

*\*Proposed revision pending commission approval. Areas with shading have changed.*

# Missouri Department Of Natural Resources



## Missouri Air Conservation Commission Operating Policy

**August 3, 2015**

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## Purpose

Environmental statutes and regulations of the State of Missouri embody the goals of the people for protection of the environment and public health in a balanced manner consistent with economic growth. To achieve these goals, laws describe and assign powers and duties to the Department of Natural Resources and the environmental commissions and boards.

The template for this policy document is a result of a Commissioners' Core Workgroup held in 2004. The purpose of the policies is to promote a higher level of commission competence and independence, transparency and clarity in action, and predictability and consistency in processes, thus enhancing public trust and commission accountability. Throughout this document the term "commission" is understood to mean the Missouri Air Conservation Commission.

This operating policy strives to establish a level of consistency, to the extent appropriate, with other boards and commissions of the Department of Natural Resources. The commission will review this policy as necessary to reflect changes in commission practice or procedure. Nothing in this document may be used to implement any enforcement action or levy any penalty unless promulgated by rule under chapter 536 or authorized by statute.

## Commission Structure

### 1. Authority and Powers\*

The Missouri Air Conservation Commission was established in 1965 by the Missouri General Assembly. The commission oversees the implementation of laws and regulations in regards to the air resources of the state. The primary duty of the commission is to carry out the Missouri Air Conservation Law (Chapter 643, Revised Statutes of Missouri). Most often, the commission's activities are directed toward achieving and maintaining the National Ambient (outdoor) Air Quality Standards. When air quality in an area meets all standards, the area is considered to be in "attainment." If air monitors detect too much of a pollutant, the area is called "non-attainment" for that pollutant.

Among the commission's duties are the adoption, amendment and rescission of rules; making decisions on appeals from enforcement orders and permit conditions; beginning legal actions to compel compliance with rules; assigning duties to local air pollution control agencies; listing regions as attainment or non-attainment areas based on the national standards; and approving overall plans for meeting the national standards in listed non-attainment areas.

### 2. Members\*

The commission shall have a total of seven members who are appointed by the Governor and confirmed by the Missouri Senate.

All members shall be representative of the general interest of the public and shall have an interest in and knowledge of air conservation and the effects and control of air contaminants.

At least three members shall represent agricultural, industrial and labor interests, respectively.

No more than four of the members shall belong to the same political party and no two members shall be a resident of and domiciled in the same senatorial district.

Members shall serve for four years or until their successors are selected and qualified. There is no statutory limitation on the number of terms any appointed member may serve.

Members shall receive no compensation and shall be reimbursed for travel and other reasonable and necessary expenses incurred in the performance of their duties.

A member may resign from the commission with written notice to the Governor and the chair or applicable program director.

Any commission member absent from four regular commission meetings per calendar year for any cause shall be deemed to have resigned.

The governor may remove any appointed member for cause.

Where applicable, the governor may appoint a member for the remaining portion of the unexpired term created by a vacancy or the position may be filled according to other applicable law.

### 3. Officers\*

The members shall annually select from among themselves a chair and a vice chair. Commissions are encouraged to rotate the offices among the membership.

### 4. Staff

The Department of Natural Resources' Air Pollution Control Program provides the commission all necessary support the commission may require to carry out its powers and duties. Staff generally includes the program director, commission secretary and other personnel as needed.

The Attorney General's Office provides legal advice to the commission and an assistant attorney general acts as attorney for the commission.

### 5. Meetings\*

The commission shall routinely meet at least nine times a year, at times and places determined by the chair in consultation with staff and members of the commission. The commission should attempt to vary meeting locations and times to offer more opportunity for interested persons to attend.

The commission may hold special meetings as necessary to the timely performance of commission responsibilities. Special meetings may be called by three members of the commission upon delivery of written notice to each member of the commission.

Issues may arise from time to time that are of interest to more than one commission and its program. In such instances, commissions may hold joint meetings to discuss topics of mutual interest. Joint meetings may be called by the chairs of the two or more commissions in consultation with each program director.

The commission may, from time to time, tour facilities or locations of interest. Tours will have an agenda as with any other meeting. Consideration must be given to providing access to the public during the tour.

The commission may hold working meetings, at which no decisions are made, to discuss topics pertaining to the commission.

Pursuant to the Missouri Sunshine Law, all meetings of the commission at which a quorum of the commission is present, other than social gatherings, shall be open to the public. All meetings of the commission are subject to the provisions of Missouri's Sunshine Law.

Any motion to close the meeting shall cite the specific statutory exception or exceptions under which the closed meeting is being held. The number of staff attending the closed meeting should be limited to those members directly involved in the matter discussed. The time spent in a closed meeting should be as brief as necessary and the discussion limited to only the specific topic or topics for which the meeting was closed.

After a closed meeting the commission should return to open session. The chair should state the general topic of the discussion held during the closed session.

## 6. Agendas

An agenda is a tool to organize a meeting, to notify members, staff, and any interested parties about topics to be discussed, and to assist in the orderly conduct of a meeting.

All agendas will contain at a minimum:

- Name of the commission holding the meeting.
- Meeting time, date, location and phone number at the location (if possible).
- Notice that members of the public may ask to address any agenda item at the time it is discussed, together with instructions, if any, for signing a form or card to speak to an agenda item.
- A standing item to allow for public comment.
- Items for consideration: brief, but clear as to the topic.
- Anticipated action for each item such as: decision, no action-information only or further direction sought.
- An item to discuss or set future agendas.
- An item for future meetings.
- If a meeting is to contain a closed session in accordance with the Sunshine Law, a statement of when the closed session will be held and when the open session will be held (when known in advance).
- Contact information for the commission and program, referencing how copies of materials provided to commission members in preparation for the meeting may be requested.
- Other agenda items as appropriate, such as legislative updates or correspondence for commission members.
- Contact information for those with disabilities.

Where possible, preliminary agendas should be developed and provided, with the statement that the agenda is preliminary and subject to change.

Agenda items shall generally be determined by the program director in consultation

with the commission chair. Any commissioner or a member of the public may request that an item be brought before the commission. Such requests should be received at least three weeks before a meeting. When necessary, items can be added no less than 48 hours prior to the meeting (to allow sufficient time to post the required public notice), by contacting the program director and commission secretary. If an item for discussion is not on the agenda, yet introduced during a meeting, the commissioners may vote on whether to discuss at the current meeting or table the discussion for the next scheduled meeting.

Agendas for any meeting will be posted according to the provisions of the Sunshine Law as well as posting on the department's website. Agendas will be routinely provided to stakeholders who have requested to be placed on a mailing list, and to anyone requesting an agenda.

## 7. Conduct of Meetings

Roberts Rules of Order should be followed for the orderly conduct of commission's business and actions.

The work of the commission will be conducted with respect and courtesy toward the staff, interested parties and the public. Decision-making will reflect independence and impartiality, except that any member appointed to represent a specific interest may express the views of such interest.

Four of the members of the commission must appear in person or by electronic conference to constitute a quorum for the conduct of business. If there is no quorum, members may conduct a working meeting.

If a quorum is present, the affirmative vote of the majority of the members entitled to vote on the subject shall be the act of the commission. If taking a roll call vote, consider rotating the order of the roll call so that the same person is not always called to cast the first vote.

The commission welcomes information and views from all interested parties regarding the work of the commission. Members of the public shall be afforded the opportunity to comment on agenda items at the time they are addressed, and may be asked to sign a form or card to address the particular item. The commission may set reasonable time limits for public comments.

If it has been decided before the meeting how much time will be allowed for public comment (for example, 3 minutes per person) and how the order of speakers will be determined, that information should be placed on the agenda and stated at the beginning of the meeting. The chair should announce the procedures for public comment.

\*For more information, refer to Chapter 643, RSMo.

## Records and Information

### 1. Meeting Materials

Materials that are provided to commission members for any meeting will also be made available to the public on request, unless the material relates to a closed meeting topic under The Missouri Sunshine Law. Materials can be made available either as hard copies or by electronic means.

Effort should be made to make the meeting materials available, especially those that will be relied upon for the meeting.

### 2. Minutes

The commission secretary will maintain minutes of commission meetings and draft minutes shall become final upon approval at a subsequent commission meeting.

### 3. Records

The department shall maintain the types of records listed below. Except for records closed in accordance with Missouri's Sunshine Law, the records shall be made available to the general public. In addition, citizens can obtain copies of records upon request to the department's Custodian of Records and payment of appropriate fees.

- Missouri Air Conservation Commission Operating Policy
- Meeting dates, times, places and agendas
- Meeting Minutes
- Meetings packet materials and handouts
- Rulemaking reports
- Regulatory Impact Reports
- Instruction on participation and submission of information
- Commission member contact information
- Pertinent correspondence
- Other materials utilized by the commission

Most commission meetings are streamed live on the Department of Natural Resources' live meeting page at: [www.dnr.mo.gov/videos/live.htm](http://www.dnr.mo.gov/videos/live.htm).

In addition, recordings of meetings, meeting minutes and meeting materials are available at the commission website:

<http://dnr.mo.gov/env/apcp/macc.htm>

## Roles and Responsibilities

### 1. Commission Members\*\*

Each commission member represents the interest of the general public or of an interest group as set forth in statute 643.040.2, RSMo. Members should facilitate open communication between the regulated community, interested groups, the general public and the department.

The authority of the commission rests in the commission as a whole, not in individual members. Members shall faithfully carry out the powers and duties placed upon them by law, which may include:

- Conducting public hearings required by Chapter 643, RSMo.
- Establishing policy and direction for the program.
- Making and amending rules in accordance with the laws and policies governing rulemakings.
- Performing a quasi-judicial function with respect to decisions on appeals.

Each commissioner is expected to attend training events in accordance with the Training for Commissioner's information contained in the Appendix of this policy.

Each commissioner is expected to fully review the materials provided prior to each meeting.

### 2. Director of the Department of Natural Resources\*\*

By statute, the director of the Department of Natural Resources is directed to administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources, including all budget and reporting functions, to execute policies established by the commission, and is subject to commission decisions as to all substantive and procedural rules. Department decisions are subject to appeal to the commission, as provided by law. The director is also responsible for recommending policies to the commission to achieve effective and coordinated environmental control and natural resource conservation policies.

### 3. Staff Director of the Air Pollution Control Program\*\*

The program director is responsible to both the director and the commission and has primary responsibility for commission support and for implementation of commission decisions. The program director's responsibilities include meeting agendas, supporting materials, notices and logistics, presentations, analyses and rule development. According to Chapter 640, the program director is appointed by the director of the department, subject to commission approval, and may be removed or reassigned by the commission through a written request to the department director.

#### 4. Commission Secretary and Program Staff

The commission secretary and program staff shall assist the program director. Program staff are employed by the department director and are required to provide optimum service, efficiency and economy. Commissions should discuss any staff issues first with the program director.

#### 5. Department of Natural Resources Legal Counsel

The department's General Counsel's Office provides advice and assistance to the director, divisions and program, and commission as necessary.

#### 6. Attorney General's Office

An assistant attorney general is assigned to provide legal counsel to the commission. The Office of the Attorney General:

- represents the State in matters referred by the commission.
- represents the commission in suits brought against the commission.
- represents the department in appeals.
- provides legal counsel to the commission.

An assistant attorney general addressing the commission should state who he or she is representing (the State, the commission or the department).

For assistance on the services provided, contact the Office of the Attorney General.

\*\* For more information, refer to Chapter 643, RSMo and rule 10 CSR 10-1.010.

## **Appeal Hearings and Decisions**

### **1. Appeal Hearings**

Appeals of agency decisions shall be initiated in accordance with the procedure established in section 621.250 RSMo and 10 CSR 10-1.030 Air Conservation Commission Appeals and Requests for Hearing.

### **2. Decision after Hearing**

Following a hearing on an appeal, the hearing officer will provide the appeal record, findings of fact and conclusions of law, and recommendations to the commission. The commission shall hold a meeting as expeditiously as possible to decide the appeal.

The commission shall provide a reasonable time for written and oral argument.

The decision of the commission on the appeal shall be based on the facts and evidence in the hearing record. The commission shall either adopt the recommendation of the Administrative Hearing Commission or prepare its own written decision including findings of facts and conclusions of law.

Appeal from a final decision of the commission may be filed in the manner provided by law.

A record of the decision in the appeal shall be preserved and shall be available to the public as provided by law.

## **Referrals to the Attorney General's Office**

Conference, conciliation, and persuasion is a normal part of the inspection and enforcement process. The commission and the department generally prefer to give parties an opportunity to address the commission before a pending enforcement case is referred to the Attorney General's Office, but recognize that this is not feasible or efficient in some circumstances. Generally, when an enforcement case is pending referral, the department will provide an opportunity for the responsible party to request to be heard at a future commission meeting. If the party requests to go before the commission, the program will schedule the agenda item for an upcoming meeting that is as convenient as possible, considering the need for a timely referral. The commission will vote whether or not to refer the matter to the Attorney General's Office. If the party fails to respond or request to be heard by the commission, the department director will directly refer the information to the Attorney General's Office. The program will report such actions to the commission during the next regularly scheduled commission meeting.

In order to expeditiously and efficiently address violations of the Missouri Air Conservation Law, in situations involving multi-media issues (i.e. entities that are in violation of more than one of Missouri's environmental laws) or on-going non-compliance issues the department director will typically directly refer an enforcement case to the Attorney General's Office per Section 643.080, RSMo. The director may also directly refer violations where the statute of limitations may expire prior to presentation of the matter to the commission. The program will report all such actions to the commission during the next regularly scheduled commission meeting.

## **Communications**

### **1. Open Communication**

Commission members will strive to solicit balanced viewpoints on significant issues. Members will be aware that hearing views from just one source (such as department staff, industry or environmental groups) may not adequately present the entire issue.

On rulemakings that are expected to be significant or controversial, the department and the commission will encourage early input and involvement from all interested stakeholders, in order to fully consider competing viewpoints.

Commissions serve both a quasi-legislative and quasi-judicial role. Commission members will be open to all comments in the quasi-legislative role, such as comments related to rulemaking.

In the quasi-judicial role, commissioners will avoid any ex parte communications on pending appeals with litigants to the dispute, including department staff, as well as any other persons who may have an interest in the pending appeal.

## 2. Commission Contact

Each commissioner shall provide a means for public contact such as a phone number, address and/or email address.

## 3. Commission Webpage

The department will maintain a board and commission webpage that provides information on each commission and its members, contact information regarding the commission and its members and meeting agendas. Commissions are strongly encouraged to also post meeting minutes, public notices or other materials to provide for public access.

<http://dnr.mo.gov/env/apcp/macc.htm>

## **Compliance with Other Laws**

### **1. Missouri's Sunshine Law**

All activities of the commission shall be carried out in strict accordance with Missouri's Sunshine Law, RSMo Chapter 610. The commission shall honor the letter and the spirit of the Sunshine Law.

### **2. Personal Finance Disclosure**

Each commissioner shall annually file a Personal Finance Disclosure Statement in accordance with RSMo Chapter 105, where appropriate.

### **3. Conflict of Interest**

Commissioners shall comply with all applicable statutory requirements regarding conflict of interest, including RSMo Chapter 105.

### **4. Administrative Procedures**

The commission shall comply with the rulemaking and other applicable requirements of the Missouri Administrative Procedures Law, RSMo Chapter 536.

# Appendix

## Training for Commissioners

Premise: Comprehensive knowledge and understanding of the commissioner's responsibilities and roles, as well as of the substantive laws and regulations governing the Air Pollution Control Program, is key to competent and consistent performance of commissioners.

### 1. New Commissioner Information

Upon appointment, each new commission member shall receive orientation from the Missouri Air Conservation Commission and, at a minimum, a notebook containing copies of the following:

- a. The commission's/board's operating policies.
- b. The statutes and regulations governing the Air Pollution Control Program and its authority, summarized as appropriate because of volume, including roles and responsibilities of the Staff Director and the Commission.
- c. The Sunshine Law.
- d. The financial disclosure and conflict of interest statutes (Ethics Commission).
- e. Department of Natural Resources general information, including mission, list of commissions/boards, Department budget and organizational chart.
- f. Description of commissioner's quasi-judicial role.
- g. General overview of the rulemaking process.
- h. A summary of the state revolving fund and the bond process.

### 2. Training (offered once a year)

Within 12 months following appointment, all new commission members shall attend a standardized training module as offered by the Department. Other commission members are encouraged to attend one of the standardized training opportunities. Training modules may provide in-depth presentations on the subjects listed below:

- a. Rulemaking process.
- b. MoDNR Budget.
- c. Quasi-judicial role.
- d. Policies.
- e. Services of the Attorney General's Office.
- f. Sunshine Law.
- g. Financial disclosure laws and conflicts of interest.

- h. Authority of commissions/boards.
- i. Organizational structure.
- j. Permits process.

Alternate means (electronic, etc.) of training will be provided for new members unable to physically attend a comprehensive training session.

### 3. Commissioners Conference (to be held every two years)

All commission/board members are encouraged to attend conferences as arranged by the Department to provide:

- a. Updated training refresher sessions.
- b. Issues seminar in break-out sessions. The Department, environmental groups, business/industry groups, legislators and other interested parties will be invited to give presentations on relevant issues pertinent to the commissions/boards.

### 4. Training Providers

Presentations of the various topics at the training sessions will be provided, as appropriate, by:

- a. The Director's Office.
- b. Program staff.
- c. The Attorney General's Office.
- d. The Ethics Commission.
- e. Environmental groups.
- f. Business/industry groups.
- g. Agencies or groups representing the general public.
- h. The Environmental Protection Agency (EPA).
- i. Other federal or state agencies.
- j. Environmental Improvement and Energy Resources Authority (EIERA).

### 5. Training Costs

- a. Training and incidental tasks by MoDNR and other state personnel will be provided by existing personnel as part of their work assignments.
- b. Costs of information notebooks, incidentals, travel, meals and lodging will be borne by the Air Pollution Control Program for its Missouri Air Conservation Commission member.
- c. Logistic costs of meeting place and incidentals will be borne by the Department.
- d. Members of the public attending the training shall bear their own costs.

