

WSR 22-19-090
PREPROPOSAL STATEMENT OF INQUIRY
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE

[Filed September 21, 2022, 8:11 a.m.]

Subject of Possible Rule Making: Chapter 371-08 WAC, Environmental and land use hearings office (pollution control hearings board) practice and procedure.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.21B.170.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule changes are needed for the following reasons:

- To clarify electronic filing procedures and remove fax and paper filing. The rule change will provide procedures for electronic filing via a case management system portal.
- To require the filing of dispositive motions no later than 90 days before the hearing date, allowing more time for the board to consider dispositive issues prior to hearing.
- To clarify what the "date of receipt" means for timely filing of an appeal. The clarification reduces confusion about the timeliness of filing an appeal.
- To remove the holding of settlement conferences from the presiding officer powers and duties. The change will allow other board members and judges to hold settlement conferences, not limiting it to the presiding officer.
- To clarify that proof of service must be filed with the board clerk to perfect the appeal, reducing confusion about proof of service requirements.
- To allow parties who have settled an appeal to submit a request for dismissal rather than a written order of dismissal.
- To reduce confusion about forest practices appeals by adding existing statutory language to the rule that describes the filing requirements for these appeals.
- To repeal the board jurisdictional rule. Board jurisdiction is set forth in statute and rule making lags behind the statutory delegation of authority, causing inconsistencies and confusion to appellants.
- To remove the requirement that parties apply to the board to request a certificate of appealability for direct review of board decisions by the court of appeals. Without the requirement, parties may file directly with the court of appeals without receiving certification by the board.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The environmental and land use hearings office will reach out to the department of natural resources (DNR) regarding forest practices appeal's rule-making activity and will keep DNR apprised of progress and opportunities for input.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, phone 360-485-1282, fax 360-586-2253, email Jamie.Merly@eluhwa.gov, website www.eluhwa.gov.

September 20, 2022

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