

Pollution Control Hearings Board Briefing Memo

Meeting Date: May 9, 2024

Title: Director's Report

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Summary

This memo summarizes key agency activities and happenings.

Board Action Requested

This item will be a:

<input type="checkbox"/>	Request for Decision
<input type="checkbox"/>	Request for Input
<input checked="" type="checkbox"/>	Briefing

Staffing Update

Administrative Appeals Judge (AAJ) Barbara Dykes Ehrlichman joined us on May 1, 2024. She brings a wealth of land use, environmental, and administrative law experience. She will work from her home in Chimacum. Welcome, Barbara!

Former Board member, Neil Wise, will return to the Environmental and Land Use Hearings Office (ELUHO) on June 3, 2024. Neil will work as a part-time AAJ. While we are targeting having Neil work about half time,

Law Clerk Elie Steinberg left on May 3, 2024. Interviews are underway to fill her position. We had a large number of well-qualified applicants from around the country. Thanks to Elie for working with her connections at local law schools to post the recruitment.

We are reallocating Atraeyu Addessi's position from a Legal Assistant 2 to a Legal Assistant 3 and we are reallocating Destinee Chisa's Legal Office Assistant position to an Administrative Assistant 3. Both Atraeyu and Destinee are qualified for these promotions. Some of their duties will shift when they take on their new roles. For example, Atraeyu will shift toward being the primary person to review orders and Destinee will take on higher level administrative duties in addition to the Legal Office Assistant duties.

We are recruiting for Chair Carolina Sun-Widrow's seat on the Board. I have encouraged the Governor's Office to fill this position as quickly as possible for a seamless transition on July 1, 2024.

The Governor's Office selected a new Growth Management Hearings Board (GMHB) member, Alex Sidles. Alex will join the GMHB on June 17, 2024. GMHB member Bill Hinkle was not reappointed by the Governor's Office and will depart the GMHB on June 30, 2024. The Governor's Office is accepting applications for his eastern Washington seat.

Takeaways from Elie

Before leaving ELUHO, I talked with Elie about what improvements could be made to the Law Clerk position and aspects of her work. Elie was the first Law Clerk for ELUHO and I believe she was the first quasi-judicial law clerk for the state.

Elie suggested the Law Clerk could be utilized more fully by giving them bigger writing assignments earlier, for example, full first drafts of less complicated orders (like summary judgment orders) and the opportunity to write conclusions of law. I also talked with Elie about how to manage workload and communications. Based on her input, I plan to take a more active role in managing the next Law Clerk's assignments by keeping track of their work and checking in with them weekly. To ensure Board Members and AAJs stay informed about the Law Clerk's workload, I plan to use the weekly PCHB-SHB case check-in meetings to review the Law Clerk's assignments with Board members and AAJs and to solicit additional work. Please let me know if you have any thoughts about how to better utilize and manage this position.

During her time at ELUHO, Elie did excellent work establishing the Extern Program. Elie reached out to the Attorney General's Office and other agencies to learn best practices, she made connections with local law schools to help with recruiting, and she created filing and administrative systems to manage recruiting, selecting, onboarding, equipment, offboarding, etc. She also drafted an Extern Program Handbook. All of this took quite a bit of time, good thinking, and effort.

Elie offered some insights and suggestions about how the Extern Program can be further improved:

- Clearly define roles – Better defining the roles will reduce the potential for confusion and frustration. The mentoring attorney should assign and review all substantive work performed by the extern. The Law Clerk is the administrative manager and back up support for the extern. While the mentoring attorney

supervises the work, the Law Clerk supervises the position and addresses issues that arise.

- Assign mentor early - The mentor should be assigned when the extern is selected and should be included in the selection. Sometimes the mentor is a factor in the extern's decision to do the externship, and the connection with a particular attorney is important throughout the externship. To avoid confusion, there should only be one mentor per extern per quarter/semester.
- Mentor responsibilities –The mentor should be available to the extern for questions and should be timely in responding. The mentor should assign and review all work, track the extern's hours, and complete the paperwork for the law school on the extern's work and performance. While other attorneys could help with projects for the extern, the mentoring attorney should check in regularly with the extern about the work and how things are going.
- Create a schedule – Law schools have deadlines for the paperwork they need to approve an externship before it starts. ELUHO should create an annual schedule for recruitment and selection that aligns with the law school deadlines and school schedules.
- Ensure best human resources (HR) practices are followed – Now that the program is more established, ELUHO should reconnect with HR to make sure best practices are followed for selecting and supervising these volunteer employees.

It takes a lot of time for the Law Clerk to do the ongoing administrative work to manage the extern program. When deciding whether to take on a new extern, I think we should assess the upcoming workload and consider how the Law Clerk's time should best be utilized.

Elie also gave input about the Law Clerk's role in providing procedural assistance. Although Elie started providing procedural assistance this year, she has already helped at least 28 different people. Having the Law Clerk as the primary person for these calls helps divert a significant amount of work from the AAJs and avoids having to conflict out AAJs. Elie suggested it would be useful for an incoming Law Clerk to take on this duty right away because it will help onboard the Law Clerk as they familiarize themselves with ELUHO's website and the Board's appeal procedures. They will need to become familiar with procedural rules and learn Board processes to respond to procedural questions, and they will learn how to offer procedural assistance without giving legal advice and while avoiding ex parte communications.

Budget Update

As we close in on the end of the fiscal year, we've been spending accrued funds to prepare for the future. We've made larger purchases of furniture and an upgrade to our

audio/video (A/V) system. The furniture and A/V system can be moved with us to our new location next year. We've made some investments in our employees by giving raises and promotions and by approving trainings.

The positive variance this year is due to several prolonged vacancies that resulted in substantial savings, including two GMHB vacancies and three legal support vacancies. We expect next fiscal year will have a tighter budget because vacancies will be reduced and salaries have been increased.

The Governor's Office has discretion to set the Board member and Director salaries. I don't yet know where these salaries will be set but I anticipate it will be at or near the amounts we requested. Board members will receive a letter from the Governor's Office notifying you of the increase. I anticipate the increases will be effective on July 1, 2024 but the Governor's Office has discretion.

New Bills

Bills that were passed by the 2024 legislature become effective June 6, 2024. You can refer to the [Bills of Interest](#) document for bills that I tracked this session. Several bills will result in changes to areas within the Board's jurisdiction.

A handful of bills are expected to result in new appeals to the Board:

[E2SHB 1185](#) - Reducing environmental impacts associated with lighting products

- New regulation over the sale of compact fluorescent lamps and linear fluorescent lamps. Penalties may be appealed to the Board. Gives authority to the Board over appeals of penalties imposed under the existing mercury light disposal statute (Revised Code of Washington (RCW) 70A.505.100) and the mercury statute (RCW 70A.230.020).

[2SHB 1551](#) – Reducing lead in cookware

- Prohibits the manufacture, sale, or distribution of cookware containing a specified amount of lead. Amends the Board's jurisdiction statute to include appeals of penalties and orders issued under the act. Specifies that civil penalties imposed under the act must be imposed by written notice describing the violation with reasonable particularity.

[E2SHB 2039](#) - Modifying the appeals process for environmental and land use matters

- Modifies the Administrative Procedure Act (RCW 34.05) process for direct review by the Court of Appeals for appeals of decisions made by the Board, Shorelines Hearings Board (SHB), and GMHB.
- Requires the Board and SHB to consolidate appeals of permits for clean energy facility projects when certain criteria are met.
- When appeals of permits for the same underlying clean energy project are filed with both the Board and the SHB, the consolidated appeals shall be heard by the Board.
- Gives the Board jurisdiction over appeals under RCWs 70A.230 (Mercury), 70A.430.070 (Children’s Safe Products), 70A.500.260 (Selling covered electronic products without participating in an approved plan prohibited).

[E2SSB 6058](#) - Facilitating linkage of Washington's carbon market with the California-Quebec carbon market

- Ecology has authority to require all electric power entities report emissions of greenhouse gases (GHGs) from electricity purchased, sold, imported, exported, or exchanged in Washington. The PCHB has jurisdiction over penalties (RCW 70A.15.3160) and orders (RCW 70A.15.2520 & .3010) issued for violations of RCW 70A.15.

Office Relocation

Legal and Administrative Services Director Jamie Merly and I are continuing to work with the Office of Financial Management (OFM) and the Department of Enterprise Services about our upcoming office relocation next year. We are working on identifying a space in state-owned building that will meet our needs. The biggest challenge is finding a space with an adequate hearing room. We are looking at an option where we would have scheduling priority for the hearing room, but we may need to share the room with other agencies.

Our co-tenants, State Parks, is likely to move out of the building at the end of the year or early next year. State Parks’ lease expired last year and they are currently on a month-to-month lease. The building owner is planning to sell the building and State Parks is moving to the Department of Ecology building in Lacey. You may see them packing up and getting ready for their move.

Our lease expires August 31, 2025 and we’ve been assured by DES that our lease is secure until its expiration.

Please let me know if you have any questions or concerns. We'll keep you posted as we learn more.

Governor's Transition

Governor Inslee is not seeking a new term next year. His administration is helping transition their employees to new jobs in anticipation of a new administration coming in January. While the Governor's Office is working hard to minimize disruption to agencies and others, some disruption is inevitable as his staff depart. Some of these positions will be temporarily filled pending the new administration.

The Governor's Cabinet is also expected to transition with the next administration. Cabinet members have been asked what they would like to do and many are planning to leave their current positions. Many people expect that the new Governor will want to appoint their own Cabinet members. I let the Governor's Office know that I'd like to stay in my current role. While there's no way to know whether the new Governor will want to appoint a new ELUHO Director, I don't plan to look for a new position unless I'm asked to leave. I am very grateful for the care and support provided by Governor Inslee's team to make this transition as smooth as possible for Cabinet members and executive agencies.

Governor-appointed Board members who have been confirmed by the Senate are insulated from removal until the end of their appointed term. It's important to keep in mind that there are over 200 Boards and Commissions under the Governor's appointment authority and the new Governor will likely have more pressing priorities for appointment than replacing members of ELUHO's boards.

Transition can be difficult. Please feel free to talk with me about any questions or concerns you have. As a reminder, the [Employee Assistance Program \(EAP\)](#) offers free, confidential support to employees, including counseling services and legal and financial resources.

Network of Adjudicatory Agencies CLE

ELUHO is co-hosting the Network of Adjudicatory Agencies (NAA) Continuing Legal Education (CLE) conference this fall. The all-day conference will be on Wednesday, November 6, 2024 in Office Building (OB) 2 on the Capitol Campus. It is free and will offer Washington State Bar Association (WSBA)-approved legal credits.

The theme is "Improving Your Practice" and here is the draft agenda (subject to change):

- Opening Remarks: RaShelle Davis, Chief, Office of Administrative Hearings (confirmed)
- Administrative Law Update: Panel of Assistant Attorneys General from the Office of the Attorney General, Administrative Law Division (confirmed)
- Chevron Deference and Loper Bright v. Raimondo: Professor Saanne Knudsen, UW School of law (confirmed)
- Importance of Administrative Law to Washington State: Governor Inslee or Governor's Office Staff (tentative)
- Artificial Intelligence (AI) in the Legal Field: Professor Drew Simshaw, Gonzaga law School (confirmed)
- Administrative Law Judge Best Practices Panel: panelists TBD
- Code of Judicial Conduct: Reiko Callner, Director, Commission on Judicial Conduct (confirmed)

Please let me know if you have any suggestions over the coming months for making this CLE interesting and informative.

Special thanks to Destinee for her help planning and preparing for this conference!