

# SMALL WIND CERTIFICATION COUNCIL



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## Certification Appeal Policy

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## A. General Provisions

1. Scope/Purpose of Policy. The following process is the sole and exclusive means by which an applicant for, or holder of, an SWCC product certification may appeal an adverse action issued by SWCC, including deficiency and violation decisions, and objections to the application of SWCC policies. This Policy controls the manner in which all such appeals will be reviewed and resolved. All organizations holding SWCC certifications, accept this Policy as the appropriate and binding organizational system for the fair, equitable, orderly, and efficient consideration and settlement of such appeals, without resort to governmental, court, or other outside procedures.
2. Confidentiality of Process/Participation of Non-Parties. All non-final resolutions, proceedings, and materials related to this Policy are confidential and private, and will be maintained securely by SWCC and the parties. Other than the parties involved, no observers or other persons are permitted to participate in the processes established by this Policy without the permission of the designated SWCC authority, and the denial of such permission is not subject to further review or appeal.
3. Parties. The individual, group, or organization initiating an appeal under this Policy will be identified as the Respondent(s). An individual, group, or organization initiating a complaint concerning a Respondent, other than SWCC, will be identified as the complainant.
4. Information and Proof Accepted. The designated SWCC authority will receive and consider all information appearing to be relevant to the appeal, including any information that may be helpful to a complete understanding of the issues involved. Objections relating to the relevance of information and similar issues will be decided by the designated SWCC authority, and such decisions are not subject to further review or appeal.
5. Failure to Cooperate/Submission of Misleading or False Information. All parties must behave in a courteous and professional manner when communicating with SWCC representatives and other parties. Any party, including a complainant who is not associated with SWCC, must cooperate with the designated SWCC authority with respect to the appeal resolution process. Failure to cooperate may result in the imposition of corrective actions or sanctions by SWCC, including the denial or acceptance of an appeal, or other appropriate corrective actions. Similarly, any party who submits false or misleading information to SWCC with respect to an appeal may be subject to appropriate corrective actions or sanctions.

6. Fiduciary Responsibility and Retention of Legal Rights. Notwithstanding any provision of any corporate policy, consistent with legal fiduciary responsibilities and SWCC governing documents, SWCC retains all rights and privileges to: seek any available legal remedies and relief on behalf of itself and authorized representatives; and, defend itself and authorized representatives to the fullest extent permitted by law.

## **B. Circumstances for the Appeal of an Adverse Action**

An applicant for, or holder of, an SWCC certification (Respondent) may submit an appeal concerning an adverse action related to such certification under the following circumstances.

1. The Respondent was found to be ineligible for SWCC certification;
2. The Respondent was found to have failed to satisfy an SWCC certification requirement or condition; or,
3. The Respondent otherwise was the subject of an adverse SWCC certification action or decision.

## **C. SWCC Appeals Committee/ First Appeal**

1. SWCC Appeals Committee. At least three (3), qualified, disinterested representatives of SWCC will be appointed to serve as the SWCC Appeals Committee to resolve appeals. Upon receipt, and in the first instance, appeals will be received and considered by the Appeals Committee. In the event of a possible conflict of interest, or other appropriate basis for referral, the Appeals Committee may refer the matter to the Chair of the SWCC Board of Directors, or an appropriate manager, to reassign the appeal for initial review and resolution.
2. Appeal Committee Review and Actions. The SWCC Appeals Committee will conduct a preliminary review of the appeal, including the collection and consideration of all relevant information and materials submitted by the parties or others in possession of relevant information. Following such review, the Committee may take any of the following actions:
  - a. Request or direct that one or more of the parties, or others, provide relevant documents or information necessary to consider and resolve the appeal;
  - b. Issue an informal resolution of the matter;
  - c. Issue a formal resolution of the appeal, which will include a written, first

Appeal Decision, and may include any appropriate corrective or remedial action(s) and/or disciplinary sanction(s). Among other formal resolution actions, the Appeals Committee may: affirm an adverse action in whole or in part; or, deny and dismiss an adverse action in whole or in part.

- d. Refer the matter to the Chair of the SWCC Board of Directors, or other designated Resolution Officer, for review, further referral, and/or resolution.
3. Referral to Other Resolution Officer. In the event that the Appeals Committee refers a matter to a Resolution Officer, the Committee will provide all relevant record materials, including the documents and materials submitted by the parties and others in possession of relevant information. The designated Resolution Officer is authorized to exercise the same authorities granted to the Appeals Committee with regard to the review and resolution of the appeal.

#### **D. SWCC Board of Directors/ Final Appeal**

1. Board of Directors Appeals/Time Requirements. In the event that a party is dissatisfied with an Appeals Committee Decision (Committee Decision), the party may request a Board of Directors final review of the appeal by a written communication to the Chair of the SWCC Board of Directors, consistent with the requirements of this Policy. Such appeal communication must be received by SWCC within thirty (30) days of the date of the Appeals Committee Decision. If no such appeal is submitted to SWCC, the resolution and Committee Decision will be final and binding upon all parties.
2. Contents of Appeal Communications to the Board of Directors. In order to be considered, an appeal communication to the Board of Directors must provide the following information in an appropriate, clear, and detailed manner:
  - a. A statement of the grounds and basis of the appeal, which specifically explains the reasons for the appeal;
  - b. A statement that describes the portion or portions of the Appeals Committee Decision disputed by the party, including a specific description of any findings, conclusions, or remedial actions which the party challenges or believes to be in error;
  - c. A statement that describes the findings, conclusions, or remedial actions that the party seeks from the Board of Directors;
  - d. References to all SWCC policies and rules that the party believes may

apply to the resolution of the appeal; and,

- e. Accurate copies of all written documents or other materials that the party believes are relevant to, and support, the appeal.
3. Board of Directors Review and Decisions. The SWCC Board of Directors will review an appropriate appeal in closed session, usually within sixty (60) days of receipt. Thereafter, the Board will resolve and decide the appeal based on the record. The Board will consider the relevant information and include a summary of its findings in the Final Appeal Decision. The Board may affirm, modify, or reverse a Committee Decision based on its findings. The Board will issue its Final Appeal Decision to the parties.
4. Finality of Board Decisions and Resolutions. All Board Final Appeal Decisions will be final and binding on all parties. No additional or further appeals are permitted.

## **E. Resolution and Appeal Hearings**

1. Hearing Requests. A party may request that an Appeals Committee or Board of Directors appeal, include an informal telephone, or when appropriate, in-person hearing. Such request must be made in a timely manner as directed by SWCC, and must include a statement of the reasons that the party believes support the scheduling of a hearing. The decision to grant or deny a hearing request is within the sole discretion of the Appeals Committee or the Board of Directors (designated SWCC authority), and is not subject to appeal.
2. Hearing Process. Any hearing authorized or convened under this Policy will be informal, and designed to collect and weigh the available, relevant information and proof. The designated SWCC authority conducting the hearing will have full authority and responsibility to convene, preside over, limit, control, continue, and conclude the hearing in a fair, objective, and efficient manner.
3. Hearing Schedule and Location. Each hearing convened under this policy will be scheduled by the designated SWCC authority in consultation with the parties. Each hearing will be held by telephone conference, or at a site determined by the designated SWCC authority.
4. Hearing Notice and Participation. The designated SWCC authority will schedule the hearing and notify the parties in writing at least thirty (30) days prior to the scheduled hearing date. Any hearing may proceed to a conclusion whether or not the parties are present. Each party will be given the

opportunity to participate in the hearing and will be required to provide the following information at least twenty-one (21) days before the scheduled hearing:

- a. Whether the party intends to participate in the hearing, and if such participation is via telephone, the telephone number where the party is to be reached during the hearing;
  - b. Whether the party intends to participate in the hearing with an attorney or other representative, and if so, the name, address, email address, and telephone number of such attorney or representative;
  - c. Whether the party intends to present witnesses at the hearing, and if so, the name, address and telephone number of each witness and a brief summary of the content of proposed witness testimony; and,
  - d. Whether the party intends to present and refer to any written information or other materials during the course of the hearing, and if so, the party should provide a copy of all such materials and a brief description of the relevance of the material at least ten (10) calendar days prior to the hearing.
5. Responsibilities and Rights of the Parties. In addition to other responsibilities and rights, the parties may do, or be required to do, the following:
- a. Participate in the hearing and be present during the testimony of all witnesses;
  - b. Present witnesses, written information, and arguments on their behalf;
  - c. Review or inspect all oral or written information presented in the case; and,
  - d. Comply with all lawful requirements or directives issued by the designated SWCC authority, consistent with the terms of this policy.
6. Witnesses. All witnesses will be excluded from the hearing except during their presentation of information. However, a party may request that a witness remain present during all or part of the hearing. In its sole discretion, the designated SWCC authority may grant, modify, or deny such a request, and the ruling will not be subject to appeal.
7. Hearing Expenses. Parties will be responsible for their own expenses associated with the hearing, including costs associated with transportation,

witnesses, legal counsel, and the like. SWCC will bear all general hearing expenses and other appeal costs, including costs associated with the participation of SWCC representatives.

8. Closing of the Hearing Record. The record of each hearing will be closed following the conclusion of the hearing, unless otherwise directed by the designated SWCC authority. Any party may request that the record remain open for thirty (30) days for the purpose of receiving additional documentary information or similar materials. The designated SWCC authority will rule on any request, and the ruling will not be subject to appeal.