

Guide on appealing under the Carbon Pricing Act (CPA)

1. Introduction

1.1. This guide is intended to help registered persons under the Carbon Pricing Act (CPA) in submitting an appeal against a decision by the National Environment Agency (NEA), on matters set out in Section 34(1) of the CPA.

1.2. Please also refer to the relevant legislation on appeals, available from the MSE Appeals webpage.

1.3. Under Section 34(1) of the CPA, a registered person that is aggrieved by a decision of NEA —

- a. refusing to deregister a business facility as a taxable facility of the registered person;
- b. refusing to approve a verified emissions report or a monitoring plan for a business facility of the registered person;
- c. refusing to refund any tax under Section 19(1) or credit any carbon credit into the registered person's registry account under Section 19(2); or
- d. refusing to revise any assessment relating to the registered person pursuant to Section 23,

may appeal against the decision to the Minister for Sustainability and the Environment ("the Minister") within 30 days after the date of the service of NEA's decision appealed against.

1.4. An appeal to the Minister under Section 34(1)(d) can only be made after NEA serves the registered person a Notice of Refusal to revise a carbon tax assessment, as a result of the objection process. (See Section 2 below for an overview of the carbon tax assessment and objection process.)

1.5. For other matters of appeal under Section 34(1), an appeal can only be made after NEA serves upon the registered person a formal notice of its refusal to reconsider the decision.

1.6. The Minister can consider and determine the appeal, or establish an Appeal Panel to do so, should the Minister decide that the appeal involves issues of such nature or complexity that it ought to be considered and determined by persons with particular technical or other specialised knowledge.

1.7. More details on the appeal process are provided in the rest of this guide. 1

2. Objection process (For matters of appeal under Section 34(1)(d))

- 2.1. Under the CPA, NEA will issue a Notice of Assessment stating the carbon tax liability for a taxable facility in a reporting period, based on the verified emissions report submitted by the taxable facility, or in the absence of such information, to the best of NEA's judgment.
- 2.2. If you do not agree with a Notice of Assessment issued by NEA, a Notice of Objection and the precise grounds of objection must be filed with NEA within 30 days after the date of service of the Notice of Assessment. If no valid objection has been filed within the stipulated time, NEA's assessment is final.
- 2.3. After reviewing the Notice of Objection, NEA will inform you in writing whether your objection is accepted or not. NEA may also request for additional information to verify your claims. If an agreement is not reached, NEA will issue a Notice of Refusal and inform you of NEA's decision and of your right to appeal.
- 2.4. For further information, please refer to Regulations 3 and 4 of the Carbon Pricing (Carbon Tax and Carbon Credits Registry) Regulations 2020.

3. Submitting an Appeal

- 3.1. An appeal to the Minister can be made after receiving a formal notice of NEA's refusal to reconsider its decision in respect of the matter of appeal under Section 34(1) of the CPA. After receiving such notice, you can either:
 - a. Accept NEA's decision on the item under objection. NEA's decision will be regarded as final and conclusive; or
 - b. File a Notice of Appeal (available [here](#)) to the Minister within 30 days after the date of service of NEA's decision appealed against.
- 3.2. Should you wish to appeal to the Minister, please submit 3 hardcopies of the Notice of Appeal, together with supporting documents, to the address below. In extenuating circumstances where it is not possible to file hardcopies, MSE may provide for a Notice of Appeal to be submitted by other means.

Carbon Pricing Appeals Secretary
40 Scotts Road, #23-01
Environment Building
Singapore 228231
- 3.3. The Secretary will forward a copy of the Notice of Appeal to NEA. NEA will file a Defence within 30 days after receiving the Notice of Appeal. A copy of the Defence will be forwarded to you.
- 3.4. You may choose to file a Reply within 30 days after the date of receiving the Defence.

4. Grounds of Appeal

- 4.1. It is your responsibility to prove to the Minister or to the Appeal Panel that NEA's decision on the matter appealed against is excessive. It is not enough to state that you do not agree with NEA's decision or that NEA's decision is excessive; there must be sufficient grounds and arguments supported by law and fact against each item under appeal.
- 4.2. While you may be able to develop your arguments in a detailed submission over the course of the appeals proceedings, you may not rely on any grounds of appeal not stated in your Notice of Appeal, except with the consent of the Minister or the Appeal Panel. Therefore, it is important to state all the relevant issues, supporting facts, and grounds for appeal in the Notice of Appeal.

5. Appeal Authority

- 5.1. The appeal authority refers either to the Minister, or to the Appeal Panel in the case where Minister has established an Appeal Panel to consider and determine the appeal.
- 5.2. The Panel will comprise 3 or more members with the relevant technical or other specialised expertise in respect of the issues in the appeal.
- 5.3. If the Minister decides to convene an Appeal Panel, you will be notified of the composition of the Panel. You may object to one or more of the members of the Panel by providing supporting reasons (e.g. potential conflict of interest) within 14 days of being notified of the composition of the Panel. NEA may also object to the members of the Panel.
- 5.4. The Minister will consider the objections. If the Minister accepts the objections, he will propose an alternative composition for the Appeal Panel. In such circumstances, you will similarly be notified of the composition of the Panel, and may object to one or more members of the Panel if you have supporting reasons. The Minister's decision on accepting or rejecting objections to the composition of the Panel will be final.

6. For Appeals Heard by an Appeal Panel

Case Management Conference

- 6.1. If an Appeal Panel hears the appeal, a Case Management Conference (CMC) will be scheduled for you and NEA to identify the issues in dispute and decide whether to proceed with a Hearing. The CMC is usually held 6-8 weeks from the date that the Secretary receives your Notice of Appeal.

6.2. If you and NEA agree to settle, you may jointly apply to the Appeal Panel to make a Consent Order.

6.3. If you and NEA decide to proceed with the Hearing, you must prepare and submit the necessary documents to the Appeal Panel for the Hearing.

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Hearing of Appeal

6.4. The Hearing date and place will be fixed after all Hearing documents have been filed. A minimum of 14 days' notice will be given to you and NEA on the time and place for the Hearing. The Hearing must be attended by the appellant and NEA, either in person or by an authorised representative.

6.5. After the Hearing, the Appeal Panel will make its determination of the appeal in accordance with Section 36(2) of the Act. A copy of the written determination will be issued to you. In addition, the Appeal Panel may deliver its determination orally (either in its entirety or as a summary) to you before the copy of the written determination is issued.

7. Confidential treatment of documents

7.1. You may write to the Secretary to request confidential treatment of a document or a part of a document within 14 days after filing the document. In the request, please state the relevant words, figures or passages where confidentiality is claimed, and the reason(s) for the request. You may also file a non-confidential version of the document (summarised or redacted as appropriate) that can be shared with any party to the appeal proceedings.

7.2. If the appeal authority grants confidential treatment for the document or part of the document, the confidential information will not be shared with NEA. The appeal authority also cannot rely on the confidential information when considering or determining the appeal. A non-confidential version of the information may be used for the case instead, if that is made available.

8. Legal Representation

8.1. The Carbon Pricing (Appeals) Regulations requires an authorised representative to represent the registered person in the appeal. The authorised representative can, but does not have to be a legal representative.

8.2. As appeals typically involve statutory interpretation of the Carbon Pricing Act and the application of the law to the facts, legal representation may be helpful.

9. Withdrawing an Appeal

9.1. You can withdraw your appeal at any time, by writing to the Secretary to seek the

appeal authority's approval. If NEA decides to concede the matter in dispute, they will write to the Secretary and to you.

- 9.2. The appeal authority may grant permission for the withdrawal of the appeal on any terms or condition deemed fit to impose. This may include an order to pay costs incurred by the NEA and the Appeal Panel up to the time of withdrawal, where the appeal is to be heard by an Appeal Panel.

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10. Appeal to the High Court

- 10.1. The Minister's or the Appeal Panel's decision, as the case may be, on the appeal is final.
- 10.2. You may appeal to the Appellate Division of the High Court against the decision, if there is any question of law or of mixed law and fact. This does not apply where the appeal decision results in a change of less than \$500 in the amount of carbon tax charged.

11. Contact Information

- 11.1. If you have any enquiries or need clarification on this guide, please contact the Secretary at CPA@mse.gov.sg.

