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A Guide to the Alberta Environmental Appeals Board

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1.0 What the Board Is and How It Operates

The Alberta Environmental Appeals Board (EAB) was established in 1993, as part of the major environmental statute revision, under the *Environmental Protection and Enhancement Act* (EPEA).[1] Its creation followed public concerns about decision-making fairness, including the need for an independent appeal process, which was expressed in the public consultation process that led to EPEA.[2] A model may have been have been the "boards of review" created by the federal *Canadian Environmental Protection Act*[3].

It is a specialized provincial appeal court with jurisdiction limited to decisions under EPEA and other specified statutes, that now include certain provisions of the *Water Act* [4], and the *Emissions Management and Climate Resilience Act* [5](EMCRA). The Board's power to hear specific appeals must be based on a clear right of appeal under one of these statutes. It describes itself as a "quasi-judicial body – "… A judicial body that makes judgments about the rights and responsibilities and in some cases, liabilities, of the parties that appear before it".[6] Analogous environmental appeal boards are found in British Columbia[7] and Ontario.[8]

Simply put, these laws define the Board's jurisdiction and provide the procedural rules that govern its operations. The Board is composed of a Chair, Vice-Chairs, and Members who are appointed based on their expertise in environmental science, law, and public administration.

The Board's operations are guided by principles of natural justice and procedural fairness. This means that all parties involved in an appeal have the right to be heard, to present evidence, and to receive a reasoned decision based on the merits of their case.[9] The EAB conducts hearings, both written and oral, and makes determinations based on the evidence presented. The EAB also provides recommendations to the Minister of Environment and Protected Areas on policy and

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1 *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.
2 *Ibid*.
3 *Canadian Environmental Protection Act*, 1999, SC, c 33s. 333-341.
4 *Water Act*, RSA 2000, c W-3, ss. 109, 115.
5 *Emissions Management and Climate Resilience Act*, SA 2003, c E-7.8, s. 42.
6 EAB, "About the Board", "Role of the Board", EAB Website, online: Environmental Appeals Board - Role of the Board (gov.ab.ca) [About the Board].
7 *Environmental Management Act*, SBC 2003, c 53, Part 8.
8 *Environmental Review Tribunal Act*, 2000, SO 2000, c 26, Sch F
9 About the Board, "History of the Board", *supra* note 6.

legislative matters, ensuring that environmental governance evolves to meet emerging challenges.[10]

Key historical milestones include landmark cases such as *Chem-Security (Alberta) Limited v. The Lesser Slave Lake Indian Regional Council and Environmental Appeal Board*[11], which underscored the importance of Indigenous organizations and the role of the EAB in upholding environmental standards.

1.1 Appointment of Members

Board members are appointed by the provincial Cabinet under section 90 (1) of the *Environmental Protection and Enhancement Act*. All are part-time, paid a *per deim* (plus expenses) that is set by Order in Council.[12]

2.0 This Guide

This paper will focus on the balance that has been struck by the Alberta legislature and the Board between these sometimes-conflicting objectives. It will point to EAB's successes in achieving its key goals. What the EAB is; what it does; and what legal techniques it uses will be clarified. This will provide a guide for public participation in environmental issues through the mechanism of the Board. It will show the nature and extent of public participation in the Board's appellate processes. Public legal standing to participate in appeals before the EAB will be examined. The study will also show the Board's legal interaction with public decision-makers - both regulatory and elected officials, particularly the Minister of Environment and Protected Areas.

Key EAB decisions that have marked its path as an appellate body will be reviewed. Critical statutory changes will also be shown. What have the leading environmental law issues been in the different eras of the Board's 30-year history? Attention will be given to interpretation of relevant legislation, and procedural innovations and trends, particularly the Board's development and success with its mediation system. What the Board actually said on certain key issues will be highlighted.

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10 See David Boyd, *Environmental Law and Policy in Canada.* Toronto: Irwin Law. 2016.

11 *Chem-security (Alberta) Ltd v. Lesser Slave Lake Indian Regional Council and EAB (Alberta)*, 1997 ABCA 241 [Chem-security].

12 EAB, About the Board, "About the Environmental Appeals Board Members", *supra* note 6.

3.0 Statutory Interpretation

The Board is a statutory appeal tribunal. Its decisions involve interpreting its constituting statute, the *Environmental Protection and Enhancement Act* and regulations under this Act, as well as related statutes that provide appeals to the Board. This includes questions of **standing** to initiate appeals and the **fundamental legality of Board decisions**. Both issues are discussed below. Statutory interpretation is central to understanding Board decisions and the process by which it makes those decisions.

There is a body of law that concerns statutory interpretation. However, there is no concise template for statutory interpretation.

In 1998 The Supreme Court of Canada summed it up this way citing Elmer Driedger, *Construction of Statutes*, 2nd ed 1983:

"**Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.**"[13]

More recently, according to Ruth Sullivan author of *Sullivan on the Construction of Statutes*, 6th Edition, Driedger's central principle has three elements: "A correct interpretation of legislation must be:

1. plausible in that it complies with the legislative text,

2. efficacious in that it promotes the legislative intent, and

3. matches accepted legal norms in that the interpretation is reasonable and just."[14]

In interpretation, both the "internal context" (the empowering statute (here particularly EPEA) and regulations) and the "external context" (including related statutes and regulations, and legislative proceedings, notably legislative Hansard (recorded legislative proceedings) must be carefully considered.[15]

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13 *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 2; Elmer Driedger, *The Construction of* Statutes, 2nd. Ed. (Toronto: Butterworths, 1983) at 87.

14 Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada, 2014), at 2.01 [2]. [Sullivan].

15 *Ibid* at 22.01.

Another relevant principle is that should there be a conflict between the words of the Act and the language of "**subordinate legislation**" authorized by the Act, the Act takes precedence.[16]

All of this should be borne in mind when considering the EAB issues reviewed below.

4.0 The EAB's Establishing and Empowering Statute – The Environmental Protection and Enhancement Act (EPEA)

Part 4 (sections 90-106.1 of EPEA) is the source of the EAB's existence and its legal powers and duties. Section 91 is central. It states the circumstances in which a person may file an appeal with the Board. If an issue does not fall under one or more of these listed circumstances, there is no right of appeal. Unlike courts, the Board has no inherent jurisdiction to accept an appeal. Further, the notice of appeal must be filed within the prescribed time limit – 30 days after receiving the decision or notice of the decision appealed from.[17]

The major "circumstances" categories are where an Alberta Environment and Parks Director issues or amends an approval. Then an 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)…"[18]

Applicants and approval holders may appeal where a director denies or cancels an approval or issues an environmental protection order (a form of enforcement order).[19] However, there is no appeal from certain enforcement orders that require specified measures to be taken.[20]

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16 Sullivan *supra* note 14 at 11.02 [2].
17 EPEA, s. 91 (4).
18 EPEA, s. 91 (1).
19 *Ibid*.
20 *Clover Bar Sand and Gravel Ltd. V. Director, North Region*, 2024 AEAB at para 52-66.

The statement of concern referred to above must be submitted to the Director within 30 days after the Director's last provided notice of an approval application or amendment. This means that to exercise a right of appeal it is **essential** that a statement of concern be filed within the time limit.

5.0 Rules of Practice

The EAB's Rules of Practice[21] govern the conduct of appeals, ensuring that proceedings are orderly, efficient, and fair. These rules outline the steps for filing an appeal, the requirements for submissions, and the procedures for hearings.[22]

Key elements include timelines for filing appeals, the format of written submissions, and the conduct of oral hearings. The rules also provide guidance on procedural issues such as disclosure of evidence, adjournments, and the role of legal representation.[23]

6.0 Filing an Appeal

A notice of appeal submitted under section 91 of EPEA must contain:

(a)"the provision of the Act under which the notice of appeal is submitted;

b) the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision being appealed;

(c) a description of the relief requested by the person appealing;

(d) the signature of the person appealing, or the person's lawyer or other agent;

(e) an address for service for the person appealing."[24]

For filings under the *Water Act* or any other specified act, the name of that Act must be stated.

7.0 Public Participation in EAB Proceedings

For the EAB, public participation should be understood to be only participation as parties to appeals before the Board. Unlike regulatory bodies such as the Alberta Energy Regulator, the EAB has no power to hold inquiries or investigations. However, being a party before the Board can in a

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21 Environmental Appeals Board, Rules of Practice, ENVIRONMENTAL APPEALS BOARD (gov.ab.ca) [EAB Rules of Practice].

22 *Ibid.*

23 McEwen, C. A. (2010). Procedural Fairness in Environmental Tribunals: A Case Study of the EAB. Canadian Journal of Administrative Law & Practice, 23(2), 193-217.

24 EAB Regulation, Alta Reg 114/1993 s. 5(1) [EAB Regulation].

formal and structured sense be seen as participatory activity. So, in this sense, public participation has been as a cornerstone of the EAB's processes, ensuring that a diverse range of voices can influence environmental decision-making.[25]

7.1 Indigenous Participation

The Supreme Court of Canada has described a spectrum of Aboriginal rights and impact significance to determine the scope and content of consultation and accommodation required in specific circumstances.[26] However, the EAB has no jurisdiction to decide questions of constitutional law including Aboriginal consultation rights.[27] Entitlement to these rights and their nature in specific cases must be determined in court proceedings for judicial review of EAB decisions.[28]

8.0 Standing to participate

8.1 The Legal Test

The legal test for standing to participate before the Board (initiate or participate in an appeal) has evolved over the last three decades. Initially, standing was granted to individuals and groups who were directly affected by the decision under appeal or who have a genuine interest in the environmental issue at hand.[29] This meant use of a natural resource (such as water or wildlife) near the activity approved under relevant environmental legislation.[30]

A significant issue that arose in 1995, soon after the Board's establishment, was whether citizen organizations can have standing to appeal. A group of residents in the Edmonton community of Hazeldean sought to appeal an EPEA Director's decision to approve a facility's release of contaminants to the ambient air. The problem was that all residents would be affected in the same way; no one was directly affected to a greater degree than other residents. The citizen group as an entity was not affected at all. In the result, the Board granted standing to the community

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25 Stewart, R. B., & Sinclair, A. J. (2007). Public Participation in Environmental Assessment in Canada: A Comparative Analysis. Journal of Environmental Law and Practice, 18(1), 31-65.

26 *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153; and *Gitxaala Nation v. Canada*, 2016 FCA 187.

27 *Administrative Procedures and Jurisdiction Act*, RSA 2000, c. A-3.

28 See *Siksika First Nation v. Alberta (Director Southern Region Alberta Environment),* 2007 ABCA 402, which concerned a municipal wastewater pipeline approval by an Alberta Environment Director that had been appealed to the EAB.

29 EAB Regulation, *supra* note 24.

30 *Court v. Alberta Environmental Appeal Board*, 2003, ABQB 456.

group. A significant factor was the apparent risk that otherwise no one would have standing – a result that would be unreasonable and contrary to the intent of the Act.[31]

8.2 The Normtek Appeal's New Directions on Standing

In *Normtek Radiation Services Ltd. v. Alberta (Environmental Appeal Board)*[32] the Alberta Court of Appeal overturned a Board standing decision by placing a different, more inclusive interpretation on the phrase "directly affected" in section 91 (1)(a)(1) of EPEA. The essence was that the Court of Appeal decided that the definition included not just human health, safety, or property, but also the social, economic or cultural effects of the activity. Thus, Normtek was granted standing to appeal a decision to permit disposal of certain radioactive waste in a landfill, notwithstanding that it had no land likely to be affected, and its main concern was business competition as a firm that disposed of radioactive waste in geologically secure sites, not landfills. The court referred to the reference in EPEA's objectives to "the environmental, social, economic, and cultural consequences of a proposed activity".[33] This goes beyond effects on human health, safety and property, including natural resources.

The Board now describes its "refined" "directly affected" standing test under EPEA and the *Water Act* as "having three parts, all of which a person must meet:

> *"1.* whether there is a personal or private interest, consistent with the underlying policies of the applicable statutes, being asserted by a person;
>
> *2.* whether there is an adverse effect to the identified interest; and
>
> *3.* whether the adverse effect to the identified interest is direct".[34]

Further, it is the exception rather than the general rule to have a collective interest group, association or community deemed to be directly affected.[35]

In light of the direction of the Alberta Court of Appeal in *Normtek*, the Board set out the following framework to determine "directly affected" in section 115(1) of the *Water*

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31 *Hazeldean Community League v. Director, Air and Water Approvals Division, Environmental Protection*, 1995 ABEAB 9 (11 May 1995).

32 2020, ABCA 456.

33 *Ibid* at para 135.

34 Standing Decision: Jeans-Moline et al. v. Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, re: Canadian Carmelite Charitable Society Inc., 21-025-026 and 22-001-034, 036-037-ID1, 2023 ABEAB 9 (CanLII), <https://canlii.ca/t/jxmwd> (appeals by individuals and citizen organizations concerning issuance of a licence to divert water to a rural religious "spiritual Centre") [Jeans Moline].

35 *Ibid*, para 81.

Act and section 91(1) of EPEA, when a collective interest group, association, or community files an appeal before the Board. Such group, association or community appellant must meet all six parts of the following test:

> "*1.* is there a personal or private interest, consistent with the underlying policies of the applicable statutes, being asserted by persons in the group;
> *2.* is there an adverse effect to the identified interests personal or private interests;
> *3.* is the adverse effect to the identified interests direct;
> *4.* is the direct adverse effect shared by, or common to, the persons in the group who have clearly identified interests;
> *5.* does the nature of the adverse impact render it impossible to prove, or to differentiate, impacts between persons in the group who would clearly be directly affected; and
> *6.*will a majority (more than half) of the persons in the group be directly affected personally, and therefore, have standing in their own right"[36]

This inclusive approach enhances transparency and accountability in environmental governance.

9.0 Initial Board Jurisdiction

There are several circumstances in which the Board lacks initial legal authority (initial jurisdiction) to entertain an appeal. **First,** it must determine which matters in a notice of appeal will be included in the hearing, focusing on whether a matter was already considered by another Alberta Board or in a public review under the federal *Impact Assessment Act.*[37] **Second,** the EAB "**shall** dismiss a notice of appeal if in the Board's opinion …" (a).the person filing the notice of appeal had notice of or opportunity to participate in hearings by the Natural Resources Conservation Board, or any act administered by the Alberta Energy Regulator or the Alberta Utilities Commission, and in which all matters raised were adequately dealt with; or (b). The Alberta government has participated in a public review under the federal *Impact Assessment Act."*[38]

Third, if the Board concludes that a person filing a notice of appeal is not directly affected, it **may**, on this standing ground (discussed above), dismiss the appeal[39]. Under a more sweeping

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36 *Ibid*, para 87.
37 SC 2019, c 28 ,s1; EPEA, s. 95 (2) (a).
38 EPEA, s. 95 (5) (b).
39 *Ibid*, s. 91 (1).

power it **may** dismiss an appeal if it considers the notice of appeal to be "frivolous, vexatious or without merit". or "not properly before it" [40] There must be sufficient information before the board to permit it to make these initial jurisdiction determinations. If not,[41] any judicial review is premature and will not be heard by a court.

In *Chem-Security v. Alberta EAB*, the Board held in an appeal of approval of a hazardous waste treatment plant expansion by local residents, that an increase in fugitive emission[42] discharge levels was significant. It was a "new matter" that had not been "considered" in previous hearings on the plant approval application by the Alberta Natural Resources Conservation Board.[43] Consideration of this new matter could involve hearing evidence that was not before the Director.[44] Another example is *Slauenwhite v. Alberta EAB* (1994),[45] where the Court of Queen's Bench agreed that the Board had authority to address alleged failure by the Director to consider an environmental assessment (EA) of a proposed Conwest gas processing plant that had been approved by the ERCB (now Alberta Energy Regulator). The ERCB had considered the EA, but that addressed only the Conwest application that accounted for 40% of proposed natural gas plant intake. It was thus a new matter properly before the EAB.

10.0 The Hearing

Elements of the hearing are:

1. Opening statements
2. Hearing of evidence
3. Cross examination
4. Closing arguments and briefs
5. Closing the record

The EAB's Rules of Practice govern the conduct of appeals, ensuring that proceedings are orderly, efficient, and fair. Every party must file a written submission with the Board and copies

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40 *Ibid*, s. 95 (5) (b).

41 *Chem-Security (Alberta) Ltd v. Lesser Slave Lake Indian Regional Council and EAB (Alberta)*, *supra* note 11

42 The term refers to unintentional release of air emissions to the atmosphere. This includes pressurized substances from facilities such as hazardous waste treatment plants [Chem-security] and natural gas processing plants [Slauenwhite, *infra* note 45] as well as large area sources such as tailings ponds.

43 *Ed Graham v. Director of Chemicals Assessment and Management*, 1996, ABEAB 14.

44 *Chem Security v. Alberta EAB,* 1996 ABEAB 14.

45 *Slauenwhite v. Alberta EAB* 1995 CanLII 9179 (ABKB) [Slauenwhite].

to the parties, at least 7 days before the scheduled hearing start. The submission must contain a summary of the facts and a party's proposed evidence, as well as a list of witnesses to be called, an evidence summary, and contact information. All evidence is submitted under oath or affirmation. It is significant that the Board's hearings are "*de novo*" – that is, they are not limited to evidence that was before the director in making the decision appealed; the Board hears new evidence.[46] Normally, each party gives a brief opening statement that describes the issues to be addressed, an evidence outline, a witness list, and a time estimate.

The usual order of presentation is:

1. The Appellant;
2. Other Parties whose interest or position is, in the Board's opinion, similar to that of the Appellant;
3. Other Parties whose interest or position is, in the Board's opinion, similar to that of Alberta Environment and Protected Areas;
4. Alberta Ministry of Environment and Protected Areas;
5. The Board's witnesses, if any; and
6. The Appellant in rebuttal.

11.0 Evidence

The Board considers various types of evidence, including expert testimony, technical reports, and environmental impact assessments.[47] Evidence[48] must be relevant – "tending to make the existence of relevant facts more or less probable". Sworn written statements may be accepted in evidence instead of oral statements. Evidence may be excluded as unfairly prejudicial, likely to confuse or delay, waste time, or needlessly repetitious. A party proposing confidential or sensitive evidence may be directed to summarize or follow other arrangements to permit access to the evidence. Cross examination should not go beyond the direct evidence that is adverse to the examining party. At the end of the hearing parties may file a written brief that includes proposed findings of fact, conclusions of law or both. After close of the hearing no additional evidence is

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46 *McMillan v. Director South Saskatchewan Region*, 2024 ABEAB *7* at para 297 [McMillan]; Chem-Security*, supra* note 11.

47 *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3.

48 See Rules of Practice pp 12, 13.

accepted, subject to the presiding Board member's discretion to receive other relevant evidence that for good cause was not previously produced.

The onus of proof lies with the appellant, who must demonstrate that the decision under appeal was flawed or that the proposed activity will have significant adverse environmental impacts.[49] The Board's decisions are based on a thorough evaluation of all evidence, ensuring that conclusions are well-founded and justifiable.[50]

12.0 Decision - Recommendation to the Minister

In a decision following the close of a hearing, the Board may "confirm, reverse, or vary the decision" appealed.[51] This decision must be written.[52] It may make any further order it considers necessary to carry out the decision, particularly relevant terms and conditions.[53]

A Board decision takes the form of a "Report and Recommendations" directed to the Minister. The latter reviews the Board's report and decides whether to confirm, reverse or vary the decision appealed from and make any further order considered necessary.[54]

Are these separate Board and ministerial decisions or is there a single decision process with the Board holding the hearing, finding facts, and preparing recommendations to guide and support the ultimate ministerial decision? The answer is that normally it is a single two-stage decision process. This was confirmed by the Alberta Court of Appeal's 2003 judicial review decision in *Imperial Oil Limited v. Alberta (Minister of Environment.* [55]

The Director of Enforcement and Monitoring, Alberta Environment issued an environmental protection order (EPO) to Imperial requiring cleanup of soil and water contamination at an historic Calgary oil refinery site. Imperial appealed to the EAB. Subsequently the Director sent two letters to Imperial stating specific remedial requirements. The Board held a hearing and issued a report and recommendations upholding the Director's EPO. However, Imperial was not allowed to appeal the requirements in the two letters. The Board then sent its

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49 McMillan*, supra* note 46 *(*concerning *EPEA s. 91 and Water Act s 115 (1) (a).*

50 See H. Davis, Evidence and Proof in Administrative Proceedings: Standards and Principles (2005) Environmental Law Review, 7(2), 94-117.

51 EPEA, s. 98 (2) (a).

52 *Ibid*, s. 98 (3).

53 *Ibid*, s 98 (2 (a).

54 *Ibid,* s. 100 (1).

55 *Imperial Oil Limited v. Director, Enforcement and Monitoring Bow River Region, Regional Services, Alberta (Minister of Environment)*, 2003 ABQB 388 [Imperial].

report and recommendations to the Minister incorporating its decision, and the Minister issued a decision ordering compliance with the EPO, but without mentioning the requirements in the two letters.

Imperial then sought judicial review in the Court of Kings Bench. It argued that that it had been denied procedural fairness because the minister gave the company no opportunity to respond to the letter requirements and provided no reasons for the decision. The court noted in effect that under EPEA normally neither hearing nor reasons were required from the Minister. This the court said is because of the "bifurcated" decision process established by EPEA. The Minister's decision is based on the Board's fact finding. However, in this case the letter requirements went to the heart of the decision process by mandating remedial standards. Thus, ministerial reasons were required.

13.0 Remedies

13.1 Substantive and Procedural Remedies

The EAB has the authority to grant a range of remedies, including reversing or modifying decisions, imposing conditions on approvals, and recommending policy changes. It can also issue environmental protection orders (EPOs)[56] requiring remediation including removal of contaminant substances. EPO powers are exemplified by the Imperial Oil appeal discussed above under "Decision". The Board's remedial powers are designed to address the specific issues raised in each appeal and to ensure that environmental decisions are consistent with legislative and regulatory requirements.[57]

Remedies are tailored to the circumstances of each case, with the goal of balancing environmental protection with sustainable development. The Board's decisions often set important precedents, influencing future regulatory practices and policies.[58]

13.2 Administrative Penalties

Appealable remedial decisions by a Director include decisions requiring a person to pay an administrative penalty (AP) under section 237 of EPEA or Part 9 of the *Water Act*.[59] These civil

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56 EPEA s. 91 (1) (g) and (h).

57 *Ibid*, ss. 90-95.

58 See Pring, G. W., & Pring, C. (2009). Greening Justice: Creating and Improving Environmental Courts and Tribunals. Washington, DC: The Access Initiative.

59 RSA 2000, c. W-3, s. 115 (1) (q).

penalties may be issued by written notice where the Director is of the opinion that a person has contravened a provision of the Act. The notice states that the person is required to pay to the government a penalty in the amount specified. This penalty may be either or both of, 1. a daily amount listed in a Base Penalty Table (with listed amounts based on specified criteria) and determined by the Director, and 2. a one-time amount concerning direct or indirect economic benefit. Penalties of the latter type have been significant, with a $ 769,778 imposition upheld against a permit violating bottle depot operator.[60]In this appeal the penalty was based on total revenue received by the violator. In appeals under the *Public Lands Act*, the Board has allowed expenses to be deducted from total revenue.[61]

14.0 Stay

On application by a party to an appeal, the Board may stay a decision permitting a project or activity that is subject to appeal to proceed.[62] Merely filing an appeal does not stay a decision.[63] Where a stay application concerns an EPEA enforcement order or a *Water Act* water management order, and in the Board's opinion, there would be "an immediate and significant effect if terms of the order are not carried out, the Board may order the Director to take necessary action, and require necessary security.[64]

When faced with a stay application, the Board uses the template established by the Supreme Court of Canada in *RJR-MacDonald v. Canada (Attorney General)*.[65] It asks:

1. What are the serious concerns of the Appellant that should be heard by the Board?
2. Would the Appellant suffer irreparable harm if the stay is refused?
3. Would the Appellant suffer greater harm if the stay is refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay?

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60 *Alberta Reclaim and Recycling Company Inc. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Protected Areas* (18 August 2016), Appeal Nos 14-025-027D (AEAB)).

61 Gilbert Van Nes," Administrative Penalties in Alberta: Overview and Latest Trends", in Alastair R. Lucas and Allan E. Ingelson (eds), *Environment in the Courtroom II* (Calgary: University of Calgary Press, 2023) ch 19 at 312.

62 EPEA, s. 97 (2).

63 *Ibid*, s 97 (1).

64 *Ibid*, s. 97 (3).

65 1994 SCC 117.

4. Would the overall public interest warrant a stay?[66]

An example is *Alexander v. Director*[67]. The appellant owned lake property, directly affected (as the Board found) by *Water Act* approvals issued to the Town of Blackfalds for constructing a stormwater management works, constructing and modifying several wetlands, and constructing a trunk stormwater pipeline. The Board applied the *RJR MacDonald* test to analyze Alexander's stay application. The following extensive quotation shows the Board's reasoning. It stated:

"The first step of the test requires the applicant to show there is a serious issue to be tried. The applicant has to demonstrate through the evidence submitted that there is some basis on which to present an argument. As not all of the evidence may be before the Board at the time the decision is made regarding the stay application, "…a prolonged examination of the merits is generally neither necessary nor desirable.[25]

[153] The second step in the test requires the decision-maker to decide whether the applicant seeking the stay would suffer irreparable harm if the stay is not granted. It is the nature of the harm that is relevant, not its magnitude. The harm must not be quantifiable; that is, the harm to the applicant could not be satisfied in monetary terms, or one party could not collect damages from the other…."

[157] The Courts have recognized that any alleged harm to the public is to be assessed at the third stage of the test. The public interest includes the "... concerns of society generally and the particular interests of identifiable groups."[33]

[158] In assessing the stay application, the Board notes that the first part of the *RJR-Macdonald* test requires the Appellant to raise serious issues to be tried and to show some basis for those concerns. The Appellant must be able to demonstrate through evidence submitted that there is some basis on which an argument can be presented. As noted previously, at this preliminary stage, the evidence does not need to be complete, as not all of the evidence will be before the Board at the time the decision is made regarding the stay application.

[159] The Appellant has raised concerns regarding potential harm to her use of the Lake for recreational purposes, and potential harm to her enjoyment of the biodiversity, fish and wildlife at

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66 Stay Decision: *Alexander* v. *Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Parks*, re: *Town of Blackfalds* (18 July 2022), Appeal Nos. 20-013-014-ID4 (A.E.A.B.), 2022 ABEAB 41.

67 *Ibid.*

the Lake as a result of the Activities authorized by the Approvals. The evidence currently before the Board indicates that there is a potential for the Appellant's use of the Lake for recreational purposes and her enjoyment of the biodiversity, fish, and wildlife at the Lake to be impacted by the Activities authorized by the Approvals.

[160] There are conflicting arguments about whether the water quality in the Lake will be improved by the proposed Project. There are also conflicting arguments regarding whether water quantity in the Lake will noticeably increase, if harm to the Lake will be caused, if harm will occur to the shoreline, or the degree to which impacts may be experienced. However, at this stage, it is sufficient that the Appellant has shown a basis for her argument, as required by the first part of the test. In the Board's view, the concerns raised by the Appellant directly relate to the subject Approvals and they are serious in nature.

[161] In considering the second part of the test, the nature of the harm has to be irreparable in nature. The Board notes that the Appellant argued she would suffer irreparable harm, as the wetlands and shoreline of the Lake, once impacted by the Approvals, cannot easily be replaced and will take decades to recover. The Appellant outlined a number of potential impacts to the Lake that could arise from the Project proceeding if the stay were refused, some of which the Appellant alleged were irreparable or would take many years to repair.

[162] The Appellant has further argued that any efforts to dredge the Lake of contaminants caused by the Activities should the Approvals ultimately be reversed, are likely to just cause further damage. The Board notes the Appellant also argued the Lake Property could potentially suffer erosion and property loss, however, in the Board's view these specific losses could be compensated for monetarily.

[163] The Appellant has further argued against the permanent loss of the natural features of the affected wetlands and the Lake such as loss of biodiversity and habitat loss. The Board notes that both the Appellant and the Approval Holder in their submissions acknowledge that if the wetland cannot be restored, the environmental damage is quantifiable as per the replacement plan and its cash equivalent will provide an equal or greater benefit to the environment under the Alberta Wetland Policy.

[164] In addition, no evidence was presented to show how the Appellant herself would suffer irreparable harm if the stay were refused. As the Board stated above, the alleged damage to the

Lake Property potentially from erosion and loss of shoreline property or vegetation is compensable monetarily.

[165] The Board finds the Appellant has not demonstrated she would suffer irreparable harm if the stay were refused. Consequently, the Appellant has not met this step of the test.

[166] In considering the balance of convenience and public interest, the Appellant argued her interests in the recreational values of the Lake represented the public's interest in preserving Alberta's wetlands and lakes. The Board notes the Approval Holder's submissions that the Project may enhance the water quality of the Lake by regulating the stormwater entering into it, while also protecting neighbouring properties from potential flood damage. In that regard, the public interest does not warrant a stay.

…In the Board's view, a stay of the Approvals would result in harm to the Approval Holder more than the Appellant in the form of more damage to the environment and neighbouring properties, increased costs due to delayed procurement and construction, and delayed development in the municipality.

[169] Therefore, the Board finds the overall public interest does not warrant a stay and the balance of convenience favours the Approval Holder. In other words, the Approval Holder would suffer greater harm [though not in a cost-benefit sense as the Board noted earlier] if the Board granted the stay than the Appellant would suffer if the stay were refused.

[170] For the Board to grant a stay, all three parts of the RJR McDonald test must be met. Here, while the Appellant has raised a serious issue, the Board has concluded she will not suffer irreparable harm, and the balance of convenience favours the Approval Holder. The Appellant has not met the test for a stay."[68]

15.0 Costs

The EAB has the discretion to award costs on an interim or final basis to parties involved in an appeal.[69] As Justice Fraser in *Cabre Exploration Ltd. v. Alberta (Environmental Appeal Board)* put it:

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68 *Ibid*, para 152-170.

69 EAB Rules of Practice, *supra* note 21 at.14.

"Under s. 88 [(now section 96)] of the Act, however, the Board has final jurisdiction to order costs 'of and incidental to any proceedings before it…'. The legislation gives the Board broad discretion in deciding whether and how to award costs."[70]

Awards will not be made until all parties to an appeal have been determined.[71] Costs may be awarded to cover expenses such as legal fees, expert witness fees, and other out-of-pocket costs incurred during the appeal process.[72] Costs must be reasonable and primarily related to matters in the notice of appeal, and preparation of submissions.[73] They are not limited, as in judicial proceedings, to requiring losing parties to pay.[74] There may be a redetermination as part of a final award.[75] The Board's policy on costs aims to ensure that financial considerations do not unduly hinder access to justice.[76]

Factors influencing the award of costs include the complexity of the case, the conduct of the parties, and the public interest in the outcome of the appeal.[77] The following more specific factors are listed in the *Environmental Appeals Board Regulation*:

"In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following: (a) whether there was a meeting under section 11 or 13(a); (b) whether interim costs were awarded; (c) whether an oral hearing was held in the course of the appeal; (d) whether the application for costs was filed with the appropriate information; (e) whether the party applying for costs required financial resources to make an adequate submission; (f) whether the submission of the party made a substantial contribution to the appeal; (g) whether the

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70 2001 ABQB 293 (CanLII), at para 10.

71 *Ibid*.

72 EAB Regulation, *supra* note 24, ss. 19-22

73 *Ibid*, s. 18 (2).

74 *Costs Decision: Edey et al. v. Director, South Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Protected Areas, re: Town of High River*, 19-089 & 093-094-CD, 2023 ABEAB 17 (CanLII), at para 21 (concerning an appeal by High River resident of a Director's approval of a flood control berm within the floodplain of the Highwood River that permanently altered the flow, flow direction and water levels of the river. The minister approved the Board's recommendation to vary the approval.by requiring written consent of landowners whose lands would be receive redirected waters from the berm. The Board awarded legal costs of $17,275.78, and expert witness costs of $2,622.38, all to be paid by the Town of High River.

75 EAB Regulation, *supra* note 24 s. 19 (5).

76 *Ibid*.

77 See Brown, D., & Deregowski, W. (2012). "Costs in Environmental Appeals: A Comparative Analysis". Journal of Environmental Law and Practice, 24(1), 45-67.

costs were directly related to the matters contained in the notice of appeal and the preparation and presentation of the party's submission; (h) any further criteria the Board considers appropriate. "[78]

Costs will normally be paid by the approval holder or applicant parties. A cost award against the Director will only be made in exceptional circumstances.[79]

16.0 Mediation Process

The EAB offers a mediation process as an alternative to formal hearings, providing parties with an opportunity to resolve disputes through facilitated negotiation. Mediation is voluntary and confidential, allowing parties to explore mutually acceptable solutions without the adversarial nature of a hearing.[80]

Prior to setting any appeal down for hearing, the Board hearing panel will schedule a mediation meeting (normally in person) of parties.[81] The mediation process and its objectives are explained to the parties, and issues in dispute are identified and clarified.

Emphasis will be on the nature of the mediation process, namely that it is **interest based** ("interest-based mutual gains") as opposed to **position oriented**. Originally, shortly after its creation in the late 1990s, when the Board considered mediation, it collaborated with the Harvard Program on Negotiation under the direction of Dr. Lawrence Susskind.[82] This involved intensive hands-on training of Board members and staff. It led to the Board adopting an interest-based model in which Board members (excluding the member who presided at each mediation meeting) act as mediators.

An example on the Board website highlighting the interest-based concept, is a farmer who is appealing a water allocation decision by the director on the ground that this withdrawal will restrict available water levels. However, beyond this **position** the farmer's underlying **interest**

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78 Section 20 (2).

79 *Hochhausen v. Director*, 2023 ABEAB 10 at para 38.

80 Environmental Appeals Board, About Mediation, Alberta Environment and Protected Areas, online: Environmental Appeals Board - About Mediation (gov.ab.ca)

81 EAB, Rules of Practice and Procedure, *supra* note 21, at 9, online: ENVIRONMENTAL APPEALS BOARD (gov.ab.ca)

82 Now see, Harvard Program on Negotiation, online: PON - Program on Negotiation at Harvard Law School. See also Matthew Taylor, Patrick Field, William Tilleman, and Lawrence Susskind, "Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices" (1999) 22:2 Dalhousie Law Journal 51.

may be not having enough water for family and livestock. The idea is that a mutually agreed upon solution should focus on maximizing satisfaction of the personal needs of all participants.

The mediation process is conducted by trained mediators who help parties identify issues, explore options, and reach agreements. Successful mediation can result in binding agreements that are formalized by the EAB, promoting efficient and collaborative resolution of environmental disputes.[83] An important factor is the opportunity of parties to meet and engage in person with representatives of corporations and public interest groups. These meetings can involve board staff preparing an agreement document in a meeting, and the parties signing off. This is then rendered as a formal board decision, and the appeal is normally withdrawn.

17.0 Judicial Review of EAB Decisions

Judicial review is a process by which courts examine the legality and reasonableness of the EAB's decisions. Parties who are dissatisfied with a Board decision may apply for judicial review, challenging the decision on grounds such as procedural fairness, errors of law, or abuse of discretion.[84]

The judicial review process involves a detailed examination of the EAB's record, including the evidence and reasons for the decision. Courts typically give some deference to the Board's expertise, intervening only when there are significant errors or injustices.[85] Successful judicial reviews can result in the quashing of the EAB's decision and remittal for reconsideration.

17.1 Standard of Review

The appropriate standard of review of EAB decisions by courts in judicial review refers to the relative amount of deference that should be given to the board in reaching its conclusions. In *Canada (Minister of Citizenship and Immigration) v. Vavilov* (Vavilov) [86], The Supreme Court of Canada confirmed that for decision making bodies bodies, the presumptive standard should be "reasonableness", a standard on the deferential side of the scale (the opposite side being relatively intrusive "*correctness"*) that would be applicable with little deference to matters such as

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83 See Fisher, R., Ury, W., & Patton, B. (2011). Getting to Yes: Negotiating Agreement Without Giving In. New York: Penguin Books.

84 Administrative Procedures and Jurisdiction Act, R.S.A. 2000, c. A-3, ss. 23-30.

85 See Evans, J. M., Janisch, H. N., Mullan, D. J., & Risk, R. C. B. (1995). Administrative Law: Cases, Text, and Materials. Toronto: Emond Montgomery.

86 2019 SCC 65.

constitutional issues. *Vavilov* also made it clear that reasonableness depends on the context, including relative expertise and provision of justification through reasons. Further, the court provided a list of contextual factors for determining reasonableness in any case. There are no bright-line rules for determining the standard of review in a particular case.

Factors from Vavilov (not all of which may be relevant) include:

- Reasons (if any) given [87]
- Range of possible conclusions [88]
- Decision maker's institutional role
- Context for the decision, particularly the statutory scheme. [89]

17.1.1 Applying the Reasonableness Standard

The Vavilov court also provided directions (not a checklist)[90] for applying the reasonableness standard. Decisions must be justified in light of relevant law and facts;[91] reasoning must be internally coherent[92]; modern principles of statutory interpretation must be applied if relevant[93], and impact on affected persons must be considered.[94]

In *Normtek Radiation Services Ltd v, Alberta Environmental Appeals Board,*[95] the Alberta Court of Appeal, in a case decided just after Vavilov (Supreme Court of Canada), addressed the Vavilov standard of review guidelines. The Court of Appeal applied the Vavilov approach for determining the standard of review – beginning with the presumption that the standard was reasonableness[96] and concluding that this was not rebutted.

Using this standard led to the conclusion that the EAB's interpretation of "directly affected" in applying the standing test under section 91 (1) of EPEA, was unreasonable. In this

87 *Ibid,* para 84.
88 *Ibid,* para 83.
89 *Ibid,* para 86.
90 *Ibid*, para 106.
91 *Ibid*, para 105.
92 *Ibid*, para 102.
93 *Ibid*, para115.
94 I*bid*, para 133.
95 2020 ABCA 456 [Normtek].
96 This case is discussed in relation to standing to file an EAB appeal in section 9.2 above.

analysis, the focus, as the Supreme Court of Canada directed, was on determining whether the decision was "transparent, intelligible, and justified".[97]

This applies to statutory interpretation questions like that in Normtek. The statute provisions must be "read in their entire context and their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[98]

18.0 Key Judicial Review Case Examples

Key judicial review cases decided by the Alberta's courts of King's Bench and Appeal provide insights into the EAB's process and principles and the evolution of environmental jurisprudence. Notable cases include:

1. *Kostuch v. Alberta (Director Air and Water Approvals Divisions) and Environmental Appeal Board* (1996, King's Bench)[99] (standing, section 8 above)

This was the first of a series of cases that clarified the law in relation to standing to appeal to the Board. It involved a battle by Dr. Martha Kostuch, a Rocky Mountain House veterinarian, to stop construction of a cement plant by Alberta Cement Corporation in a wilderness area some 50 kilometers from the town. The Alberta Environment Director granted an approval To Alberta Cement and the EAB ruled that Kostuch had no standing to appeal.

In the judicial review by the Alberta Court of King's Bench, Justice Richard Marceau agreed that Kostuch was not "directly affected" and consequently lacked standing. He reasoned that the EAB applied the correct test, namely a sufficient causal connection – a direct personal interest and not merely a history as an environmental advocate.

2. *Normtek Radiation Services Ltd v, Alberta Environmental Appeals Board* [100] (standard of review: new directions on standing that include directly affected economic and social interests: Court of Appeal, 2020, section 8.2 above).
3. *Chem-Security v. Lesser Slave Lake Indian Regional Council and EAB (Alberta)*[101] (1997) (whether" new matters" before the EAB; Court of Appeal, section 9 above).

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97 Vavilov *supra* note 86 at para 95.
98 Normtek, *supra* note 95 at para 75.
99 1996 CanLII 10565 (ABKB).
100 Normtek*, supra* note 95.
101 1997 ABCA 241.

4. *Imperial Oil Limited and Devon Estates Limited v. Alberta (Minister of the Environment, Alberta Environmental Appeal Board, and Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment).*[102] (2003) (nature of Ministerial Decision, whether hearing and reasons by Minister required). (Court of Appeal, section 12 above).
5. *Fenske v. Alberta (Minister of Environment)*[103] (2002) (Ministerial decision ordering appellant Regional Waste Management Services Commission to provide further information concerning landfill expansion to Director, held not invalid as unreasonable; ministerial reasons not required in the circumstances) (King's Bench).
6. *Slauenwhite v. Alberta EAB* (1994) (alleged failure by the Director to consider an environmental assessment (EA) of a proposed natural gas processing plant is a "new matter" (King's Bench, section 10 above).

19.0 Conclusions

The EAB plays a crucial role in ensuring that environmental decisions in Alberta are fair, transparent, and legally sound. Through its hearings, mediation processes, and recommendations, the Board contributes to the effective governance of environmental issues, balancing the needs of development with the imperative of environmental protection.

Public participation, procedural fairness, and evidence-based decision-making are central to the EAB's operations, fostering trust and accountability in environmental regulation. The Board's decisions and the judicial review process ensure that environmental governance evolves in response to new challenges and changing societal values.

As environmental issues become increasingly complex and contentious, the EAB's role in adjudicating disputes and shaping policy will remain vital. Future research and analysis of the EAB's practices and decisions will continue to provide valuable insights into the principles and practices of environmental governance.

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[102] 2002, ABCA 135.

[103] Slauenwhite, *supra* note 45.

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1 *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.
2 *Ibid*.
3 *Canadian Environmental Protection Act*, 1999, SC, c 33s. 333-341.
4 *Water Act*, RSA 2000, c W-3, ss. 109, 115.
5 *Emissions Management and Climate Resilience Act*, SA 2003, c E-7.8, s. 42.
6 EAB, "About the Board", "Role of the Board", EAB Website, online: Environmental Appeals Board - Role of the Board (gov.ab.ca) [About the Board].
7 *Environmental Management Act*, SBC 2003, c 53, Part 8.
8 *Environmental Review Tribunal Act*, 2000, SO 2000, c 26, Sch F
9 About the Board, "History of the Board", *supra* note 6.
10 See David Boyd, *Environmental Law and Policy in Canada.* Toronto: Irwin Law. 2016.
11 *Chem-security (Alberta) Ltd v. Lesser Slave Lake Indian Regional Council and EAB (Alberta)*, 1997 ABCA 241 [Chem-security].
12 EAB, About the Board, "About the Environmental Appeals Board Members", *supra* note 6.
13 *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 2; Elmer Driedger, *The Construction of* Statutes, 2nd. Ed. (Toronto: Butterworths, 1983) at 87.
14 Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada, 2014), at 2.01 [2]. [Sullivan].
15 *Ibid* at 22.01.
16 Sullivan *supra* note 14 at 11.02 [2].
17 EPEA, s. 91 (4).
18 EPEA, s. 91 (1).
19 *Ibid*.
20 *Clover Bar Sand and Gravel Ltd. V. Director, North Region*, 2024 AEAB at para 52-66.
21 Environmental Appeals Board, Rules of Practice, ENVIRONMENTAL APPEALS BOARD (gov.ab.ca) [EAB Rules of Practice].
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25 Stewart, R. B., & Sinclair, A. J. (2007). Public Participation in Environmental Assessment in Canada: A Comparative Analysis. Journal of Environmental Law and Practice, 18(1), 31-65.
26 *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153; and *Gitxaala Nation v. Canada*, 2016 FCA 187.
27 *Administrative Procedures and Jurisdiction Act*, RSA 2000, c. A-3.
28 See *Siksika First Nation v. Alberta (Director Southern Region Alberta Environment),* 2007 ABCA 402, which concerned a municipal wastewater pipeline approval by an Alberta Environment Director that had been appealed to the EAB.
29 EAB Regulation, *supra* note 24.
30 *Court v. Alberta Environmental Appeal Board*, 2003, ABQB 456.
31 *Hazeldean Community League v. Director, Air and Water Approvals Division, Environmental Protection*, 1995 ABEAB 9 (11 May 1995).
32 2020, ABCA 456.
33 *Ibid* at para 135.
34 Standing Decision: Jeans-Moline et al. v. Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, re: Canadian Carmelite Charitable Society Inc., 21-025-026 and 22-001-034, 036-037-ID1, 2023 ABEAB 9 (CanLII), <https://canlii.ca/t/jxmwd> (appeals by individuals and citizen organizations concerning issuance of a licence to divert water to a rural religious "spiritual Centre") [Jeans Moline].

[35] *Ibid*, para 81.
[36] *Ibid*, para 87.
[37] SC 2019, c 28 ,s1; EPEA, s. 95 (2) (a).
[38] EPEA, s. 95 (5) (b).
[39] *Ibid*, s. 91 (1).
[40] *Ibid*, s. 95 (5) (b).
[41] *Chem-Security (Alberta) Ltd v. Lesser Slave Lake Indian Regional Council and EAB (Alberta)*, *supra* note 11
[42] The term refers to unintentional release of air emissions to the atmosphere. This includes pressurized substances from facilities such as hazardous waste treatment plants [Chem-security] and natural gas processing plants [Slauenwhite, *infra* note 45] as well as large area sources such as tailings ponds.
[43] *Ed Graham v. Director of Chemicals Assessment and Management*, 1996, ABEAB 14.
[44] *Chem Security v. Alberta EAB,* 1996 ABEAB 14.
[45] *Slauenwhite v. Alberta EAB* 1995 CanLII 9179 (ABKB) [Slauenwhite].
[46] *McMillan v. Director South Saskatchewan Region*, 2024 ABEAB *7* at para 297 [McMillan]; Chem-Security*, supra* note 11.
[47] *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3.
[48] See Rules of Practice pp 12, 13.
[49] McMillan*, supra* note 46 *(*concerning *EPEA s. 91 and Water Act s 115 (1) (a).*
[50] See H. Davis, Evidence and Proof in Administrative Proceedings: Standards and Principles (2005) Environmental Law Review, 7(2), 94-117.
[51] EPEA, s. 98 (2) (a).
[52] *Ibid*, s. 98 (3).
[53] *Ibid*, s 98 (2 (a).
[54] *Ibid,* s. 100 (1).
[55] *Imperial Oil Limited v. Director, Enforcement and Monitoring Bow River Region, Regional Services, Alberta (Minister of Environment)*, 2003 ABQB 388 [Imperial].
[56] EPEA s. 91 (1) (g) and (h).
[57] *Ibid*, ss. 90-95.
[58] See Pring, G. W., & Pring, C. (2009). Greening Justice: Creating and Improving Environmental Courts and Tribunals. Washington, DC: The Access Initiative.
[59] RSA 2000, c. W-3, s. 115 (1) (q).
[60] *Alberta Reclaim and Recycling Company Inc. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Protected Areas* (18 August 2016), Appeal Nos 14-025-027D (AEAB)).
[61] Gilbert Van Nes," Administrative Penalties in Alberta: Overview and Latest Trends", in Alastair R. Lucas and Allan E. Ingelson (eds), *Environment in the Courtroom II* (Calgary: University of Calgary Press, 2023) ch 19 at 312.
[62] EPEA, s. 97 (2).
[63] *Ibid*, s 97 (1).
[64] *Ibid*, s. 97 (3).
[65] 1994 SCC 117.
[66] Stay Decision: *Alexander* v. *Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Parks*, re: *Town of Blackfalds* (18 July 2022), Appeal Nos. 20-013-014-ID4 (A.E.A.B.), 2022 ABEAB 41.
[67] *Ibid*.
[68] *Ibid*, para 152-170.
[69] EAB Rules of Practice, *supra* note 21 at.14.
[70] 2001 ABQB 293 (CanLII), at para 10..
[71] *Ibid*.
[72] EAB Regulation, *supra* note 24, ss. 19-22

[73] *Ibid*, s. 18 (2).

[74] *Costs Decision: Edey et al. v. Director, South Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Protected Areas, re: Town of High River*, 19-089 & 093-094-CD, 2023 ABEAB 17 (CanLII), at para 21 (concerning an appeal by High River resident of a Director's approval of a flood control berm within the floodplain of the Highwood River that permanently altered the flow, flow direction and water levels of the river. The minister approved the Board's recommendation to vary the approval.by requiring written consent of landowners whose lands would be receive redirected waters from the berm. The Board awarded legal costs of $17,275.78, and expert witness costs of $2,622.38, all to be paid by the Town of High River.

[75] EAB Regulation, *supra* note 24 s. 19 (5).

[76] *Ibid*.

[77] See Brown, D., & Deregowski, W. (2012). "Costs in Environmental Appeals: A Comparative Analysis". Journal of Environmental Law and Practice, 24(1), 45-67.

[78] Section 20 (2).

[79] *Hochhausen v. Director*, 2023 ABEAB 10 at para 38.

[80] Environmental Appeals Board, About Mediation, Alberta Environment and Protected Areas, online: Environmental Appeals Board - About Mediation (gov.ab.ca)

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[85] See Evans, J. M., Janisch, H. N., Mullan, D. J., & Risk, R. C. B. (1995). Administrative Law: Cases, Text, and Materials. Toronto: Emond Montgomery.

[86] 2019 SCC 65.

[87] *Ibid,* para 84.

[88] *Ibid,* para 83.

[89] *Ibid,* para 86.

[90] *Ibid*, para 106.

[91] *Ibid*, para 105.

[92] *Ibid*, para 102.

[93] *Ibid*, para115.

[94] I*bid*, para 133.

[95] 2020 ABCA 456 [Normtek].

[96] This case is discussed in relation to standing to file an EAB appeal in section 9.2 above.

[97] Vavilov *supra* note 86 at para 95.

[98] Normtek, *supra* note 95 at para 75.

[99] 1996 CanLII 10565 (ABKB).

[100] Normtek*, supra* note 95.

[101] 1997 ABCA 241.

[102] 2002, ABCA 135.

[103] Slauenwhite, *supra* note 45.