


State of Oregon
Department of Environmental Quality

Memorandum

Date: Jan. 25, 2016

To: Environmental Quality Commission

From: Dick Pedersen, Director 

Subject: Agenda item F, Action item: The potential addition of Executive Session in reviewing appeals of contested case proposed orders
Feb. 3, 2016, EQC meeting

Why this is important

In pursuing DEQ's mission to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water, DEQ issues permits, compliance orders, and civil penalties to named parties that become legally-binding requirements. Oregon statutes and rules specify how such orders and penalties are to be issued and how recipient parties may contest them. Under Oregon's Administrative Procedures Act, ORS Chapter 183, parties are entitled to challenge these actions through a "contested case hearing" process that will result in a final order from the agency and commission. It is important that modifications to the appeal and review process be fully evaluated to ensure that they are fair, efficient and effective.

Background

At the June 2015 meeting, at the commission's request, DEQ staff presented an information session and discussion on the issue of whether the EQC should change its role in the contested case hearing process. Commissioners raised some questions requiring follow-up, and during the October 2015 meeting, DEQ staff presented information in response to those questions, including whether the EQC could create a subpanel to focus on review of the record in contested cases. The commissioners then asked for a proposed procedure for using a subpanel, which was discussed at the December 2015 meeting, and included the potential to utilize Executive Session as part of the procedure. The EQC decided not to pursue using a subpanel, but DEQ staff will provide more information about the use of Executive Session for contested case review at the February 2016 meeting.

Next steps and commission involvement

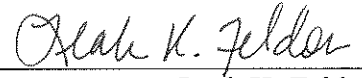
DEQ asks the commissioners for a discussion and decision on whether Executive Session will be used in the future to discuss contested cases with EQC counsel.

Attachment

A. Potential Change to Contested Case Hearing Procedure: Adding Executive Session

Action item: The potential addition of Executive Session in reviewing appeals of contested case proposed orders
Feb. 3, 2016, EQC meeting
Page 2 of 2

Approved:



Leah K. Feldon

Office of Compliance and Enforcement Manager

Report prepared by Sarah Wheeler
Environmental Law Specialist

Potential Change to Contested Case Hearing Procedure: Adding Executive Session

1 - Oral Argument in the morning

2 - EXECUTIVE SESSION

Executive Session provides a more confidential, candid environment for commissioners to ask questions of their legal counsel.

During Executive Session, DOJ could advise commissioners on the following:

1. Strengths and weaknesses of DEQ's legal position
2. Legal implications of decision for DEQ in implementing the program at issue
3. Other legal implications (e.g., potential liability of DEQ and EQC)
4. Ongoing litigation or other legal actions (e.g. injunctions, EPA orders) related to the contested case, to the extent allowed under rules governing *ex parte* contacts.

Commissioners may not deliberate or vote in Executive Session.

3 - Public Meeting in the afternoon

- Deliberation, if appropriate
- Vote

Considerations:

Time

Cost

Appearance