



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN

DEPARTMENT OF NATURAL RESOURCES

LANSING



REBECCA A. HUMPHRIES
DIRECTOR

SUBMITTED: April 6, 2009

MEMORANDUM TO THE NATURAL RESOURCES COMMISSION

SUBJECT: Natural Resources Commission Policy
1010 - Appeals to the Natural Resources Commission
FOR INFORMATION ONLY

Authority:

The Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, authorizes the Natural Resources Commission (NRC) to establish general policies related to natural resources management and environmental protection for the guidance of the director. In addition, the commission has appellate authority as provided in section 1101.

Discussion and Background:

Certain decisions made by the Department regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit or operating license issued by the Department under authority Part 13 of the NREPA may be appealed to the NRC under the authority of Part 11 of the NREPA. Other decisions made by the Department regarding special watercraft controls may be appealed to the NRC under authority of Part 801.

The NRC currently does not have a policy or procedure in effect to provide guidance to any entity of the process by which Department decisions regarding the above may be appealed to the NRC. It is anticipated that the proposed *1010 - Appeals to the Natural Resources Commission* will provide the information and guidance to the public on how that process works. The Department of Attorney General has reviewed the draft NRC Policy and concurs with the purpose and language of the Policy.

NATURAL RESOURCES COMMISSION
Keith J. Charters, Chair • Mary Brown • Hurley J. Coleman, Jr. • John Madigan • J. R. Richardson • Frank Wheatlake
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Recommendation:

Natural Resources Commission Policy 1010 – Appeals to the Natural Resources Commission is submitted for information and consideration. This item appeared on the Department's April 2009 calendar and may be eligible for approval on June 4, 2009.



Patricia A. Spitzley, Chief
Office of Legal Services



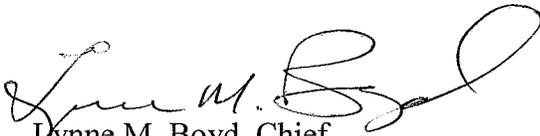
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Law Enforcement Division



Russ Mason, Ph.D., Chief
Wildlife Division



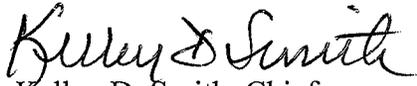
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Land and Facilities Division



Kelley D. Smith, Chief
Fisheries Division



Armind S. Koch
Resource Management Deputy

***** **NATURAL RESOURCES COMMISSION POLICY** *****

Number 1010 – Issued (effective date) Appeals to the Natural Resources Commission

<< **Preparing Division** >>

Executive Division, Office of Legal Services

< **Preamble** >>

Certain decisions made by the Department of Natural Resources (Department) may be appealed to the Natural Resources Commission (NRC) under the authority of Part 11 of the Natural Resources Environmental Protection Act (NREPA), 1994, PA 451, [MCL 324.1101] as follows:

1. The issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit or operating license issued under authority Part 13 of the NREPA;

Other decisions made by the Department may also be appealed to the NRC under authority of Part 801 of the NREPA:

2. Special watercraft controls.

<< **General Policy** >>

The NRC shall implement applicable laws that provide opportunity to appeal certain Department decisions [MCL 324.1101 and MCL 324.80110(6)].

<< **Permits and Licenses** >>

Following is the procedure for appeal to the NRC for a license or permit issued under Part 13, NREPA:

Appellant (Applicant/Permittee/Licensee)

Submits a notice of appeal, in writing, to the NRC regarding a Department decision involving issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit or operating license.

Identifies in the notice of appeal the Department decision being appealed, the grounds for the appeal, the basis of the Appellant's standing to appeal, and the action that the Appellant is asking the NRC to take.

NRC Assistant

Receives the appeal to the NRC, opens a file on the appeal, and provides to Appellant written acknowledgement of receipt of appeal.

After receiving the Department's initial response to the appeal, prepares and provides to the Appellant and the Department's representative a schedule for the appeal. The schedule for the appeal will include:

1. Date by which the Department should file with the NRC the agency record consisting of the information submitted to or considered by the Department in making the decision that is being appealed;
2. Date by which the Appellant should file with the NRC of the Appellant's written argument in support of the appeal (explaining the legal and factual grounds for the appeal and including a concise summary of the Appellant's position);
3. Date by which the Department's representative should file with the NRC the Department's written legal argument in response to the Appellant's argument (explaining the legal and factual basis of the response and including a concise summary of the Department's position);
4. Date, time, and location that the appeal will be scheduled for initial presentation of oral argument by the Appellant and the Department to the NRC at a regularly scheduled meeting; and
5. Notice that any document filed with the NRC by the Appellant or the Department's representative should be accompanied by proof that it was concurrently provided to the opposing party.

Publishes information regarding the hearing of the appeal by the NRC to the agenda of a regularly scheduled NRC meeting and to Department Calendar.

Provides members of the NRC and the NRC's legal counsel copies of the written arguments submitted by the Appellant and the Department before the NRC meeting at which the appeal is scheduled to be presented.

NRC

Reviews written arguments received from the Appellant and the Department. Review is based upon the record and statutory criteria governing the Department's decision, as set forth in the applicable statutes.

Hears oral argument by the Appellant and the Department at a regularly scheduled NRC meeting.

May determine that additional information is needed from either party, and an extension may be granted to either party to submit that information. In that case, the appeal will be scheduled for a future NRC meeting.

May request and consider advice from legal counsel to the NRC on legal and procedural matters pertaining to the appeal.

Decides, by majority vote of the NRC, whether to:

1. Affirm the Department's decision,
2. Reverse the Department's decision, or
3. Remand (send back) the matter to the Department for further action.

Issues final decision in writing.

OR

May refer the appeal to an administrative law judge in the State Office of Administrative Hearings and Rules (SOAHR) to conduct the review of the Department decision as a contested case hearing and to issue a Proposal for Decision [MCL 324.1101(1)].

If neither the Appellant nor the Department timely files an exception (objection) to the Proposal for Decision with the NRC, the Proposal for Decision becomes the final decision of the NRC [MCL 24.281(3)].

If either the Appellant or the Department timely files any exceptions (written arguments explaining their objections) to the Proposal for Decision with the NRC, the NRC considers those exceptions and may, upon request, allow oral argument.

Considers the record and the written and oral arguments submitted by Appellant and Department; decides, by majority vote of the NRC at a regularly scheduled meeting, whether to adopt, reject or modify the findings of fact and conclusions of law proposed by the administrative law judge and the parties, and issues the final agency decision in the appeal. [MCL 24.285].

<< Special Watercraft Controls >>

A determination by the Department that there is not a need for special rules for a water body may be appealed to the NRC by the political subdivision that has waters subject to its jurisdiction. The NRC shall make the final agency decision on the need for special rules for a water body [MCL 324.80110 (6)]. Following is the procedure for appeal to the NRC for a special watercraft control determination made under authority of Part 801, NREPA:

Appellant (Local Political Subdivision)

Submits a notice of appeal, in writing, to the NRC regarding a Department decision that special rules for a waterbody are not needed under MCL 324.80110(5).

Identifies in the notice of appeal the Department decision being appealed, the grounds for the appeal, the basis of the Appellant's standing to appeal, and the action that the Appellant is asking the NRC to take.

NRC Assistant

Receives appeal to NRC and opens a file on the appeal.

Provides to Appellant written acknowledgement of receipt of appeal, and provides information regarding the date, time, and location of the NRC's review of the appeal.

Publishes information regarding the appeal to the agenda of the NRC meeting and to the Department calendar.

NRC

Reviews written arguments received from the Appellant and the Department. Review is based upon the record and statutory criteria governing the Department's decision, as set forth in the applicable statutes.

Hears oral argument by the Appellant and the Department at a regularly scheduled NRC meeting.

May determine that additional information is needed from either party, and an extension may be granted to either party to submit that information. In that case, the appeal will be scheduled for a future NRC meeting.

May request and consider advice from legal counsel to the NRC on legal and procedural matters pertaining to the appeal.

Decides, by majority vote of the NRC, whether to:

1. Affirm the Department's decision,
2. Reverse the Department's decision, or
3. Remand (send back) the matter to the Department for further action.

Issues final decision in writing.