

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

April 2, 2014

Commission Operating Procedures

Issue: Most environmental commissions in Missouri have established operating procedures which may provide routine direction and order for handling matters coming before them. The Clean Water Commission declined the adoption of operating procedures previously, and they are offered again, with revisions for the Commission's consideration. If it pleases the Commission, staff will revise the procedures as directed and present them for adoption at a future meeting.

Background: In 2004, commissioners from several environmental commissions assembled in a group call the Core Commissioners Workgroup. These commissioners considered whether the commissions would be well served by having standard procedures that would form the framework for conducting their responsibilities. The Workgroup established a template of procedures that could be adapted for the various commissions. In 2005 the Clean Water Commission considered the template and did not adopt it at that time. Counsel to the Commission made several changes to the template so that it corresponded to the Commission's roles and responsibilities. This version of the procedures also includes an expectation of commissioner training, which could be achieved to the extent commissioners and the Department can devote the time and assemble the necessary resources.

Recommended Action: At the Commission's discretion.

Suggested Motion: None.

Attachments:

- Draft Clean Water Commission Operating Procedures

DRAFT

**Department of Natural
Resources
Missouri Clean Water
Commission
Operating Procedures**

2014

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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 operating policies set forth herein are intended to be adopted by all environmental commissions and boards having statutory responsibilities for programs of the Department of Natural Resources. The purpose of the policies is to promote a higher level of commission/board competence and independence, transparency and clarity in action, and predictability and consistency in processes, thus enhancing public trust and commission accountability. The term "commission" is understood to mean "commission", "board", "council", or "committee".

Statutes confer authority and responsibility specific to each commission and board; this document establishes an element of policy uniformity and consistency to the extent appropriate. It is expected that the policies adopted by each commission or board will be drafted and modified when necessary to reflect the requirements specific to that entity. In addition, the uniform policies will be modified as necessary to conform with changes in the law. Commission policies do not have the force and effect of law, and are not intended to set legally binding procedural rules.

Commission Structure

1. Authority and Powers 644.026

Exercise general supervision of the administration and enforcement of sections 644.006 to 644.141 and all rules and regulations and orders promulgated thereunder.

Develop Missouri's Water Quality Standards, 10 CSR 20-7.031; develop Missouri's list of impaired waters, 303(d) List; issue permits limiting the discharge of pollutants into the state's waters; take enforcement action against those who violate the Missouri Clean Water Law and implementing regulations; certification of operators of municipal wastewater facilities and the largest Concentrated Animal Feeding Operation waste management systems; oversee financial assistance to protect and preserve water quality; develop the Nonpoint Source Management Plan outlining Missouri's approach to addressing nonpoint problems; maintain a 303(e) Continuing Planning Process that brings together and coordinates all aspects of water pollution control in an effort to assure the state maintains progress toward protecting and preserving water quality.

The commission has the power to acquire information and services useful for carrying out its responsibilities through obtaining independent, technical or other professional support.

2. Members 644.021

The commission shall have a total of seven members, with 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 conservation and the effects and control of water contaminants. Two members, but no more than two, shall be knowledgeable concerning the needs of agriculture, industry or mining and interested in protecting these needs in a manner consistent with the purposes of sections 644.006 to 644.141. One such member shall be knowledgeable concerning the needs of publicly owned wastewater treatment works. Four members shall represent the public.

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 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 six consecutive regular commission meetings 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

Chair and Vice-Chair. 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 Water Protection Program and related state agencies provide the commission all necessary support the commission may require to carry out its powers and duties. Staff generally includes the program director, commission secretary, assistant attorney general and other personnel as needed.

5. Meetings

Regular Meetings: The commission shall routinely meet at least four 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.

Special Meetings: 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.

Joint Meetings: 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.

Tours: 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.

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

Open Meetings: Pursuant to the Missouri Sunshine Act, all meetings of the commission, at which a quorum of the commission is present, other than social gatherings, shall be meetings open to the public.

Closed Meetings: 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 appropriate to 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.

Open Sessions: 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.
- 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 one month before a meeting.

Agendas for any meeting will be posted according to the provisions of the Sunshine Law as well as posting on Department and Office of Administration (if available) Web sites. 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 commissions 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, three 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.

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 commission 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 commission's custodian of records and payment of appropriate fees.

- Policies
- Meeting dates, times, places and agendas
- 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

The custodian of commission records shall be the commission secretary. The fee for providing copies shall be ten cents per page, plus the average cost of clerical support and the actual cost of any necessary research. The fee for duplicating electronic records shall be the actual cost of reproduction. Staff shall respond to a request for records within three business days and make open records available as soon as possible.

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 the applicable statute. 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:

- Establishing policy and direction for the program.
- Rule-making in accordance with the laws and policies governing rule making.
- Approval of financing for capitol improvement projects.
- Performing a quasi-judicial function with respect to decisions on appeals.

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 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. The director is also responsible for recommending policies to the commission to achieve effective and coordinated environmental control.

3. Program Director

The program director is directly responsible to the commission and has primary responsibility for commission support and for implementation of commission decisions. The program director's responsibilities for the commission include meeting agendas, supporting materials, notices and logistics, presentations, analyses and rule development. According to Chapter 640, the program director is approved 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 appointed by the department director and are required to provide optimum service, efficiency and economy. Commissions should discuss staff issues with the program director.

5. Department of Natural Resources Legal Counsel

Legal counsel to the Department of Natural Resources shall provide counsel and support to the director, divisions and programs, and commissions as necessary.

6. Attorney General's Office

An assistant attorney general shall be 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.

Appeal Decisions

1. Appeal Hearings

Appeal hearings are conducted by the Administrative Hearing Commission (AHC).

2. Decision after Hearing

Following the AHC 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 oral argument upon the request of any affected parties.

The decision of the commission on the appeal shall be based on the facts and evidence in the hearing record. The commission shall issue a 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.

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 rule-makings that are expected to be significant or controversial, the commissioners will encourage early input and involvement from all interested stakeholders, since waiting for the public hearing may be too late in the process to fully consider competing viewpoints.

Members of the public may address correspondence, written or electronic, to commission members or its program. Commission members receiving written or electronic correspondence pertinent to the commission will provide a copy to the commission chair and the program director for dissemination. The program will provide all commission members copies of correspondence concerning commission issues.

Individual commission members should not respond to correspondence on behalf of the commission.

Any commission member may request a copy of correspondence received by the department.

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 recognize that they are acting as judges in appeals to the commission. In this capacity, members will strive to remain fair, independent, and open-minded. Commissioners will avoid both actual and perceived conflicts of interest in their quasi-judicial role and will avoid ex parte contact with other parties, including department staff, to pending disputes.

If a commissioner publicly takes or expresses a position on a specific issue, party or permit that later comes before the commission on an appeal, the commissioner will recuse himself on the record from any discussion, deliberation, or decision making on the issue.

2. Commission Contact

Each commission shall provide a means for public contact, generally including a phone number, address and email address.

3. Commission Web Page

The department will maintain a board and commission Web page 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.

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.

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 rule-making and other applicable requirements of the Missouri Administrative Procedures Law, RSMo Chapter 536.

Training

Comprehensive knowledge and understanding of the commissioner's responsibilities and roles, as well as of the substantive laws and regulations governing each commissioner's respective program, is key to competent and consistent performance of commissioners.

1. New Commissioner Information

Upon appointment, each new commissioner shall receive orientation from the commission staff and, at a minimum, notebook containing copies of the follows:

- a) The commission's operating policies.
- b) The statutes and regulations governing the respective program and its authority, summarized as appropriate because of volume, including roles and responsibilities of the Staff Director and 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) General overview of the rule-making process.
- g) A summary of the Water Protection Program functions.

2. Training

Within 12 months following appointment, and annually thereafter, all new commission/board members should attend standard training related to their roles. Other commission/board members are encouraged to attend training opportunities. Training sessions may provide in-depth presentations on the subjects listed below:

- a) Rule-making process
- b) Department 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 commission/boards
- i) Organizational structure
- j) Permit process

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

3. Commissioners Conference

All commission/board members will be expected to attend any training conference for commissioners offered by the Department that will provide:

- a) Updated training refresher sessions (one-half day)
- b) Issues seminar in break-out sessions (one-half day). 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

Planning for the training events will be managed by Department staff in consultation with commission/board chairs, representative Division and Program Directors, and external constituencies. 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
- i) Other federal or state agencies
- j) Environmental Improvement and Energy Resources Authority (EIERA)

5. Training Costs

- a) Training and incidental tasks by Department 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 program for its commission members.
- 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.

