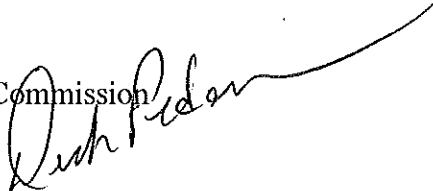State of Oregon
Department of Environmental Quality   Memorandum

Date: Nov. 23, 2015

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item D, Information and discussion item: Contested case subpanels
               Dec. 9-10, 2015 EQC meeting

Why this is important

Under Oregon's Administrative Procedures Act, ORS Chapter 183, parties are entitled to challenge certain DEQ orders, penalties or other enforcement 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. One specific set of questions related to 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. At the December meeting, DEQ will provide the EQC with a proposed procedure and questions for discussion and decision.

Next steps and commission involvement

DEQ asks the commissioners for feedback on the information presented, with the goal of finalizing a decision on whether and how a subpanel would be used.

Attachment   A. Draft proposed subpanel procedure

Approved:

Section: _____
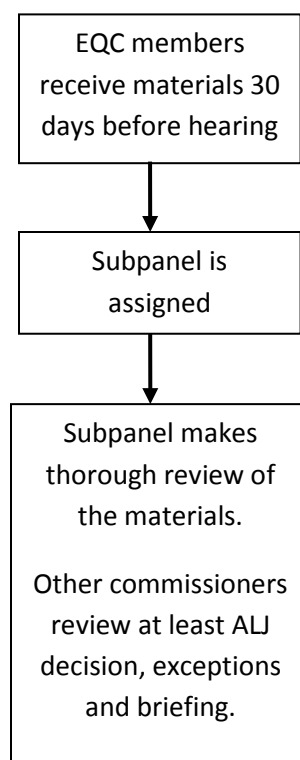   Leah K. Feldon
              Office of Compliance and Enforcement manager

                      Report prepared by Sarah Wheeler
                              Environmental Law Specialist

DRAFT PROPOSED PROCEDURE FOR COMMISSION SUBPANEL IN REVIEW OF CONTESTED CASES

BEFORE HEARING

EQC members receive materials 30 days before hearing

↓

Subpanel is assigned

↓

Subpanel makes thorough review of the materials.

Other commissioners review at least ALJ decision, exceptions and briefing.

Decisions needed:

Whether to use the subpanel

- After receiving materials, Chair decides case-by-case, or
- Subpanel is default

Who is on the subpanel

- Chair assigns subpanel members case-by-case, or
- Subpanel members are assigned on a pre-set rotating basis

DAY OF HEARING

Oral argument in the morning → Executive Session → Full commission votes during public session in afternoon