



State of Washington  
**Department of Fish and Wildlife**

Mailing Address: PO Box 43234, Olympia WA 98504-3234, (360) 902-2200, TDD (360) 902-2207  
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

March 23, 2021

City of Lake Stevens  
Jill Meis  
PO Box 257  
Lake Stevens, WA 98258-0257

Dear Jill Meis:

**SUBJECT: HPA APPLICATION RECEIVED AFTER PROJECT COMPLETION FOR NORTH COVE PEDESTRIAN FOOT BRIDGES, WDFW APPLICATION ID: 24005**

On March 12, 2021, Washington Department of Fish and Wildlife (WDFW) first received your application materials for a Hydraulic Project Approval (HPA) for the project referenced above. The project has already been completed, and no HPA was issued prior to completion of the project.

HPAs must be obtained before starting any work within state waters, and any work done without an HPA is a violation of Revised Code of Washington (RCW). RCW 77.55.021 states, "*...in the event that any person or government agency desires to undertake a hydraulic project, the person or government shall, **before** commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.*"

Washington Department of Fish and Wildlife does not issue HPAs after hydraulic projects are completed.

For that reason, I have rejected your application. If you wish to appeal this decision, you may file a written request for appeal under WAC 220-660-460 (Informal Appeal of Adverse Administrative Decision) or WAC 220-660-470 (Formal Appeal of Adverse Administrative Decision). I have enclosed these WACs.

If you have any questions, please call me at 425-775-1311 Ext:101.

Sincerely,

Kevin Lee  
Fish and Wildlife Biologist

## **WAC 220-660-460**

### **Informal appeal of administrative actions.**

An informal appeal is an appeal to the department pursuant to chapter [34.05 RCW](#) (Administrative Procedure Act).

(1) The department recommends that a person aggrieved by the issuance, denial, provisioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for an informal appeal.

(2) The department encourages aggrieved persons to take advantage of the informal appeal process before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal under [WAC 220-660-470](#).

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

(3) Any person with legal standing may request an informal appeal of the following department actions:

(a) The issuance, denial, provisioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(4) A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision or order. "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. 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. The date of actual receipt; however, may not exceed forty-five days from the date of mailing.

(5) A request for informal appeal must be:

(a) Mailed to the:

HPA Appeals Coordinator  
Department of Fish and Wildlife  
Habitat Program  
PO Box 43234

Olympia, Washington 98504-3234;

(b) E-mail: [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov);

(c) Fax: [360-902-2946](tel:360-902-2946); or

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

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, e-mail address (if available), and phone number;

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

(c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;

(d) The log number or a copy of the HPA, or a copy of the order imposing civil penalties;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise 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 attorney's name, address, e-mail address (if available), and phone number, if the appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.

(8) Informal conference. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the HPA appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC [220-660-470](#). Formal review must be requested within the time periods specified in WAC [220-660-470](#).

## **WAC 220-660-470**

### **Formal appeal of administrative actions.**

A formal appeal is an appeal to the pollution control hearings board pursuant to chapters [34.05](#) RCW and [371-08](#) WAC.

(1) The department recommends that a person aggrieved by the issuance, denial, provisioning, or modification of an HPA 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 of the problem without the need for a formal appeal.

(2) The department encourages aggrieved persons to take advantage of the informal appeal process under WAC [220-660-460](#) before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

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

(3) Any person with standing may request a formal appeal of the following department actions:

(a) The issuance, denial, provisioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(4) As required by the Administrative Procedure Act, chapter [34.05](#) RCW, the department must inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

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

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

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. The date of actual receipt; however, may not exceed forty-five days from the date of mailing.

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

- (a) The appellant's name, mailing address, e-mail address (if available), and phone number; and if represented by another, the representative's name, mailing address, e-mail address, and phone number;
- (b) The specific department action that the appellant contests;
- (c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;
- (d) A copy of the order or permit you are appealing, and if appealing a permit decision, a copy of the permit application;
- (e) A short and plain statement explaining why the appellant considers the department action 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:

(a) Mailed to:

HPA Appeals Coordinator  
Department of Fish and Wildlife  
Habitat Program  
PO Box 43234

Olympia, Washington 98504-3234;

(b) E-mail: [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov);

(c) Fax: [360-902-2946](tel:360-902-2946); or

(d) 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 thirty 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 PCHB. 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 to the PCHB, the appellant may apply to the PCHB 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.