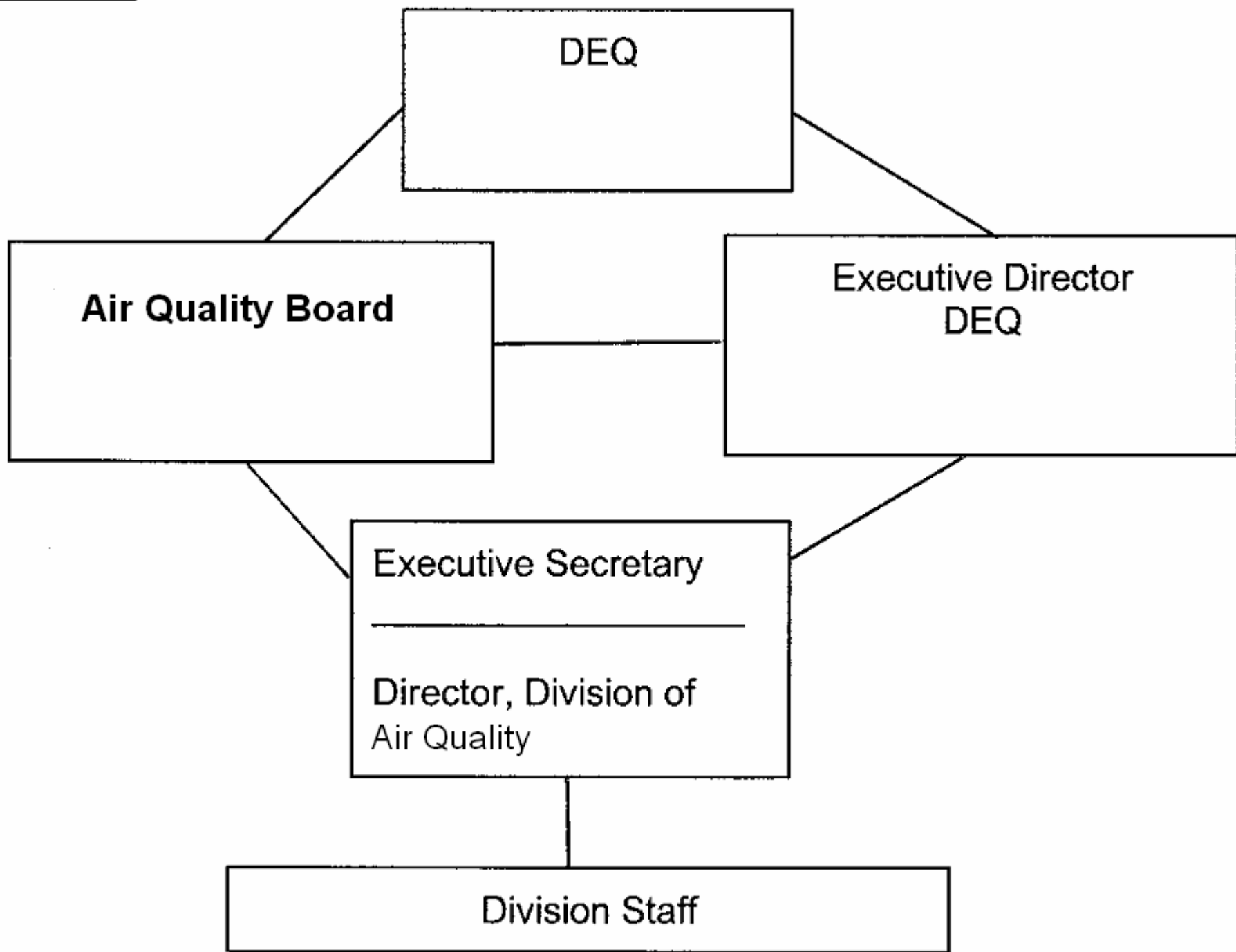


# Structure



# Utah Air Quality Board

1. Members - 6 members constitute a quorum

2. Powers

A. Rulemaking

Implement powers of Board

Limitations and Standards

Asbestos

Title V Operating Permit Program

Lead-based paint and Certification

Inspection and Maintenance Programs

Implementation Plans

B. Require plan submissions, issue permits, monitoring

C. Clean Fuel Certifications

D. Establish programs

E. Sales and Use Tax Exemption Certification

F. Inspection Authority - Entry, sampling, records inspection

G. Enforcement - Orders

H. Hearings - Adjudicative (Compel witnesses, document and evidence production, administer oaths)

Administrative Law Judge Appointment – Exec. Director

Judicial Review

## Executive Director, Department

1. Administrative Responsibilities
2. Member of Board
3. Emergency powers
4. Appoints Executive Secretary with approval of Board
5. Appoints Administrative Law Judges

## Executive Secretary, Board

1. Inspection, as authorized by Bd
2. Enforcement Notices and Orders, as authorized by Bd
3. Plan Review/Approval Order and Permit Issuance
4. Develop programs

## **Jurisdiction of Board – Statute (Utah Air Quality Act)**

First question to ask – does Board have authority over this activity?

Look to authorities and powers of Board under the statute

## **Executive Function**

Air quality control oversight and administration (by Board action in open meeting)

1. Request information from or investigation by Division
2. Direct or initiate actions and programs
3. Respond to public inquiry
4. Consider issues initiated by Division, Board or public

## Legislative Function

### - Rulemaking

#### State rules procedure

1. Consider draft of proposed rule from staff, public, or Board in open meeting
2. Proposed rule considered by Board and proposed for public comment
3. Proposed rule published in State Bulletin
4. 30 day comment period, and, if necessary or at option of Board, public hearing
5. Staff reviews comments and makes suggested changes to rules
6. Board discussion and approval – public comments accepted in Board meetings
7. Rule published with effective date

## **Judicial Function (Adjudicative Hearings)**

-  
Appeal from actions of Executive Secretary (did not comply with statute or rules)

Examples – appeals of permit issuance and notice of violation

Review findings and conclusions of Administrative Law Judge and issue final decision

1. Formal proceeding (by Administrative Law Judge)
  - Rules of Civil Procedure
  - Where legal rights potentially affected, constitutional due process applies
    - (notice, no ex parte communications, fairness)
  - Generally follow rules of evidence
2. Final decision by Board on recommendations of Administrative Law Judge

Appellate Court review of Decision of the Board is based on the hearing record – Court defers to agency expertise on fact issues

## 2. Informal proceeding

Informal presentation, discussion, and decision by Board

Appeal is to District Court with a de novo review (District Court takes evidence and testimony and makes the decision).

# Administrative Procedures for Formal Hearing – Administrative Law Judge

Request for Agency Action and Petition to Intervene

Standing – legal interest (Executive Secretary and license/permit holder)

Others must demonstrate

Example – for permit appeal, Executive

Secretary and permit holder are parties, challenger of permit must demonstrate standing

Motions

Discovery (Document requests, interrogatories, depositions)

Hearing – witnesses sworn, documents and evidence received

Formal written decision recommendation with Board decision

## **Ways for Board to consider an issue, if within jurisdiction of Board:**

1. General: Request from public, staff, or board member -- as part of Board open meeting and approved by Board  
Policy, investigative or issue request
2. Rulemaking: Request from public, staff, or board member  
Rulemaking initiated under state law process
3. Appeal of Executive Secretary Decision (compliance with law):  
Adjudicative (affects specific legal rights)  
Board hears recommendation of Administrative Law Judge and issues final decision.

If an issue is being considered in an adjudicative process, the Board must be careful to not violate constitutional due process rights of the parties by using other processes to review that issue.

However, adjudicative proceedings are not for the purpose of changing rules or establishing new programs or requirements (the executive and legislative functions of the Board are for that purpose), they are for determining whether the Executive Secretary acted in accordance with the law.