WAC 220-660-470 Formal appeal of administrative actions. A formal appeal is an appeal to the pollution control hearings board (board) under chapters 34.05 RCW and 371-08 WAC.

(1) The department recommends that a person aggrieved by a department HPA decision contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution without the need for a formal appeal.

(2) The department encourages a person aggrieved by a department HPA decision to take advantage of the informal appeal process under WAC 220-660-460 before initiating a formal appeal. However, a person may pursue a formal appeal under this section without first completing the informal appeal process under WAC 220-660-460.

This rule does not apply to pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection, under WAC 220-660-480.

(3) Requesting a formal appeal.

(a) Any person with standing may request a formal appeal of the issuance, denial, provisioning, or modification of an HPA; the rejection of a fish habitat enhancement project application for streamlined processing; a notice of intent to disapprove HPA applications; or a preapplication determination.

(b) Issuance of a stop work order, notice to comply, or notice of intent to disapprove HPA applications, may be formally appealed only by a person who received the order or notice from the department or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be formally appealed only by the person incurring the penalty.

(4) The recipient of a stop work order must comply with the order immediately upon receipt. However, the board may stay, modify, or discontinue the order upon motion, under such conditions as the board may impose.

(5) A request for formal appeal must be in writing and must be filed with the clerk of the board and served on the department within 30 days from the date of receipt of the decision, order, or notice. "Date of receipt" means:

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

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to 45 days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt.

(6) The request must be plainly labeled as "Request for Formal Appeal" and, under WAC 371-08-340, must include the following:

(a) The appellant's name, mailing address, email address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department action being contested;

(d) A copy of the decision, notice, order, or HPA you are appealing, and if appealing a permit decision, a copy of the HPA application;

(e) A short and plain statement explaining why the appellant considers the department action, notice, or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The signature of the appellant or his or her representative.

(7) Service on the department must be submitted in one of the following ways:

(a) Mailed to:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
P.O. Box 43234
Olympia, WA 98504-3234;

(b) Email: HPAapplications@dfw.wa.gov; or

(c) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(8) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within 30 days from the date of receipt of the department's written decision in response to the informal appeal.

(9) The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the board. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal, the appellant may apply to the board for a stay of the decision or order, or removal of a stay imposed by the department.

(10) If there is no timely request for an appeal, the department action will be final and nonappealable.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.04.020, 77.55.021, 77.55.091, 77.55.181, 77.12.047, and 34.05.328. WSR 26-15-073 (Order 26-13), s 220-660-470, filed 7/15/26, effective 8/15/26. Statutory Authority: RCW 77.04.012, 77.12.047, 77.55.021, 34.05.328, and 2019 c 290. WSR 20-11-019 (Order 20-75), § 220-660-470, filed 5/12/20, effective 6/12/20. Statutory Authority: RCW 77.04.012, 77.04.020, 77.12.047, 77.55.021, 77.55.091, 77.55.051, 77.55.081, 34.05.328, and 34.05.350. WSR 18-10-054, § 220-660-470, filed 4/27/18, effective 6/1/18. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.12.047. WSR 15-02-029 (Order 14-353), § 220-660-470, filed 12/30/14, effective 7/1/15.]