

4.1.11 Application and Review Process/ Permit Process/Appeals

Applicability:

Decisions of the director, permit denials, conditions of issued permits and permit fee disputes may be appealed by affected parties.

Content:

Any final decision or determination by the department, that is, actions on behalf of the department director, related to permits can be appealed by an applicant for a permit, the permittee or any other person with an interest that is or may be adversely affected.

Chapter 640, RSMo, the Department of Natural Resources enabling statute, indicates that decisions of the director are subject to appeal to the appropriate board or commission, in this case, the Clean Water Commission (Section 640.010.1). The burden of proof of matters heard by the Commission is on the department except for permit denials (Section 640.012). As of 2005, all matters appealed to the Clean Water Commission (CWC) and set for hearing will have hearings conducted by the Administrative Hearing Commission. Final decisions after hearing on appeals heard by the Administrative Hearing Commission will be made by the CWC (Section 640.013).

The Missouri Clean Water Law, Chapter 644, RSMo, addresses appeals related to permits in Sections 644.051.6 and 644.051.13(3). The denial of a construction permit or an operating permit and the conditions of any issued permit are subject to appeal to the CWC within 30 days of notice of the permit denial or issuance (Section 644.051.6). Permit fee disputes may be appealed to the CWC within 30 days of the date that the department fails to issue or deny a permit within mandated time frames (Section 644.051.13(3)).

The Code of State Regulations provides additional information about appeals and specifies requirements and procedures for the department, permit applicants, permittees and other affected persons. Other affected persons are those with an interest in the permitting action that is or may be adversely affected. The rule addressing public participation and hearings presents the information and requirements in Sections 10 CSR 20-6.020(5), (6), (7), (8), (9) and (10). The following paragraphs summarize the major points; the rule itself needs to be reviewed to understand the specifics:

- The standard 30-day time limit for filing an appeal begins with the service of notice. Service of notice is the date on which a permit or a permit denial is hand-delivered to the applicant, permittee or other affected person, or is received through certified mail return receipt requested. Service of notice is also accomplished three business days after a newly issued (or reissued) permit is mailed to an applicant, permittee or other affected party by first class mail.
- Refusal of the applicant, permittee or other affected party to accept hand-delivery, certified mail or first class mail constitutes service of notice.
- Appeals are made through original, written documents filed with the secretary of the CWC before the expiration of the 30-day period. The appellant or the appellant's legal counsel must sign the appeal document and it must clearly state that the communication is an appeal. The appeal document must contain contact information for the appellant, a statement of the reasons why the appeal is being filed and a copy of the permit or permit denial. The appeal document needs to be formatted to allow space for a case number.

The appeal document must have a statement acknowledging that the matter will be set for hearing.

- Appeals may request a stay of the conditions appealed.
- The CWC secretary will serve notice of the appeal on the department director and all parties involved.
- The CWC is to liberally construe the requirements of the rules if the appellant has prepared the appeal without legal counsel.

While the automatic action of the CWC will be to set the appeal for hearing, the appeal may be resolved through negotiations before the matter is heard, or during or following the hearing process before the matter is resolved through an order issued by the CWC. Appellants may represent themselves during the hearing before the Administrative Hearing Commission. Such hearings are conducted in accord with the procedures specified for administrative litigation in Chapter 536, RSMo (see Legal References below).

Legal References:

Department of Natural Resources Chapter 640, RSMo

- [640.010.1](#) Department created--director, appointment, powers, duties--transfer of certain agencies.
- [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

- [644.051.6](#) and [644.051.13\(3\)](#) Prohibited acts--permits required, when, fee--bond required of permit holders, when--permit application procedures--rulemaking--limitation on use of permit fee moneys.

Administrative Procedure and Review Law Chapter 536, RSMo

[536.060 to .095](#)

Code of State Regulations

- [10 CSR 20-6.020\(5\) through \(10\)](#) Public Participation, Hearings and Notice to Government Agencies
 - (5) Appeal Timeframes for AOs, Denials and Variances
 - (6) Appeal Timeframes for Permit Conditions
 - (7) Form of Appeal
 - (8) Requests for Stay
 - (9) Preparation of Appeals without Counsel
 - (10) Commission Secretary to Serve Notice of Appeal

Code of Federal Regulations

- [40 CFR 124.19](#) Appeal of Permits
- [40 CFR 124.16](#) Stays of Contested Permits

Other Links:

Key Words:

Appeal, appeals, permit appeal, permit fee dispute, permit fee appeal

Revised By: Jim Penfold

Modification Date: 2/14/06