmental Appeal Board

**Amendment to
Memorandum of Understanding
between
Minister of Environment
and
Environmental Appeals Board**

Whereas the Memorandum of Understanding signed by the parties on September 26, 2003 (the “Memorandum of Understanding”) requires that the Minister and the Chair of the Board review the Memorandum of Understanding each year;

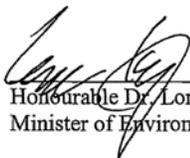
And whereas the Environmental Appeals Board changed its name from the “Environmental Appeal Board” to the “Environmental Appeals Board,” pursuant to the Miscellaneous Statutes Amendment Act, 2003 (No. 2), S.A. 2003, c. 42;

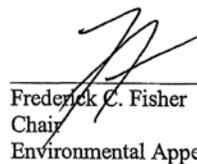
And whereas the Government of Alberta no longer requires an Annual Performance Plan.

Now therefore the Minister of Environment and the Environmental Appeals Board mutually agree to the following changes to the Memorandum of Understanding:

1. The name “Environmental Appeal Board” is changed to the “Environmental Appeals Board” wherever it occurs in the Memorandum of Understanding, with the exception of the reference in the fifth “Whereas” clause to the Environmental Appeal Board Regulation;
2. Delete term 6(g) of the Memorandum of Understanding; and
3. Delete term 7(d) of the Memorandum of Understanding.

Dated at the City of Edmonton, in the Province of Alberta, this 19 day of October, 2004.


Honourable Dr. Lorne Taylor
Minister of Environment


Frederick C. Fisher
Chair
Environmental Appeals Board

Attachment 3

Environmental Appeals Board

Recruitment of New Board Members (April 1, 2008)

Background

The Environmental Appeals Board's (the Board) main function is to make recommendations to the Minister of Environment to resolve appeals brought before it, using its mediation program and hearing process. Board Members work to advance the protection, enhancement, and wise use of Alberta's environment by providing fair, impartial, and efficient resolution of all matters that come before the Board.

The Board is recognized for the demonstrated technical and scientific expertise of its Board Members and for the skill of its Board Members in conducting mediations. The recruitment of new Board Members must recognize the need for this expertise and skill and provide for the openness, accountability, and transparency required by the principles of natural justice.

Recruitment Procedure

1. This procedure does not apply to the reappointment of existing Board Members.
2. The Board will identify a need for a new member, generally as a result of the retirement of an existing Board Member or as a result of additional scientific or technical expertise being required on the Board.
3. The Board will place an advertisement in major newspapers in Fort McMurray, Grande Prairie, Edmonton, Red Deer, Calgary, Medicine Hat and Lethbridge, and in newspapers covering a broad distribution of the Province. The advertisement will also be placed on the Board's website, and on the Government website, inviting applications from qualified individuals. A copy of the advertisement will also be provided to the Minister, for distribution at his discretion, and to the Deputy Minister. The Board may include applications that have previously been received by the Board in its considerations. A draft advertisement is attached.
4. Board Staff will conduct an initial screening of the applications with respect to administrative completeness and general compliance with the requirements of the position.

5. Applicants will then be reviewed by a screening panel representing the four main stakeholder groups that deal with the Board. The panel consists of representatives from Industry, Appellants, Alberta Environment, and the Board. The proposed panel is Grant Sprague (Alberta Justice for Alberta Environment), Ron Kruhlak (Industry counsel), Jennifer Klimek (Appellant counsel and Chair of the Board of Directors of the Environmental Law Centre), and Gilbert Van Nes (the Board's General Counsel). Additional representatives, such as a representative of the technical and scientific community, may be added to the screening panel by the Board's Chair. This review process will take place either through an interview process or by the screening panel providing written comments following a review of the application documents and background of the applicants.
6. The screening panel will review the applications based on:
 - demonstrated technical and scientific expertise and substantial practical experience in the area of environmental protection;
 - interest in working to advance the protection, enhancement, and wise use of Alberta's environment;
 - strong mediation skills;
 - good working knowledge of administrative law, the function of administrative boards, and the hearing process;
 - understanding of environmental law and Alberta's regulatory systems;
 - excellent communication and interpersonal skills;
 - demonstrated decision-making ability;
 - demonstrated high standards of integrity and the ability to be impartial, free from bias, and free from conflicts of interest; and
 - interest in serving the people of Alberta.
7. The screening panel will provide a short list of applicants to the Chair and Vice-Chair of the Board. The Chair and Vice-Chair will review the list and the applications. The Chair may choose to conduct interviews from the short list and such other applicants that he deems appropriate.
8. The Chair will then provide a list of recommended names to the Minister for his consideration and referral to the Lieutenant Governor in Council in his discretion. A copy of the list of recommended names will also be provided to the Deputy Minister.
9. Upon receiving direction from the Minister, the Board will prepare the required documentation for an Order in Council and forward it to the Environmental Law Section for approval as to form. Upon receiving approval as to the form of the Order in Council from the Environmental Law Section, the Board will provide the documentation to the Minister's Office, with a copy to the Deputy Minister's Office. The Minister's Office will then forward the documentation to the Lieutenant Governor in Council for their consideration. Initial appointments to the Board will generally be for no greater than 2 years.

10. The recruitment process will be consistent with the Public Agencies Governance Framework (February 2008), and in particular with Parts 6 Recruitment and Appointment Processes, Part 7 Term Lengths, and Part 8 Government Representation on Boards, which are attached.

Procedure Approval Process

1. Review by Chair - Completed
2. Consultation with Alberta Justice - Completed
3. Review by Deputy Minister – Approved January 29, 2007
4. Review by Minister – Approved April 4, 2007
5. Review by Executive Council – Approved April 10, 2007
6. Advertisement Reviewed by Personnel Administration Office – August 1, 2006

Revised April 1, 2008 – subject to review and approval

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Attachment 4

Appointments and Expiry Dates for All Board Members

Updated: October 1, 2009

Name of Board Member	Commencement Date and O.C. Number	Expiry Date and O.C. Number
Current Board Members		
Justice Delmar W. Perras	July 27, 2009 431/2009	July 26, 2012 431/2009
Dr. Alan Kennedy	September 1, 2002 416/2002	September 30, 2012 503/2009
Mr. Jim Barlishen	October 5, 2004 481/2004	September 30, 2011 503/2009
Mr. Alex G. MacWilliam	July 26, 2005 355/2005	September 30, 2012 503/2009
Mr. Eric O. McAvity, Q.C.	October 3, 2007 451/2007	September 30, 2013 503/2009
Ms. A.J. Fox	October 3, 2007 451/2007	September 30, 2013 503/2009
Dr. Dan L. Johnson	October 3, 2007 451/2007	September 30, 2013 503/2009
Mr. Gordon Thompson	July 9, 2008 339/2008	April 30, 2010 339/2008
Past Board Members		
Mr. Ron V. Peiluck	May 29, 1996 230/96	September 30, 2009 451/2007 July 26, 2005 appoints him as Vice-Chair OC 355/2005

Name of Board Member	Commencement Date and O.C. Number	Expiry Date and O.C. Number
Dr. M. Anne Naeth	September 1, 1995 563/95	August 31, 2009 340/2008
Dr. Steve E. Hrudehy	September 1, 1996 400/96	September 30, 2009 451/2007 Resigned July 14, 2009 July 26, 2005 appoints him as Chair OC 355/2005
Ms. Marilyn Kansky	October 5, 2004 481/2004	September 30, 2008 469/2006
Mr. Al Schulz	September 1, 2002 416/2002	August 31, 2008 379/2006
Mr. Dallas Miller	October 5, 2004 481/2004	October 4, 2007 481/2004 Resigned Dec 20, 2006
Dr. Harrie Vredenburg	October 5, 2004 481/2004	October 4, 2006 481/2004
Mr. George J. Gaschler, Q.C.	July 26, 2005 355/2005	September 1, 2006 379/2006 Resigned Feb 21, 2006
Dr. William A. Tilleman, Q.C.	September 1, 1993 485/93	October 5, 2004 481/2004
Dr. William A. Tilleman, Q.C. (solely to deal with 03-124 and 125 Imperial)	April 25, 2005 1/2005	June 30, 2005 1/2005 OC rescinded May 3, 2005 by OC 216/2005)
Dr. William A. Tilleman, Q.C.	January 24, 2005 1/2005	June 30, 2005 216/2005

Name of Board Member	Commencement Date and O.C. Number	Expiry Date and O.C. Number
Dr. Frederick C. Fisher	April 1, 2002 87/2002	January 24, 2005 1/2005 Resigned Dec 6, 2004
Mr. Ron Hierath	September 1, 2001 354/2001	October 5, 2004 481/2004
Dr. James Howell	September 1, 2002 416/2002	August 31, 2004 416/2002
Dr. John Ogilvie	September 1, 1994 477/94	September 1, 2002 68/98
Dr. Curt Vos	June 17, 1998 267/98	August 31, 2002 320/2000
Dr. Ted Best	February 1, 1997 44/97	August 31, 2002 320/2000
Dr. Roy Crowther	August 23, 2000 320/2000	August 31, 2001 320/2000
Ms. Patricia Cross	March 31, 1999 128/99	March 31, 2000 128/99 Resigned Nov 15, 1999
Mr. Max McCann	September 1, 1993 485/93	September 1, 1998 312/97
Ms. Joan Copp	September 1, 1993 485/93	September 1, 1997 563/95
Mr. David Marko	September 1, 1993 485/93	September 1, 1999 477/94

OC 355/2005 appoints Steve Hruddy as Chair effective July 26, 2005.

OC 355/2005 appoints Ron Peiluck as Vice-Chair effective July 26, 2005.

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Attachment 5

Summary of Spending Profile

The workload of the Board is externally driven, and the costs will accordingly vary with the number of appeals that are filed. The generation of appeals is a matter that is beyond the Board's control.

	2000/01 Actual	2001/02 Actual	2002/03 Actual	2003/04 Actual	2004/05 Actual		2007/08 Estimate	2007/08 Actual	2008/09 Estimate	2008/09 Actual	2009/10 Estimate	2009/10 Actual
Budget	898,502	921,169	1,018,518	959,000	1,046,000							
Operating	0	0	0	0	0							
Capital	898,502	921,169	1,018,518	949,751	974,541							
Total												
Budget	1,069,000	1,069,000	1,101,000	1,101,000	1,100,000		1,100,000	1,100,000	1,140,000	1,140,000	1,121,000	1,121,000
Manpower	591,000	663,075	678,000	640,964	721,000		694,956	804,000	688,196	829,000		
Supplies & Services	478,000	255,837	423,000	293,144	379,000		379,230	336,000	363,251	292,000		
Capital	0	0	0	0	0		0	0	0	0	0	0
Total Spent	1,069,000	918,912	1,101,000	934,108	1,100,000		1,074,186	1,140,000	1,051,447	1,121,000	1,121,000	1,121,000
Surplus		150,088		166,892			25,814		88,553			
Percent Change from Previous Year	+2.2%		+3.0%		-0.1%				+3.6%		-1.7%	
	\$23,000	1,069,000	\$32,000	1,101,000	-\$1,000		1,100,000	\$40,000	1,140,000	-\$19,000		1,121,000

Updated August 6, 2009

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Attachment 6

POSITION PROFILE

BOARD MEMBER

ENVIRONMENTAL APPEALS BOARD

ALBERTA ENVIRONMENT

OPEN COMPETITION

May 2010

**ENVIRONMENTAL APPEALS BOARD
BOARD MEMBER POSITION PROFILE**

MISSION

The Environmental Appeals Board will advance the protection, enhancement, and wise use of Alberta's environment by providing fair, impartial, and efficient resolution of all matters before it.

OVERVIEW

The Board is a quasi-judicial tribunal established under the *Environmental Protection and Enhancement Act*, and it hears appeals under that Act as well as the *Water Act*, the *Climate Change and Emissions Management Act*, and Schedule 5 of the *Government Organization Act*. The Board makes extensive use of mediation, which is the preferred approach to resolving appeals.

Where an appeal cannot be resolved through mediation, the Board uses a hearing process to resolve the appeal. When the hearing process is used, in most cases the Board prepares a Report and Recommendations for the Minister of Environment, who makes the final decision on the appeal. The Board makes the final decision on procedural matters and in certain types of appeals.

To ensure the Board provides the best possible advice to the Minister, Board Members shall:

- understand the respective roles and responsibilities of the Minister and the Board;
- understand the role and operation of administrative tribunals;
- understand the environmental regulatory system in Alberta;
- understand environmental law and policy in Alberta;
- possess relevant technical, scientific, or public policy experience; and
- have a general understanding of the *Environmental Protection and Enhancement Act*, the *Water Act*, the *Climate Change and Emissions Management Act*, and the *Administrative Procedures and Jurisdiction Act*.

Board Members report to the Chair of the Board and must act in compliance with the Code of Conduct and Ethics established by the Board. The Chair reports to the Minister.

Additional information on the Board can be found on its website at www.eab.gov.ab.ca.

(A) POSITION SUMMARY

The purpose of the Board is to provide advice to the Minister of Environment on the resolution of appeals that are filed in response to certain decisions made by Alberta Environment. Under the direction of the Chair, Board Members will participate on hearing panels, complete extensive file preparation, review evidence and submissions,

and make recommendations to the Minister to address the appeals. Senior Board Members also chair hearing panels.

Board Members also make extensive use of mediation skills to resolve appeals. Mediation is the Board's preferred way of resolving appeals, and the majority of the appeals that come before the Board are resolved through mediation.

This is a part-time position, paid a per diem rate and expenses for attending to Board matters. Board Members should be able to commit to an average of four days per month to the Board, and travel throughout Alberta is required.

(B) AUTHORITIES

The Board and its Members are bound by the legislation, principles of natural justice, and procedural fairness; however, there is latitude to exercise discretion and judgment within this context. The Board provides sound practical advice to the Minister through a Report and Recommendations, who in most cases, makes the final decision on an appeal. The Board's advice to the Minister must reflect the policy and programs of Alberta Environment. The Minister's decisions and the Board's Report and Recommendations, are subject to court challenge.

Board Members are responsible for upholding the accountability of the Board to the Minister; upholding the transparency and accountability of the Board to the Government of Alberta; and acting honestly and in good faith with the view of the best interests of the Board within its legal, statutory, and regulatory framework.

(C) CORE COMPETENCIES

- Commitment to serving the people of Alberta.
- Strong interpersonal skills.
- Knowledge of how administrative tribunals operate.
- Understanding of environmental legislation and policy.
- Understanding of mediation.
- Strong technical, scientific, or public policy background dealing with environmental issues.

(D) ORGANIZATION

The Board is separate and apart from Alberta Environment. The appointment of Board Members is based on the recommendation of the Minister of Environment and made by an Order in Council approved and ordered by the Lieutenant Governor in Council. The per diem rate and expenses are set in accordance with the Government of Alberta Remuneration Order for attending to Board matters.

Located in Edmonton, the Board office is supported by a staff of seven and a current budget of approximately \$1 million. Board members need not reside in Edmonton and will travel throughout Alberta as required.

(E) MAJOR REPOSIBILITIES

- Providing sound, practical advice to the Minister in response to appeals that come before the Board.
- Conducting multi-party mediations, within a regulatory context.
- Participating as a member of a hearing panel, assigned to specific appeals.
- Preparing for mediations and hearings by reviewing and analyzing documents.
- Participating in the decision-making process by listening, analyzing and weighing evidence, establishing findings of fact, interpreting and applying legislation and policy, and giving consideration to the submissions of the parties.
- Exercising the care, diligence, and skills of a reasonable and prudent Board Member.

(F) KNOWLEDGE AND EXPERIENCE REQUIREMENTS

- Experience with administrative agencies, administrative law, and administrative decision-making, as well as knowledge of the principles of natural justice and procedural fairness.
- The ability to participate in complex and challenging administrative hearings.
- A general understanding of Alberta's environmental laws, policies, and the environmental regulatory system.
- Mediation experience.
- Strong interpersonal, collaborative, and decision-making skills, and well-developed verbal and written communication skills.
- General knowledge of the *Environmental Protection and Enhancement Act*, *Water Act*, *Climate Change and Emissions Management Act*, and *Administrative Procedures and Jurisdiction Act*.
- Strong analytical skills and the ability to take complex information and diverse points of view into consideration in making sound decisions.
- Skills and abilities to respond to contentious, controversial issues within highly political environments.
- Unimpeachable integrity, free of bias.
- A university degree in a related field is preferred.

Attachment 7

POSITION PROFILE

CHAIR
ENVIRONMENTAL APPEALS BOARD

ALBERTA ENVIRONMENT

OPEN COMPETITION 55514
March 2009

ENVIRONMENTAL APPEALS BOARD**MISSION**

The Environmental Appeals Board will advance the protection, enhancement, and wise use of Alberta's environment by providing fair, impartial, and efficient resolution of all matters before it.

OVERVIEW

The Board is a quasi-judicial tribunal established under the *Environmental Protection and Enhancement Act*, and it hears appeals under that Act as well as the *Water Act*, the *Climate Change and Emissions Management Act*, and Schedule 5 of the *Government Organization Act*. The Board makes extensive use of mediation, the Board's preferred approach to resolving appeals.

Where an appeal cannot be mediated, the Board uses a hearing process to resolve an appeal. Where the hearing process is used, in most cases the Board prepares a Report and Recommendations for the Minister of Environment, who makes the final decision on the appeal.

To ensure the Board provides the best possible advice to the Minister, it is the responsibility of Board Members to: understand the roles and responsibilities of the Minister; understand the role and operation of administrative tribunals; understand the environmental regulatory system in Alberta; understand environmental law and policy in Alberta; possess relevant technical or policy experience and understand the *Environmental Protection and Enhancement Act*, the *Water Act*, the *Climate Change and Emissions Management Act*, and the *Administrative Procedures and Jurisdiction Act*. General knowledge of federal, provincial, and municipal jurisdiction and the interaction between these jurisdictions is of assistance. Mediation experience or a willingness to undertake training in mediation is required.

Board Members must act in accordance with the spirit and intent of the *Conflict of Interest Act* and in compliance with the Code of Ethics established by the Board.

Additional information on the Board can be accessed through the website at www.eab.gov.ab.ca.

(A) POSITION SUMMARY

The purpose of the Board is to provide advice to the Minister of Environment on the resolution of appeals that are made from decisions made by Alberta Environment. Board Members sit on appeal panels and undertake mediations at the direction of the Chair of the Board.

This is a part-time position, paid a per diem rate and expenses for attending to Board matters. (The per diem rate is currently under review.) Board Members should be able to commit to an average of three days per month to the Board.

(B) AUTHORITIES

The Board and its Members are bound by the legislation, principles of natural justice, and procedural fairness; however, there is latitude to exercise discretion and judgment within this context. The Board provides sound practical advice to the Minister through a Report and Recommendations, who in most cases, makes the final decision on an appeal. The Board's advice to the Minister must reflect the policy and programs of Alberta Environment. The Minister's decisions and the Board's Report and Recommendations, are subject to court challenge.

(C) CORE COMPETENCIES

- Commitment to serving the people of Alberta.
- Strong interpersonal skills.
- Knowledge of administrative tribunals.
- Understanding of legislation and policy.
- Understanding of mediation.

(D) ORGANIZATION

The Board is a statutory, independent, and impartial tribunal. The appointment of Board Members is based on the recommendation of the Minister of Environment and made by an Order in Council approved and ordered by the Lieutenant Governor in Council. This is a part-time position, paid a per diem rate in accordance with the Government of Alberta Remuneration Order for attending to Board matters.

Located in Edmonton, the Board office is supported by a staff of seven and a current budget of approximately \$1 million. Board members need not reside in Edmonton and will travel throughout Alberta as required.

(E) THE PERSON**1) Knowledge/Experience Requirements**

- Experience with administrative agencies, administrative law, and administrative decision-making, as well as knowledge of principles of natural justice and the operation of quasi-judicial boards and hearings.
- The ability to participate in complex and challenging administrative hearing.
- An interest in environmental issues.
- Understanding general environmental law and the environmental regulatory system in Alberta would be an asset.
- Background in mediation is an asset.
- Strong interpersonal, collaborative, decision-making, and well developed verbal and written communications.

- General knowledge of the *Environmental Protection and Enhancement Act, Water Act, Climate Change and Emissions Management Act*, and *Administrative Procedures Act*.
 - General knowledge of federal, provincial, and municipal planning; general environmental principles; and the interaction of different jurisdictions.
 - Strong analytical skills and the ability to take complex information and diverse points of view into consideration in making sound decisions.
 - Skills and abilities to respond to contentious, controversial issues within highly political environments.
 - Unimpeachable integrity, free of bias
- 2) Academic Background
- A university degree in a related field is required.

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Alberta Environmental Appeals Board

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