

**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 23—Division of Geology and Land Survey
Chapter 1—Definitions and Organizational Structure**

10 CSR 23-1.075 Disciplinary Action and Appeal Procedures

*PURPOSE: This rule outlines the procedures the [division] **department** [and board] will take when a person is affected by disciplinary actions and contested case appeals of such disciplinary actions.*

(1) **Appeals** [Definitions. As used in this rule, the following terms mean:

(A) *Board*—Well Installation Board (WIB);

(B) *Department*—The Department of Natural Resources, which includes the director thereof, or the person or division or program within the department delegated the authority to render the decision, order, determination, finding, or other action that is subject to review by the board;

(C) *Division*—The Department of Natural Resources' Division of Geology and Land Survey, which includes the director thereof, or the person within the division delegated the authority to render the decision, order, determination, finding, or other action that is subject to review by the board;

(D) *Hearing*—Any presentation to, or consideration by, the board or its hearing officer of evidence or argument on a petition seeking the board's review of an action by the department;

(E) *Hearing officer*—an attorney appointed by the board to conduct an administrative hearing on behalf of the board;

([F]) *Person*—An individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government or any other legal entity whatever, which is recognized by law as the subject of rights and duties.]

(A[2]) The **department** *[division]* shall cause **an** investigation $[s]$ to be made as appropriate *[in response to]* **upon receipt of an appropriate** request $[s]$ from the board or upon receipt of other information concerning alleged violations of the Water Well Driller's Act in order to determine whether there has been any violation of the law or of these rules and, in doing so, may request the permittee, well owner, or other individuals to appear before them to determine the merits of the situation in question. If requested individuals do not appear before the **department** *[division]*, a determination may be made based on the available information or the **department** *[division]* may order a permitted well driller to appear before the **department** *[division]* and/or produce relevant documentation. Any person who willfully obstructs, hinders, or prevents agents of the **department** *[division]* in the performance of the duties imposed on them by sections 256.600–256.640, RSMo, is guilty of a class A misdemeanor and may be liable for civil and criminal penalties as set out in section 256.637, RSMo. If the **department** *[division]* determines that the holder of any permit issued according to sections 256.600–256.640, RSMo, has violated any provision of this law or any rule adopted according to this law, the **department** *[division]* shall reprimand, place a permit holder on probation, or suspend or revoke a permit, and may issue a notice of violation describing the remediation required and the time period allowed to remedy the violation and/or pursue any additional remedy authorized by the Water Well Driller's Act.

(B[3]) As a condition of any order, the **department** *[division]* may specify and schedule any remediation required so that **department** *[division]* staff can be present, if deemed necessary, while the remediation is performed. The **department** *[division]* shall issue and serve on the permittee, written notice of any order issued under sections 256.600–256.640, RSMo, as provided in section 256.630, RSMo.

(2[4]) Filing an Appeal or Requesting a Hearing.

(A) Any person adversely affected or aggrieved by a decision of the **department** *[division]* or otherwise entitled to ask *[the board]* for a hearing under the Water Well Driller's Act may appeal by filing a petition with the **Administrative Hearing Commission, pursuant to Section 621.260, RSMo.***[board or the division within thirty (30) days after receiving notice of the decision.]*

(B) *[A petition sent by registered mail or certified mail 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 board or the division].* Such appeal shall stay the enforcement of the order until a final determination is made by the **Administrative Hearing Commission** *[board]*.

(3[5]) Procedures.

(A) The **appeal shall be conducted** *[board may appoint a hearing officer]* **by the Administrative Hearing Commission**, who shall **render** *[provide]* a **final** *[recommended]* decision *[to the board]* based on **the** *[a]* hearing, stipulations or agreements by the parties, disposition in the nature of a default judgment, judgment on the pleadings, or summary determination, in accordance with the Water Well Driller's Act and Chapter 536 and **621, RSMo., and the regulations of the Administrative Hearing Commission promulgated thereunder.** *[The board or the hearing officer shall provide the parties at least thirty (30) days advance notice of any hearing.]*

[1.] (B) At any such hearing, all testimony taken before the **Administrative Hearing Commission** [board or its hearing officer] shall be under oath and recorded stenographically, and the transcript shall be available to any person for the cost of reproduction, pursuant to section 256.630.4, RSMo.

[(B) Upon receipt of the hearing officer's recommendation and the record in the case, the board shall—

1. Distribute the hearing officer's recommendation to the parties or their counsel;
2. Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation;
3. Allow the parties or their counsel an opportunity to present oral arguments before the board makes the final determination;
4. Complete its review of the record and deliberations as soon as practicable;
5. Deliberate and vote upon a final, written determination during an open meeting, except that the board may confer with its counsel in closed session with respect to legal questions;
6. Issue its final, written determination as soon as practicable, including findings of fact and conclusions of law, and so notify the parties. The decision of the board shall be based only on the facts and evidence in the record; and
7. The board may adopt the recommended decision of the hearing officer as its final decision. The board may change a finding of fact or conclusion of law made by the hearing officer, or may vacate or modify the recommended decision, only if the board states in writing the specific reason for a change.]

(4[6]) Such final orders and determinations of the **Administrative Hearing Commission** [board] are subject to judicial review according to section 256.630.4, RSMo.

AUTHORITY: sections 256.606, 256.623, 256.626, and 256.630, RSMo 2000. Emergency rule filed Nov. 16, 1993, effective Dec. 11, 1993, expired April 9, 1994. Original rule filed Aug. 17, 1993, effective March 10, 1994. Amended: Filed Nov. 1, 1995, effective June 30, 1996. Amended: Filed Sept. 14, 2006, effective March 30, 2007. Amended: Filed Jan. 11, 2013, effective Aug. 30, 2013.*

**Original authority: 256.606, RSMo 1991; 256.623, RSMo 1985, amended 1991; 256.626, RSMo 1985, amended 1991; and 256.630, RSMo 1985, amended 1991.*

PUBLIC COST: This proposed amendment will not cost state agencies more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Missouri Geological Survey, Sheri Fry, PO Box 250, Rolla, MO 65402 or via email at sheri.fry@dnr.mo.gov.