



# Appeals of DNR decisions

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# Administrative Remedy

- Statutes allow appeals of specific DNR decisions to a commission.
- If a statute provides an administrative remedy, it must be used.
- This remedy is a “contested case.”



## Section 621.250 RSMo

All appeals must be filed with the  
Administrative Hearing Commission.

They must be filed within 30 days of “notice” of  
DNR’s action.

AHC follows chapter 536 RSMo, its own rules,  
or rules of civil procedure.



AHC contact info:

website: [www.oa.mo.gov/ahc](http://www.oa.mo.gov/ahc)

email: [AHC@oa.mo.gov](mailto:AHC@oa.mo.gov)

U.S. Post Office Bldg. 3<sup>rd</sup> Floor  
131 West High St.  
Jefferson City, MO 65101

P.O. Box 1557, Jefferson City, MO 65102

phone: (573) 751-2422

fax: (573) 751-5018 [Note: Fax Filing Allowed]



# Common Appeals

1. Permit denial. **Applicant** appeals and has burden of proof.
2. Permit issued. **Permittee** appeals conditions. DNR has burden of proof.
3. Permit issued. **Third party** appeals. DNR has burden of proof.
4. Enforcement order. **Violator** appeals. DNR has burden of proof.



# Notice of Appeal Rights

DNR must provide notice of the recipient's right to appeal the decision. Section 620.250 RSMo provides language.

This applies to final decisions affecting rights and duties, not to every letter DNR sends.

Failure to provide notice may extend the time to appeal.



## AHC recommends to:

Clean Water Commission

Air Conservation Commission

Hazardous Waste Mgmt. Commission

Safe Drinking Water Commission

Missouri Mining Commission



# AHC makes final decisions re:

## **Solid Waste Management**

(Sections 260.235 and 260.249 RSMo)

## **Dam and Reservoir Safety**

(Chapter 236 RSMo)

## **Water Well Drillers and State Geologist**

(Chapter 256 RSMo)



# “ROCKET DOCKET”

**Counting from date appeal is filed:**

**Within 90 days** the AHC must hold a hearing.

**Within 120 days** the AHC must make a decision.

**Within 180 days** the environmental commission must act on the AHC’s recommendation.

Only a **permittee** may extend these deadlines.



# AHC Process

- 1. Notice of complaint** – to petitioner, DNR (and perhaps the permittee, if the permittee is not the petitioner). AHC sets hearing date(s), and a deadline for DNR to file an answer. Permittee may move to intervene.
- 2. Pre-hearing order** – optional; used to set schedules for discovery, witness lists, motions, presentation time estimates, etc.
- 3. Hearing** – to present evidence and testimony under oath, subject to cross exam. Who goes first may vary.
- 4. Post-hearing briefs** – allowed but not required.



# Stays

**A stay is not automatic, unless a statute so provides. Otherwise, the petitioner may request one. A bond may be required by the AHC.**

**A hearing is swiftly set in advance of the hearing on the merits of the appeal.**

**AHC will balance interests and consider the likelihood of success on the merits.**



# AHC'S Recommendation

- Written findings of fact, conclusions of law.
- Sent with hearing record to environmental commission.
- The environmental commission may adopt, vacate or modify, but changes must be in writing.



# Environmental Commission Process

- Arguments for and against AHC's recommendation is usually allowed.
- Commission may adopt the recommendation by resolution or write a new decision.
- Aggrieved party may seek judicial review.



# Judicial Review

- For ACC cases, in the Court of Appeals district for the county where the source is located.
- Generally, the court's review is limited and based upon the hearing record.



## NOTES and CAVEATS

- A natural person does not need a lawyer, but a corporate entity does.
- In a 3<sup>rd</sup> party case, the permittee should intervene.
- The attorney general represents only DNR.



# Appeals Authorized in the Air Conservation Law (10 CSR 10-1.030)

Construction Permits.....	643.075.6
Operating Permits.....	643.078.16
Abatement Orders (automatic stay).....	643.080.4
Administrative Penalty Orders (automatic stay).....	643.085.2



**QUESTIONS?**

Office of the  
MISSOURI ATTORNEY GENERAL

