

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Rule Caption	Clarification of Proposed Orders in Contested Enforcement Cases
Title of Proposed Rulemaking:	Motions for Clarification
Stat. Authority or other Legal Authority:	ORS 468.020, 183.341, 183.452
Stat. Implemented:	ORS 468A.035, 468.070, 468.090-140, 183.341, 183.452, 183.460, 183.464, 183.470
Need for the Rule(s)	<p>A) The rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases. The rule should also eliminate the need for some appeals to the Environmental Quality Commission (EQC), reduce the time necessary to reach final orders, and improve the quality of the record on review to the EQC – ultimately assisting the EQC in reaching fully informed and well reasoned decisions.</p> <p>B) The proposed rulemaking would also clarify that Environmental Law Specialists (ELSSs) may provide lay representation on behalf of the Department of Environmental Quality (DEQ) in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.</p> <p>Additionally, this rulemaking involves two areas of Division 11 which need updating and correcting. The rulemaking would correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before Administrative Law Judges or the EQC. Finally, this rulemaking updates the incorporation by reference of the Attorney General’s Model Rules, and incorporates the Attorney General’s Model Rules for Miscellaneous and Orders in Other than Contested Cases. Neither of these items are expected to have an economic impact, and are not required to be analyzed as part of the Statement of Need and Economic Impact, per ORS 183.335(7)(d) and 183.341(1).</p>
Documents Relied Upon for Rulemaking	None.
Requests for Other Options	<i>ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule’s substantive goals while reducing negative economic impact of the rule on business.</i>
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	<p>A) The economic impacts associated with the motion for clarification rulemaking are related to the cost and/or savings of time and resources involved in the contested case hearing appeals process. These costs and savings will depend on the facts of each case, and cannot be reasonably estimated. The objective of the rulemaking is to reduce the expense of the post-contested case hearing process by clarifying proposed orders, thus making the appeal process more focused and efficient. The additional cost of preparing a motion for clarification (for both DEQ and respondents) is expected to be offset by cost savings in the reduction of appeals and a more efficient appeals process.</p> <p>For the small percentage of cases for which a contested case hearing is necessary, DEQ incurs the cost of the hearing officer, staff time, and sometimes legal fees paid to the Department of Justice (DOJ). If fewer cases are appealed to the EQC and the state Circuit Court of Appeals as a result of this rulemaking, DEQ would see a cost savings in legal fees and the cost of additional staff time. Further, if those cases that are appealed are more efficient as a result of this rulemaking, legal fees and staff time should decrease.</p> <p>The economic impact to the general public, small businesses, large businesses, local government, and other agencies will be basically the same, as the proposed rules apply equally to all respondents in contested case hearings.</p>

	B) The economic impacts associated with ELS representation of the agency in contested case hearings involving license, permit, or certification revocations, modifications, and denials are related to the DEQ paying for its own staff (ELSS) time rather than paying DOJ attorneys to represent the agency at these hearings. The use of the agency's own staff rather than DOJ is expected to save the agency money.	
General public	See Overview section above.	
Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number and types of businesses impacted	It is not feasible to estimate the number and types of businesses that may be impacted by this rulemaking, because all business subject to DEQ rules could potentially be impacted, if they violate those rules, are the subject of an enforcement action, and participate in a contested case hearing. A review of the last 9 years of DEQ enforcement data shows that on average, DEQ issues approximately 207 enforcement actions per year. On average, 13 of those actions are appealed in a contested case hearing, and three of those are appealed to the EQC. These numbers reflect <i>total</i> enforcement actions and appeals, some of which involve small businesses, but it is not known exactly how many involve small businesses.
	b) Additional reporting requirements	None.
	c) Additional equipment and administration requirements	None.
	d) Describe how businesses were involved in development of this rulemaking	The Office of Compliance and Enforcement (OCE) had initial informal consultations with representatives of the regulated community, and believes that potential respondents, including businesses, would be supportive of the rulemaking. Businesses will be able to continue to provide input through the public comment and hearing process.
Large Business	See Overview and Small Business discussions above.	
Local Government	See Overview section above.	
State Agencies	See Overview section above.	
DEQ	See Overview section above for general discussion of impacts. It is not possible to predict whether the net fiscal impact to DEQ will be positive or negative, but the expectation is that both proposed rules will save the agency money because enforcement actions may become more efficient, fewer cases may be appealed to the EQC, and DEQ employees would be doing the work that DEQ would otherwise pay DOJ attorneys to do. In addition, this rulemaking will not require any additional FTEs.	
Other agencies	See Overview section above.	
Assumptions	Based on past procedures and numbers of contested cases that are appealed, these proposed changes will increase the effectiveness of the state and the EQC in the contested case appeals process.	
Housing Costs	The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. (However, to the extent that the contested case enforcement process increases compliance with environmental regulations (as does any compliance or enforcement action taken by DEQ), it is possible that the cost of construction and development may be slightly affected. It is not reasonable to attempt to quantify this potential cost or savings).	
Administrative Rule Advisory Committee	No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) have been informed of the proposed rulemaking, have informally provided input, and will continue to do so throughout the rulemaking process.	

Prepared by _____

Printed name _____

Date _____

Approved by DEQ Budget Office

Printed name

Date