

## ***REQUESTS FOR REVIEWS UNDER THE DRINKING WATER PROTECTION ACT*** ***Office of the Provincial Health Officer***

### **Requests for a Review of a Drinking Water Officer Decision**

Under section 39.1 of the *Drinking Water Protection Act* the Provincial health officer can review certain decisions made by a drinking water officer. He may undertake the review himself, or delegate the authority to a medical health officer.

### **What decisions are reviewable?**

The only decisions that can be reviewed under section 39.1 of the DWPA are those made under:

- (a) section 19 [drinking water office authority in relation to assessments];
- (b) section 25 [hazard abatement and prevention orders];
- (c) section 26 [orders respecting contraventions];
- (d) section 31 (4) [request respecting plan initiation];
- (e) a decision resulting from a reconsideration of these decisions.

These decisions are initially made by drinking water officers or persons acting under the authority delegated to them by a drinking water officer.

### **What is a review as set out in section 39.1 of the DWPA?**

An opportunity for any person affected by a decision of a drinking water officer (DWO), under specific sections of the Act, to have the decision reviewed by the Provincial health officer or designated medical health officer. The review will be based on the evidence available at the time the original decision was made, not on new information. If a person has information that they believe was not considered during the original decision, they should provide it to the drinking water officer who made the decision and request a review of the decision.

### **What is the outcome of a review?**

Following a review, decisions related to sections above can be confirmed, varied, reversed or sent back to the original decision maker for reconsideration with or without direction.

### **How does a review differ from a reconsideration?**

A review differs from [reconsideration](#) in two significant ways. First, a review is conducted by a person other than the drinking water officer that made the original decision. Second, a review is not based on consideration of whether new evidence justifies varying or reversing the initial decision. New evidence cannot be provided or considered on a review.

### **Who can request a review?**

Any person affected by a decision of a DWO under section 39.1 (a)-(e)

This would clearly capture persons that are directly impacted by a DWO decision, including:

- A water supplier ordered to prepare an assessment (section 19);
- A person ordered to abate or take preventive measures against a health hazard (section 25);
- A person ordered to comply with the Act or Regulations (section 26);
- A local authority or water supplier aggrieved by DWO decision to not request the PHO recommend that the Minister of Healthy Living and Sport designate an area for the purpose of developing a drinking water protection plan (section 31(4)); and
- A person party to a reconsideration (section 39.1).

### **How are requests made?**

The Provincial health office can be contacted by mail, phone or facsimile at

Provincial Health Officer  
Office of the Provincial Health Officer  
Ministry of Healthy Living and Sport  
4-2, 1515 Blanshard St.  
Victoria, BC V8W3C8  
250 952-1330 fax: 250 952-1362

The person requesting the review should complete the form “request for review” available from the Office of the Provincial health officer. Assistance in completing the form is available from the Provincial drinking water officer.

The person requesting the review should send it directly to the provincial health officer.

### **Who will conduct a review?**

The provincial health officer may undertake the review himself, or he may direct that it be undertaken by a medical health officer. If the review is undertaken by a medical health officer it will be directed to a medical health officer who was not involved in making the original decision.

### **What information should be provided to the Provincial health officer?**

Reviews can only be conducted "on the record." This means the person conducting the review can only consider information in the file that was available to the original decision maker when the decision was made. A person is not able to introduce new evidence on a review. If the person believes there is new evidence relevant to the matter, they must request reconsideration from the original decision-maker instead. The person can then request a review after reconsideration if the person is still dissatisfied with the decision.

### **Determining the result of a review**

Upon completing a review, the decision can be confirmed, varied or reversed, or the matter can be referred back to the drinking water officer (with or without directions) (section 39.1(4) (d)). This is a decision for the reviewing official to make.

Generally speaking, if the reviewing official is in a position to confirm, vary or reverse the decision based on the information on the record, he or she will do so. If, however, the reviewing official believes it is more appropriate to refer the matter back to the drinking water officer for further consideration, he or she may do so. Circumstances in which it may be more appropriate to refer the matter back to the drinking water officer may include, but are not limited to:

- situations in which the reviewing official believes the drinking water officer should have obtained further information before making a decision
- situations in which the reviewing official believes the decision should be varied, but the decision as to precisely how the decision should be varied is one best left for the drinking water officer with knowledge of the water supply system

In any case, where the reviewing official has decided it is appropriate to refer a matter back to the drinking water officer, the reviewing official will attempt to provide directions and comments that would help the drinking water officer address any of the factors that, in the opinion of the reviewing officer, resulted in the matter being referred back.

### **What alternatives for redress exist for persons unsatisfied with the outcome of a review?**

Once the initial review has been conducted, the PHO does not have discretion to re-review the decision unless a subsequent decision on the same issue is made by the original decision maker.

If a person is unsatisfied with the outcome of a review, they can:

1. Take the matter before the Courts for judicial review of the original decision, re-consideration or review. Courts will evaluate the decision-making process from a procedural fairness vantage.
2. File a complaint with the Ombudsman regarding fairness of the original decision, re-consideration or review.
3. If new information that was not available at the time of the original decision becomes available, the complainant can ask the original decision maker to re-consider the matter: where re-consideration is deemed unsatisfactory, the complainant can bring the matter back to the PHO for new review.

### **Other complaints**

Other complaints, questions or concerns directed to the Office of the Provincial health officer will be referred to the Provincial drinking water officer.

For general questions, answers will be provided to the extent possible with referrals to other agencies as appropriate. For complaints about water quality or government programs, the Provincial drinking water officer will direct the complainant to the appropriate agency or directly contact that agency. Where warranted, the Provincial drinking water officer will also follow up with those other agencies and the complainant to ensure that appropriate steps have been taken.

If complaints lead to identification of general areas of concern where drinking water is being threatened due to short-comings of government programs, the Provincial health officer can make recommendations to Ministries to improve their programs. The Provincial health officer can also report to the Minister of Healthy Living and Sport and the Provincial Legislature on areas of government programs that need improvement.