

10.3.2 Finalizing the Permit/Final Permit Actions/Permit Denial

Applicability:

If the director determines that the source does not meet or will not meet applicable legal requirements, the director shall deny the permit and issue notices as required (Section 644.051.3, RSMo).

Content:

The basic reasons for and procedures related to permit denials are presented in the Clean Water Law, Chapter 644, RSMo. Section 644.051.3 and .4 state that the permit shall be denied if the source violates or will violate the federal or state clean water statutes, regulations, limitations or standards, including the water quality standards.

The department shall deny applications for construction permits or site-specific operating permits within 180 days of the receipt of the permit application. Denial of a general permit for construction or operation shall occur within 60 days of the date of receipt of the permit application if no public participation is required. (see Section 644.051.13(1))

The department must promptly notify the applicant of the denial. The notification must be in writing and must state the reasons for the denial. The applicant may appeal the denial within 30 days of notification of the department's action (see Section 644.051.6). Appeals are now filed with and heard by the Administrative Hearing Commission not the Clean Water Commission (see Section 640.013, RSMo).

The state regulations present additional provisions applicable to permit denials. The rules list a series of prohibitions blocking the department from issuing a permit under certain circumstances (see 10 CSR 20-6.010(9)). In effect, the prohibitions are reasons for permit denial and indicate that no permit shall be issued:

- When terms and conditions of the permit do not comply with applicable requirements;
- When the EPA Regional Administrator has objected to permit issuance;
- When permit conditions cannot ensure compliance with the water quality requirements of other affected states;
- When the Corps of Engineers indicates that anchorage or navigation would be substantially impaired;
- For the discharge of radiological, chemical or biological warfare agents or high-level radioactive waste;
- For a point source discharge inconsistent with an approved 208 Plan; or
- To a facility that is a new source if the discharge will cause or contribute to a violation of the water quality standards in an effluent limited stream segment or will exceed the pollutant load allocation in a water quality limited segment.

Administrative procedures related to permit denials are presented in 10 CSR 20-6.020(5). This section of the rules requires that the department serve notice of the permit denial upon the applicant by hand delivery or through certified mail return receipt requested. The rule details who may be served to accomplish delivery of the notice of the denial and also indicates that refusal to accept delivery constitutes service.

An appeal of the denial must be filed with the Administrative Hearing Commission within 30 days of the date of service. The appeal may be made by the applicant, permittee, or any other person with an interest that is or may be adversely affected. An appeal of a permit denial is a contested case with the burden of proof being on the applicant and shall be handled in accord with Section 644.066, and Sections 640.012 and .013.

The Clean Water Law requires that the permit denial states the reasons for the action and that the action may be appealed. In view of this, it is very important that the reasons for the denial be carefully considered and documented in the file. In most cases, the Water Protection Program Director or the appropriate Regional Director signs the permit denial notification letter.

The denial notice or letter should contain the following statement, or language to the same effect:

If you are affected by this decision, you may appeal to have the matter heard by the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within thirty (30) days after the date it was delivered. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Administrative Hearing Commission.

Legal References:

Department of Natural Resources, Chapter 640

[640.012](#) Burden of proof in matters heard by department, exceptions.

[640.013](#) Appeals from decisions of certain environmental commissions to be heard by administrative hearing commission.

Missouri Clean Water Law, Chapter 644 RSMo

[644.051.3, .4, .6 and .13\(1\)](#) Prohibited acts--permits required, when, fee--bond required of permit holders, when--permit application procedures--rulemaking--limitation on use of permit fee moneys.

Code of State Regulations:

[10 CSR 20-6.010\(9\)](#) Construction and Operating Permits - Permits Prohibited

[10 CSR 20-6.020\(5\)](#) Public Participation, hearings and Notice to Government Agencies - Appeal Timeframes for Permit Conditions

Other Links:

[4.1.10 Denials](#)

[10.4 Data Entry](#)

Key Words:

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