



## CHAPTER 6 – SEARCH WARRANTS

### 6.1 PURPOSE AND OVERVIEW

The purpose of this procedure is to provide uniform guidance to FSD and DEQ staff for obtaining a search warrant when access to a regulated property or facility is denied for the purpose of investigating an environmental concern or inspecting a facility. The various environmental statutory programs contain numerous and slightly varied references to the department's right to acquire an administrative search warrant in the event that access for an inspection is denied. See Chapter 6.5 for statutory authorities to inspect. The following procedure shall be used in coordinating the effort to obtain access, including warrants and dealing with the department attorney, the Attorney General's Office, and the local prosecuting attorney.

This procedure is intended to be used as general guidance and is not intended to address every situation that might be encountered. The key to a successful search warrant outcome is extensive coordination with all parties concerned on an as needed basis.

### 6.2 DENIAL OF ACCESS

Access to a facility or private property may be denied either outright by refusal of the facility representative or functionally by significant delays or other obstacles placed in the way of conducting the inspection.

The inspector may be denied access in full or partial form. Examples of denial may include:

- Denial to come onto facility property,
- Denial to look at records, regulated activities, or other aspects of the facility,
- Special restrictions imposed on the inspector, such as not allowing photographs to document violations or requiring the signing of inappropriate waivers or releases in order to conduct the inspection.
- Delays by private property owners to take you onto their property for the purposes of investigating a complaint.

Remember, department inspectors are not required to sign any type of liability release or safety waiver in order to conduct the inspection. The facility may not make entry conditional upon unreasonable health, safety or other issues.

When a responsible official of the facility to be inspected or property owner refuses to allow the inspector to conduct the scheduled inspection or establishes conditions on the inspector that limit the scope of the inspection, the inspector should do the following :

1. Remain non-confrontational and professional.



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2. The inspector must ensure that they have adequately and properly identified themselves to the individual to whom they are requesting access to inspect. Identification must have included a photographic ID of the employee. If the meeting was not face to face, the inspector should provide adequate verification of authority (email or telephone numbers). Other forms of contact such as email and telephone may meet the definition of a denial but these should be discussed with a department attorney.
3. The inspector must ensure that they have adequately and properly identified their request to inspect to a person with the appropriate authority to allow such inspection on the property in question.
4. The inspector must ensure that such person is knowingly and willfully denying the inspector's right to conduct a lawful inspection/investigation. Document such denial to the extent possible with date, time, location, name, address and telephone numbers of all parties. A denial of access form can be found at Chapter 6.6.1. If possible, obtain the reason for denial of access in case the inspector can address the reasons. The reasons for the denial are not required for a warrant but provide solid evidence of the denial.
5. The inspector must ensure that they have adequately and properly identified their legal authority to conduct such an inspection. Give the facility representative a copy of the relevant law and explain the authority to conduct the inspection. The inspector/investigator should also provide an explanation of the department's policy on denial of access and what steps may be taken if access is denied.
6. If the department inspector believes she/he is being denied and has completed the aforementioned five steps, they must retreat from the facility and contact their supervisory staff at the regional office, detailing their attempts at conducting the inspection and the response from the regulated party.
7. The supervisory staff should contact the appropriate Program's Enforcement Supervisor and will assist in coordination on contact with a department attorney to relay the information and request assistance in obtaining access to the property.
8. The department attorney shall assist the inspector with the attempt to gain access without a search warrant, which may include consultation with the Attorney General's Office and/or a local prosecutor's office. In some circumstances, a second attempt to gain access may or may not be needed. In those cases where a partial denial of access occurs, such as a refusal to allow photographs, the inspector should continue the inspection after consulting with the supervisor and program.
9. If access to inspect continues to be denied, the department attorney will assist department staff in determining if a search warrant is merited and how to proceed. At this point, the department attorney and the AGO may determine that further attempts at gaining access are necessary.



## 6.3 SEARCH WARRANT PROCEDURE

After other avenues have been pursued (short of legal action) to obtain access to inspect, a decision of whether to pursue a search warrant will be made by consultation among the regional office, appropriate program enforcement personnel, department legal counsel, and/or the AGO. When a decision is made to pursue the warrant, appropriate program enforcement personnel should contact any support agencies needed, such as the U.S. Environmental Protection Agency, Environmental Services Program, EPA criminal investigators or DNR environmental investigators to see if and when they would be available to provide assistance in executing the warrant if one is obtained. If for some reason DNR will not be pursuing the warrant, contact should be made with EPA by the appropriate program's enforcement supervisor to determine if he would be interested in pursuing further action under his authority.

1. If the determination is that a search warrant is needed to gain access to inspect, the department attorney or AGO will, after coordinating with the local prosecutor for any needed forms or special procedures, assist the inspector in developing an affidavit and perhaps also a draft search warrant application, a search warrant, and a return/inventory (collectively the "search warrant documents"). Department staff with firsthand knowledge of the events at issue (i.e. the inspector) must execute the affidavit.  
(See Chapter 6.6.2, 3, 4, 5 for samples of the above-mentioned forms)

(Local prosecutors may have their own forms that may be used. Note: Obtaining information from the local prosecutor before preparing documents will save time and also provide the information to the judge in the format he is accustomed to or expects.)

The elements of showing a need for an administrative search warrant (instead of a more specific criminal search warrant) are as follows.

- Denial of access; and
- Probable cause that activity regulated by DNR is taking place on the property.  
(In addition to the affidavit, pictures from the street or neighboring property may be helpful.)

A criminal search warrant may be obtained if the department has probable cause to believe that a specific crime has been committed.

2. The department attorney or AGO will review the search warrant documents, coordinate changes, and contact the local prosecutor for presentation. The local prosecutor will typically present the search warrant documents to the appropriate court. Information presented to the judge must be current.

(This is a time saver for staff and does not require the AGO to drive to the county for presentation and signature. It is also a good idea because the local judge knows his prosecutor and will usually have fewer reservations in signing the warrant. Local prosecutors know when their judges are available).



## 6.4 EXECUTING THE SEARCH WARRANT

The local prosecutor will typically assist the inspector and local law enforcement agencies in the planning of the execution of the search warrant, perhaps with assistance from the department attorney or AGO. Law enforcement personnel will serve the warrant and ensure the inspector's safety at the facility. Law enforcement personnel should accompany inspectors for the whole inspection. Under no circumstances shall an inspector serve the warrant. Warrant service is the responsibility of the local law enforcement agency.

While every effort should be made to follow facility safety requirements, inspectors are employees of the state, not the facility, nor are they contractors bound by facility requirements.

Denial of access to a facility is typically, by itself, grounds for issuing a notice of violation. It may also provide a basis for taking escalated enforcement action.

When conducting an inspection or investigation under a warrant the inspector must document any actions conducted at the site or facility such as samples, photographs, etc. All pictures taken at the facility or site must be numbered and documented. Any samples taken must be completely documented and inventoried. A "Return and Inventory Form" must be completed and returned to the court after execution of the warrant is complete. See 6.6.5. (The local jurisdiction may have its own version of this form that needs to be completed.)

A receipt for all items and samples taken must be given to the owner or left on site with the search warrant. See 6.6.6 for a sample form of "Receipt for Property Received." (The local jurisdiction may also have its own version of this form that needs to be completed.)

## 6.5 STATUTORY AUTHORITY TO INSPECT

Legal authorities to inspect can be found at:

Petroleum Storage Tanks - Section 319.117 RSMo  
Hazardous Waste Management Law - Sections 260.375(9) and 260.425.4 RSMo  
Solid Waste Management Law - Sections 260.210.1(5) and 260.205.11 RSMo  
Missouri Clean Water Law - Section 644.026.1(21) RSMo  
Missouri Air Conservation Law - Section 643.050.1(8) RSMo  
Missouri Air Conservation Law (asbestos) - Section 643.250 RSMo  
Missouri Safe Drinking Water Law - Section 640.120.5 RSMo  
Hazardous Substance Emergencies - Section 260.525 RSMo  
Registry of Abandoned/Uncontrolled Sites - Section 260.440.2 RSMo  
Dry-Cleaning Facilities - Section 260.925.6 RSMo  
Land Reclamation - Section 444.777 RSMo and 10 CSR 40-10.060  
Oil & Gas Production - Section 259.070.1(8)



## 6.6 STANDARD SEARCH WARRANT FORMS

Sample forms referred to in this chapter are listed below and copies attached. Local prosecutors may have variations of these forms or similar forms that may be used.

- 6.6.1 Denial of Access Report
- 6.6.2 Affidavit
- 6.6.3 Application for Search Warrant
- 6.6.4 Search Warrant
- 6.6.5 Return and Inventory
- 6.6.6 Receipt for Property Received



6.6.1

**DENIAL-OF-ACCESS REPORT**

On \_\_\_\_\_ at \_\_\_\_\_ I was denied access into \_\_\_\_\_ at \_\_\_\_\_

By \_\_\_\_\_ Location \_\_\_\_\_  
Facility Representative’s Name and Title

For the following reason(s) listed here:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

\_\_\_\_\_  
**Signed/Inspector**

\_\_\_\_\_  
**Signed/Facility Representative**

The facility representative, \_\_\_\_\_, has refused to sign this Denial-Of-Access Report.



6.6.2

AFFIDAVIT

I, [staff member name], being of lawful age and upon my oath and affirmation, state that I am an employee of the Missouri Department of Natural Resources (hereinafter referred to as MDNR), [division], [program or region], located in \_\_\_\_\_, Missouri.

The MDNR is a state agency created pursuant to Chapter 640, RSMo 1986, and is authorized to administer the provisions of the Missouri \_\_\_\_\_ Law, Sections [cite law], RSMo, and to enforce rules and regulations to carry out these provisions. The MDNR is required under Section [inspection authority], RSMo to [investigate or conduct inspections – use wording from law]. As part of my duties, I inspect areas and facilities within the State of Missouri for possible violations of the [law] and implementing regulations.

[responsible party] is the [owner of real property located in legal description; or operator of such facility], \_\_\_\_\_ County Missouri.

The Department of Natural Resources received a [describe how department received information, include complaint 3, etc.].

On [date], I arrived at the subject property and observed [describe any knowledge gained upon arriving]. I [describe interaction with people encountered, including responsible party or RP’s representative]. I presented my credentials to [RP or rep] identifying myself as a representative of the MDNR, and requested permission for the MDNR to enter onto the subject property for purposes of conducting an inspection for compliance with the Missouri \_\_\_\_\_ Law. [RP or rep] refused my request, and therefore denied MDNR access to the subject property for purposes of inspection. I informed [RP or rep] that the department may seek to obtain a search warrant to enter the property and asked again if [RP or rep] would grant permission to enter the property. [RP or rep] said that [describe; i.e. under no circumstances would he allow anyone to go onto the property]. I asked [RP or rep] to sign a Refusal of Access Form which I filled out and presented, and [RP or rep] [signed or declined to sign]. I thanked [RP or rep] for the time and left the property.

Pursuant to Section [inspection provision of law], it is unlawful for any person to “[quote authority to enter property for purpose of inspection].” In the event of such a refusal, Section [authority request search warrant] further provides that “[quote legal authority to obtain search warrant].”

[Cite any additional authorities related to conducting inspection or obtaining search warrants that may be relevant.]



From the foregoing, I observed from the vantage point of a [public roadway or other access point] [alleged violation(s)] on the subject property and further, that these practices are being conducted in violation of the Missouri \_\_\_\_\_ Law and Regulations. As stated above, MDNR is required to investigate reports of [violations] of [media]; however, MDNR has been unlawfully denied access to the subject property for purposes of such inspection. In order to conduct a complete inspection of the subject property, affiant prays for issuance of a search warrant authorizing representatives of MDNR to:

1. inspect any records, papers or documents kept by [RP] which may indicate what kind, or how much [mishandled in violation];
2. inspect the [media] facilities located within any building or outside any building of the above described property;
3. take samples of [media] and any other type wastes located in barrels, drums, tanks, containers and all receptacles capable of holding or storing any kind of [regulated materials];
4. take [media] samples anywhere on the above described property;
5. take photographs or videotape the [media] facilities and grounds at the above described property;

Affiant further sayeth not.

\_\_\_\_\_  
[staff member name]

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_





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My Commission expires: \_\_\_\_\_

6.6.4

SEARCH WARRANT AUTHORIZING INSPECTION UNDER THE MISSOURI \_\_\_\_\_ LAW

STATE OF MISSOURI )
) ss.
COUNTY OF \_\_\_\_\_ )

SEARCH WARRANT

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, MISSOURI, TO ANY AUTHORIZED EMPLOYEE OF THE MISSOURI DEPARTMENT OF NATURAL RESOURCES:

WHEREAS, \_\_\_\_\_, on the \_\_\_\_\_ day of, 20\_\_, filed with the undersigned, Judge of this Court, his duly verified application in writing and on oath as provided by law, and supported by affidavit from [staff member name], stating that [she/he] has authority under the Missouri \_\_\_\_\_ Law to inspect the property owned by [responsible party], located in [legal description], \_\_\_\_\_ County Missouri (see attached [property document] for full legal description), and more particularly described in an Exhibit to the above referenced affidavit, to evaluate compliance with the Missouri \_\_\_\_\_ Law.

WHEREAS, from the facts set forth in said verified application and attached affidavit, it is found by me that there is probable cause to inspect the subject property and that the right of the Missouri Department of Natural Resources to enter the premises to conduct such an inspection has been improperly denied, in the manner charged.

NOW THEREFORE, these are to command you that you search the said premises above described within ten (10) days after the issuance of this warrant during normal business hours, and take with you, if need be, the powers of the State of Missouri and \_\_\_\_\_ County, and that you seize and take into your possession records, samples and photographs of any and all materials and to conduct such other investigation in and around the property, making a complete and accurate inventory of the samples so taken by you in the presence of the person from whose possession the same is taken, if that be possible, and giving to such person a receipt for such samples together with a copy of this warrant or, if no person be found in possession of said property, leaving said receipt and said copy upon the premises searched, and that you return a duly verified copy of the inventory thereof and with your return to this warrant this Court to be herein dealt with in accordance with law.

WITNESS my hand and seal of this Court, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at the hour of \_\_\_\_\_ am/pm.





6.6.6

Missouri Department of Natural Resources

RECEIPT FOR PROPERTY RECEIVED/RETURNED/RELEASED/SEIZED

File#/Case# \_\_\_\_\_

On (date) \_\_\_\_\_ items listed below were:

- Received From
- Returned To
- Released To
- Seized From

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Description of Item(s) \_\_\_\_\_

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Received By: \_\_\_\_\_ Received From: \_\_\_\_\_  
(signature) (signature)

