

REQUESTS FOR REVIEWS UNDER THE *DRINKING WATER PROTECTION ACT*

Requests for a Review of a Drinking Water Officer Decision

Under section 39.1 of the *Drinking Water Protection Act (DWPA)*, the Provincial Health Officer (PHO) can review certain decisions made by a Drinking Water Officer (DWO). The PHO may undertake the review or delegate the authority to a Medical Health Officer (MHO). Section 39.1 allows persons affected by a decision of a DWO to request a review or reconsideration of a decision made under certain sections of the Act. Reconsiderations and reviews are two separate processes.

What decisions are reviewable?

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

- Section 19 [drinking water office authority in relation to assessments];
- Section 25 [hazard abatement and prevention orders];
- Section 26 [orders respecting contraventions];
- Section 31 (4) [request respecting plan initiation]; or
- 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 DWO.

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 DWO, under specific sections of the Act, to have the decision reviewed by the PHO or designated MHO. The review will be based only on the evidence available at the time the original decision was made, and 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 DWO who made the decision and request a reconsideration of the decision.

How does a review differ from a reconsideration?

A review differs from a reconsideration in two important ways. First, a review is conducted by a person other than the DWO who 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 for a review. Reviews can only be conducted "on the record," which 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 reconsideration can be made at any time after a decision is made. When a request for reconsideration is made, the person must indicate new evidence that they believe would justify the DWO changing, reversing, or varying a prior decision. In deciding whether to confirm, vary, or reverse the initial decision, the DWO should assess whether there is new evidence which, if it had been available when the decision was made, would have caused him/her to make a different decision. Reconsiderations of decisions are typically conducted by the DWO who made the initial decision.

Who can request a review?

Any person affected by a decision of a DWO under section 39.1 (a)-(e). This would 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 who disagrees with a DWO's decision to not request the PHO recommend that the Minister of Health designate an area for the purpose of developing a Drinking Water Protection Plan (section 31(4)); or
- A person party to a reconsideration (section 39.1).

Contact information to send requests:

**Office of the Provincial Health Officer
Ministry of Health
PO Box 9648, STN PROV GOVT
1515 Blanshard St., 4th Floor
Victoria BC V8W 9P4
Phone: 250 952-1330**

The person requesting the review must submit their request in writing and provide grounds for conducting the review. The Office of the Provincial Health Officer recommends the applicant complete and submit the "[request for review](#)" form from the Office of the Provincial Health Officer (PHO). Assistance in completing the form is available from the Provincial Drinking Water Officer. The person requesting the review should send the form directly to the Office of the PHO.

Who will conduct a review?

The Provincial Health Officer may undertake the review, or may direct that it be undertaken by a Medical Health Officer. If the review is undertaken by an MHO, it will be directed to an MHO 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," which means the person conducting the review can only consider information in the file that was available to the person who made the original decision. 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 person who made the original decision. The person can then request a review after reconsideration if the person is still dissatisfied with the decision.

The result of a review.

Upon completing a review, the reviewing official (e.g. the PHO or designated MHO) can confirm, vary, reverse the decision, or the matter can be referred back to the DWO with or without directions, per section 39.1 (4) (d).

If the reviewing official is in a position to confirm, vary, or reverse the decision based on the information on the record, he/she will do so. However, if the reviewing official believes it is appropriate to refer the matter back to the DWO for further consideration, he/she may do so.

Circumstances which may be referred back to the DWO, may include, but are not limited to:

- Situations where the reviewing official believes the DWO 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 how the decision should be varied is best left for the DWO with knowledge of the water supply system.

If the reviewing official decides it is appropriate to refer a matter back to the DWO, the reviewing official will attempt to provide directions and comments that would help the DWO address any of the factors that, in the opinion of the reviewing officer, resulted in the matter being referred back.

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

Once the initial review has been conducted, the Provincial Health Officer (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:

- 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;
- File a complaint with the Ombudsman regarding fairness of the original decision, re-consideration, or review; or
- 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 reconsider the matter, and where reconsideration 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 (PDWO).

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 PDWO will direct the complainant to the appropriate agency or directly contact that agency. Where warranted, the PDWO will follow up with those other agencies and the complainant to ensure 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 PHO can make recommendations to Ministries to improve their programs. The PHO can also report to the Minister of Health and the Provincial Legislature on areas of government programs that need improvement.