



STRATEGIC PLAN

ENVIRONMENTAL HEARINGS OFFICE

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Environmental Hearings Office Strategic Plan 2009-11

A. Mission Statement

The mission of the Environmental Hearings Office (EHO), which is comprised of five independent environmental boards, is to:

- Conduct fair and impartial hearings and issue clear and well-reasoned decisions;
- Provide expeditious and efficient resolution of environmental appeals through hearings and alternative dispute resolution processes;
- Foster a consistent statewide interpretation of Washington's environmental laws in agency decision making and appeals; and
- Assist parties in understanding the hearing process to ensure meaningful and enhanced access to justice.

B. Listing of Statutory Authority References

The Environmental Hearings Office includes the following five boards:

1. Pollution Control Hearings Board (PCHB)
2. Shorelines Hearings Board (SHB)
3. Environmental and Land Use Hearings Board (ELUHB)
4. Forest Practices Appeals Board (FPAB)
5. Hydraulic Appeals Board (HAB)

Each board is independent of the agencies whose decisions are reviewed on appeal.

The Pollution Control Hearings Board reviews orders, penalties, and other decisions of the Department of Ecology. Additionally, this board reviews certain decisions of local conservation districts, air pollution control boards, local health departments and the Department of Agriculture.

The Shorelines Hearings Board reviews decisions of local governments (cities and counties) and the Department of Ecology under the Shoreline Management Act.

The Environmental and Land Use Hearings Board reviews decisions involving certain projects with multiple permits, including local environmental permits.

The Forest Practices Appeals Board reviews decisions of the Department of Natural Resources made under the Forest Practices Act.

The Hydraulic Appeals Board reviews certain decisions of the Department of Fish and Wildlife on Hydraulic Project Approvals.

C. AGENCY GOALS

1. **Provide expeditious and efficient resolution of environmental appeals through hearings and alternative dispute resolution processes.**

Objectives and Strategies

- a. Conduct fair and impartial hearings and issue clear and well-reasoned written decisions in a timely manner.
 - Provide continuing education and training for judges and board members.
 - Hold periodic “best practices” workshops to improve the skills of presiding officers.
 - Conduct periodic workshops on relevant legal and environmental subject matters.
 - Encourage open discussion and analysis by judges and board members.
 - Continue to timely issue orders and decisions.
- b. Increase standardized practices, procedures, and forms.
 - Develop methods and use best practices to reduce the time for issuing orders and decisions.
 - Develop a standardized plan for document indexing.
 - Develop a standardized, consistent management plan for handling exhibits during and after a hearing.
 - Develop an internal desk book for board members and judges.
 - Develop an informal style manual.
 - Establish standard internal formats.
- c. Increase the use of technology to assist the boards, judges, and parties in the hearing and appeals process.
 - Explore and test use of innovative and available technology in hearing setting, including video technology and real-time accessibility to testimony.
 - Expand data collection and assessment of performance measures, and develop format for presenting statistical data.
 - Explore expanded use of Outlook for calendaring to improve internal communications.
 - Maximize use of technology in communicating with off-site board members.
 - Improve the access to the Boards’ on-line decisions, through development of a subject/topic/keyword index and/or an enhanced search engine.
 - Update internal forms book and make it available electronically.
 - Research interactive forms for the on-line practice manual.

- Research electronic filing and records management, including a study of the electronic processes used by the Washington State court system.
 - Provide alternative legal research tools and related training.
 - Continue to ensure our website has up-to-date information and is clear and easy to use.
 - Develop reports for tracking mediation and appeals of board decisions.
 - Track appeals from board decisions and get copies of appellate decisions.
 - Continue to provide electronic access to information for stakeholders and citizens.
- d. Continue to improve the appeals process through both stakeholder input and internal review.
- Assess methods to expedite and streamline appeals of small air penalty cases, with input from the stakeholders.
 - Schedule a second stakeholder survey.
 - Actively engage in discussions with other adjudicatory agencies, including those agencies participating in the NAA (Network of Adjudicatory Agencies) on opportunities to share resources and hearing rooms, when not in use.
- e. Conduct hearings outside the Olympia area, as funds allow, minimizing costs to parties and allowing citizens to see an important function of state government.
- During Pre-Hearing conference, discuss with parties the location of witnesses and attorneys and other considerations relevant to hearing location.
- f. Continue to improve the agency mediation and procedural assistance program.
- Develop a process to screen cases for mediation potential.
 - Strongly encourage parties to participate in the mediation program.
 - Assess potential areas for mandatory dispute resolution processes.
 - Develop specific reports for tracking mediations.
- g. Identify opportunities to improve the effectiveness and efficiency of the environmental permitting and appeals process and state government administration.
- Continue Executive Order 03-01, Service Delivery, to further improve service delivery standards.
 - Continue Executive Order 05-01, Sustainability and Efficiency for State Operations.
 - Continue Executive Order 05-02, Government Management, Accountability and Performance (GMAP).
 - Continue Executive Order 05-03, Plain Talk, to improve clarity of written documents.

2. Create a safe, quality work environment and an effective team.

- a. Ensure retention of knowledgeable, professional, and dedicated employees.
 - Develop and implement a plan to address staff compensation.
 - Identify opportunities for employee recognition and teambuilding.
 - Practice an attitude of respect and courtesy towards all agency personnel.
 - Provide a safe and healthy work environment.
 - Evaluate the condition and size of our current office space to determine whether it will continue to meet our needs and the needs of our stakeholders in the future. Determine whether the lack of space for growth and/or the physical condition of the facility (built in 1980) will require a decision to relocate when our lease expires in 2010.

- b. Increase opportunities for career growth and training for all board members, judges, and staff.
 - Develop and implement a training and education plan for each person through the Performance Development Plan.
 - Assist in planning and participate in available judicial training programs.
 - Hold meetings of the members of all five boards as necessary for information sharing and training.
 - Hold monthly meetings between director and staff for sharing information and ideas.
 - Hold monthly office meetings to discuss internal processes.

- c. Minimize and manage risks associated with the appeals process and administration of EHO.
 - Encourage all Board members to be guided by the Code of Judicial Conduct.
 - Encourage Board members and staff to receive relevant state-sponsored training in ethics.
 - Regularly review and update the agency policies on ethics.
 - Make training and educational materials available to assist in working with parties of different backgrounds and abilities.
 - Ensure all employees have received defensive driving training.
 - Provide storage off-site for critical back-up computer information.
 - Periodically review and update office security and safety measures.
 - Periodically review and update agency policy and procedures manual.
 - Include risk management as a topic for discussion among Board members and staff.

D. Performance Measures and Targets

Output: Number of months from appeal to final resolution of contested cases decided either by hearing or motion.

EHO's performance measures are primarily based on the amount of time from filing of appeal to completion. The goal is to accomplish this as quickly as possible, while ensuring that all parties receive equal access to justice in the process. Our goal is 6 months from start to finish for appeals going to a full hearing.

Output: Number of months from appeal to settlement for cases which do not go to hearing.

As noted in the first measure, our goal is to accomplish the entire appeal process as quickly as possible, while ensuring that all parties receive equal access to justice in the process. Our goal is 5.5 months from start to finish for appeals that reach a settlement prior to hearing.

Output: Percentage of appeals that settle before hearing.

A large percentage of the appeals filed before the five boards are settled before hearing. Settlements are win-win solutions for the parties involved, and can be achieved independently or through our mediation services. Our goal is to have 90% of all appeals filed reach amicable settlement.

Output: Number of Board decisions appealed to Superior Court or the Court of Appeals, and the percentage of those decisions upheld on appeal.

Over the past few years, a decreasing number of decisions issued by the Boards are appealed further to Superior Court or the Court of Appeals. A key focus of our recent quality improvement efforts has been improving the quality of our decisions, and our goal is to issue clearly written opinions that are well-reasoned and supported by the law and the facts. This important qualitative goal is measurable, to some degree, by the decreasing number of Board decisions that are appealed and the increasing percentage of those decisions that are upheld on appeal. The EHO recognizes that this output does not perfectly measure the improvements made in our written decisions and that we do not have direct control over whether parties will appeal our decisions, but we believe it provides a useful gauge of the improved quality of our work product.

1. Agency Activity Inventory

The five adjudicatory boards under EHO were created to provide independent review of various local, regional, and state agency decisions in an expedited and cost-effective manner.

2. Statewide Goals

#8: Improve the quality of Washington's natural resources.

#5: Improve the economic vitality of businesses and individuals.

#10: Improve the ability of state government to achieve results efficiently and effectively.

E. Performance Analysis

Meeting our performance measures requires diligence on the part of the Board members, judges, and staff. We closely monitor active cases to keep the parties moving toward resolution of their appeals. EHO has two performance measures that track the number of months it takes to resolve an appeal, either by settlement or by the hearing process. Although these measures can be affected either in a positive or negative way by the parties and/or by the board during the appeal/hearing process, we have been successful in meeting or exceeding the performance targets for several biennia.

The third performance measure is the percentage of appeals that settle prior to a hearing. EHO can positively affect this measure through our (1) early encouragement to the parties at the pre-hearing conference to discuss among them whether an amicable agreement can be had without going to hearing, and (2) through our mediation program where both sides agree to mediate with one of our trained administrative appeal judges. EHO can only encourage and accommodate mediations – we do not force parties to participate. Therefore, the performance measure, which has a high target (90% settlement rate), is not completely within our control. However, that being said, the average settlement rate for the 2005-07 biennium was 87%. We're proud to contribute to this high rate of win-win solutions, although we cannot claim absolute control over the results.

F. Assessment of External Challenges and Opportunities

Appeals are filed with each of the five boards from decisions made by various state and local agencies. Thus, EHO's workload can change significantly depending on the number of decisions issued by local and state agencies, the number of those decisions that are appealed, and the complexity of the issues involved in each appeal. As the permitting process before local governments and state agencies focuses on specific types of permit decisions, EHO will typically see a corresponding increase in the number of appeals of that same type.

EHO's stakeholder base includes permitting agencies and local governments, environmental or community organizations, landowners, citizens, and project developers throughout Washington State. While our Boards frequently hear appeals involving statutes requiring the consideration and balancing of public interests, the Boards' ultimate role is to interpret and apply the law.

Our mission includes providing more expeditious and efficient disposition of appeals of agency environmental decisions, including alternative dispute resolution process, and giving aggrieved parties meaningful and enhanced access to justice. A key element to providing meaningful access to justice is to have a hearing in or near the location where the appeal originates. EHO monitors and adjusts travel to hearings based on stakeholders' needs and budget restrictions. Reductions to our travel budget jeopardize a fundamental element of our core mission.

Key external issues during 2009-2011: The work of the EHO will be affected by initiatives and actions taken by regulatory agencies (Ecology, DNR) and decisions of state and local agencies on shoreline matters. Ecology priorities to protect Washington waters from stormwater pollution, effectively manage water resources statewide and efforts to protect and restore Puget Sound will result in appeals of contested actions to the EHO Boards. Climate change, population growth, watershed planning and conservation efforts reflect the type of external factors that will influence the number and type of disputes the EHO Boards will be asked to resolve. As Ecology works to manage the priorities established by the Puget Sound Partnership, the Board's work will be directly affected. In the 2007-2009 Biennium, the EHO saw appeals from many of the general permits issued by Ecology to regulate entire categories of discharges to the state's waters (e.g. construction stormwater general permit). Because many of these permits set new standards for these industries to meet, the EHO will now see appeals of enforcement actions by Ecology, as it regulates industry compliance with such standards. Development and redevelopment pressures on the state's many shorelines will also result in appeals to the EHO. The issuance of Sec.401, water quality certifications for hydroelectric facilities, will also result in complex appeals before the boards within the EHO, as will the issuance or reissuance of any further general permits.

The GMAP process will continue to be used by EHO to demonstrate how process improvement efforts undertaken by the agency have improved the appeals process.

Existing trends in appeals before EHO are likely to continue, including the number of complex appeals with extensive motion practice, parties' use of EHO's procedural assistance and mediation programs, and a significant number of pro se appeals.

G. Assessment of Internal Capacity and Financial Health

EHO is a small agency, comprised of three full time Governor-appointed board members, three administrative appeals judges, and three administrative staff. All positions are exempt. The Director position is rotated among the three PCHB members and shares a full caseload with the other members and judges. The Director is responsible for the administrative duties and requirements of the office, and is assisted by staff and judges in fulfilling these obligations.

EHO is 100% funded by the State of Washington (General Fund) and has no other independent sources of funds (fees or charges).

EHO saves taxpayer dollars and serves customers more efficiently by making our handouts, board decisions, and the hearing calendar all available on our website. We also provide many research links for parties. We have a "research" station available for those who do not have access to a computer. The station can be used to access all previous board decisions, and perform legal research free of charge. All previous board decisions are now available online. The agency is now in the process of developing brief, easy-to-understand handouts to better assist parties who are not represented by an attorney, and has posted "frequently asked questions" on the website.

EHO has been located in the same office space since 1980. The facility is showing its age, and is in need of substantial upgrades. On the other hand, the physical location is close to I-5 and has plenty of free parking, and the current room layout meets our needs. EHO's current lease will expire in June 2010. We will evaluate our current facility, discuss what improvements the landowner would be willing to make at lease renewal, and determine whether it is in the best interests of the stakeholders and EHO to remain here or seek another location

In addition to meeting the demands that are inherent with the core mission of the agency, we must also comply with the directives from the Governor, the Office of Financial Management, the Dept. of Information Services, and other agencies. This is a challenge to a small agency with only 9 FTEs.