

**A GUIDE TO ADMINISTRATIVE REVIEW
BEFORE THE NATURAL RESOURCES COMMISSION**

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NATURAL RESOURCES COMMISSION

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I. Introduction

This guide is designed to enhance your familiarity with the process of administrative review before the Natural Resources Commission (NRC). The guide is not intended to provide legal advice or to address every situation that may arise. In the event information provided in this guide conflicts with current laws and administrative rules, the laws or administrative rules will control.

Staff of the NRC and its Division of Hearings are not able to provide legal assistance or advice to any person.

II. Administrative Review Process – Overview

In most cases, the NRC serves as the ultimate authority for matters within the jurisdiction of the Department of Natural Resources (DNR). However, in limited instances, the NRC's Administrative Law Judges (ALJ) are designated as the ultimate authority. ([IC 14-10-2-4](#)).

The DNR will always be a party to a proceeding that involves a DNR action (i.e. DNR's approval or disapproval of a permit application or issuance of a notice of violation). The NRC has also been tasked with providing administrative review in proceedings involving disputes between persons with competing interests in a shoreline of an Indiana public freshwater lake ([IC 14-26-2-23\(e\)](#) and [312 IAC 11-3-2](#)), commonly referred to as "riparian rights disputes"; and disputes between a timber grower and a timber buyer and/or agent ([IC 25-36.5](#) and [312 IAC 14](#)), commonly referred to as "timber buyer disputes". The DNR frequently is not a party to riparian rights or timber buyer disputes. Further, the ALJs serve as the ultimate authority for the Board of Licensure for Professional Geologists ([IC 25-17.6](#)) and the Board of Registration for Soil Scientists ([IC 25-31.5](#)).

The ALJs are attorneys licensed in Indiana who will regulate the course of the proceeding. The ALJ will provide an opportunity for parties to explore settlement options and, if necessary, present evidence before issuing findings of fact, conclusions of law, and orders addressing the subject matter of the proceeding. When the ALJ is the ultimate authority, the ALJ issues the NRC's final order, or final agency action. When the NRC is the ultimate authority, the ALJ issues a nonfinal order that the NRC will affirm as a final order unless a party files an objection. If a party files an objection to an ALJ's nonfinal order, the NRC's AOPA Committee will provide additional review. Upon completion of its consideration of filed objections, the AOPA Committee, as the delegate of the NRC, will issue the NRC's final order, or final agency action.

A final order, whether issued by the ALJ, as the ultimate authority, or by the AOPA Committee, acting as the delegated ultimate authority of the NRC, is subject to judicial review in accordance with [IC 4-21.5-5](#).

III. Legal Representation

A party can appear on his or her own behalf or may seek to be represented by an attorney or a designated individual who is not an attorney. [IC 4-21.5-3-15](#) and [312 IAC 3-1-3.5](#)

The laws under the jurisdiction of the NRC can be complex and it may be preferable to have the guidance of an attorney. A party or a party's non-attorney representative must have sufficient knowledge of the law and the procedure to present the case. See [Save Clay-Harris Water v. DNR and City of Mishawaka, 7 CADDNAR 156 \(1997\)](#); *Seleme v. JP Morgan Chase Bank*, 982 N.E.2d 299, 310 (Ind. App. 2012)

An attorney is required to file an Appearance in accordance with [Trial Rule 3.1 of the INDIANA RULES OF TRIAL PROCEDURE](#). A party designating a non-attorney representative shall file a "[Designation of Non-Attorney Representative](#)".

IV. Requesting Administrative Review

In order to obtain administrative review a person must state information demonstrating the person is:

1. the person to whom an order is specifically directed;
2. aggrieved or adversely affected by an order; or
3. entitled to administrative review by any law.

[IC 4-21.5-3-7](#). As applicable to items (1) and (2), an "order" is defined as "an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons...the term includes a license." [IC 4-21.5-1-9](#). A "license" may be "a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law". [IC 4-21.5-1-8](#).

With respect to item (3), an example of a law that entitles a person to seek administrative review would be [IC 14-26-2-23\(e\)\(3\)](#) and [312 IAC 11-3-2](#), which specifies that persons with disputes associated with competing interests in the shoreline of a public freshwater lake may seek resolution through the NRC.

V. Filing a Petition

(A) Where to File

A written Petition may be filed by personal delivery, by U.S. Mail, or by third party carrier at the following address:

**Natural Resources Commission
Division of Hearings
Indiana Government Center North
100 N. Senate Avenue, Room N103
Indianapolis, IN 46204**

There is no filing fee required in order to initiate a proceeding with the NRC.

(B) When to File

- (1) With respect to orders issued by an agency, a Petition must be filed within the time stated in the order, which is customarily either 15 or 30 days from the date the order is issued.
- (2) A Petition alleging a riparian rights dispute initiated under [IC 14-26-2-23](#) and [312 IAC 11-3-2](#) may be filed at any time a dispute exists.
- (3) A ten (10) year statute of limitation applies to the filing of a Petition involving a timber buyers dispute initiated under [IC 25-36.5-1-3.2](#). See [DNR v. Shields, 14 CADDNAR 19 \(2015\)](#).

(C) Contents of the Petition

- (1) Information that must be provided:
 - a) Your full name and address.
 - b) The full name and address of the other person(s) who is the subject of the Petition.
 - c) Sufficient detail of the dispute to notify the NRC and other persons of:
 - i. the act(s) that form the basis of the Petition; and
 - ii. how you are entitled to initiate administrative review ([see Section IV](#)).
- (2) Information that may also be provided include copies of:
 - a) documents;
 - b) photos; or
 - c) other material that identify, clarify, or provide specificity about the subject matter of the dispute.

VI. After a Petition is filed

(A) Conducting the Prehearing Conference

After a Petition is filed, the appointed ALJ will issue a written "Notice of Prehearing Conference" to the parties describing the allegations and advising of the date and time for the Prehearing Conference.

At the Prehearing Conference, the ALJ may:

1. discuss procedural matters;
2. consider applicable substantive law;
3. seek to obtain clarity about the dispute;
4. make an effort to identify other necessary parties; and
5. consider the parties' interest in reaching a settlement to resolve the dispute.

If the parties believe settlement is possible, the ALJ may place the proceeding on hold while the parties explore settlement, either on their own or through mediation.

[\(See Subsection G\)](#)

If the parties do not believe settlement is possible, the ALJ will discuss the establishment of a case management plan to allow the parties to conduct discovery [\(See Subsection E\)](#) or otherwise prepare for the presentation of evidence at an Administrative Hearing [\(See Section VII\)](#) or through the filing of dispositive motions [\(See Subsection F\)](#).

The ALJ will not receive testimony or other evidence at the Prehearing Conference unless expressly stated in the Notice of Prehearing Conference.

Typically, the Prehearing Conference is conducted in the NRC's Division of Hearings office in Indianapolis or by teleconference.

(B) Filing Documents with the NRC

A party may file motions or other pleadings or documents with the NRC. [312 IAC 3-1-7](#). Filing may occur by personal delivery, first class mail, certified mail, express mail, or priority mail directed to the address provided in [Section V\(A\)](#). A party may also file documents by email using NRCAOPA@nrc.in.gov.

Please note that an administrative review proceeding **may not** be initiated by email.

A pleading or document delivered by mail or private carrier is deemed filed when delivery is made to the U.S. Post Office or the private carrier, provided the document was properly addressed, correct postage or fees were included, and the date of delivery to the U.S. Post Office or the private carrier is reflected on the envelope that contains the pleading or document. Filing accomplished by personal delivery or email is complete on the date of receipt; except a document delivered or transmitted after 4:30 p.m. ET, or on a weekend, a legal state holiday identified at [IC 1-1-9-1](#), or other date the Division of Hearings is closed, will be deemed filed on the next business day.

Any document filed with the NRC **must:**

- (1) include the administrative cause number,

- (2) be served upon all other parties, [IC 4-21.5-3-17](#), and
- (3) provide written verification in the document of the date and the means by which the document was served upon other parties.

The NRC will not file or act upon a motion or other pleading unless it is evident that the document has been served upon the other parties.

(C) Continuances and Extensions of Time

If an event is scheduled for a date on which a party is unable to attend or participate, the party may file a motion to have the event continued or rescheduled. Similarly, if a party is unable to meet a deadline set by the ALJ a party may seek an extension of the deadline.

A motion seeking a continuance or extension of time should be filed as early as possible and indicate whether the other party objects to the motion. The motion must be filed before the date of the event or deadline.

Upon receipt of a proper motion, the ALJ may grant a reasonable continuance of an event or extension of a deadline.

(D) Default and Dismissal

A party who fails to attend or participate in a Prehearing Conference, a Status Conference, an Administrative Hearing, or other event in an administrative review proceeding may be held in default or have a proceeding dismissed. [IC 4-21.5-3-24](#) and [312 IAC 3-1-9](#).

(E) Conducting Discovery

Discovery is a term in the law that identifies generally a number of methods by which each party may obtain information about the case from the other party or from third persons.

A [*deposition upon oral examination*](#) is when a witness is required to testify upon questioning by a party and the witness's answers are recorded by a court reporter. Sometimes a witness's deposition can be used instead of having the witness present to testify at an Administrative Hearing.

[*Interrogatories*](#) are written questions from one party to another party involved in the case that must be responded to in writing.

[*Requests for production of documents or items*](#) is a request for a party or a witness to provide copies of documents or other tangible items, i.e. photographs, relevant to the issues in the proceeding.

[Requests for admission](#) require a person involved in the case to admit or deny that certain facts are true. Responses must be provided in writing. Failure to respond may result in the ALJ's declaration that the matter is deemed admitted.

(F) Dispositive Motions

Dispositive motions filed with the NRC customarily take the form of a Motion to Dismiss or a Motion for Summary Judgment. A party filing a dispositive motion is seeking to have a decision rendered in the proceeding without conducting a full Administrative Hearing.

[Motions to Dismiss](#) are most commonly filed with respect to claims that the NRC lacks jurisdiction over the subject matter of the administrative review proceeding or that the person initiating the proceeding has failed to sufficiently plead his or her case.

[Motions for Summary Judgment](#) may be filed when the facts associated with a proceeding are not significantly disputed by the parties but each party has a different interpretation of the applicable law. In this instance, a party may file a motion, along with a brief and designation of evidence in support of their respective position. See [IC 4-21.5-3-23](#).

(G) Settlement Conferences and Mediation

Frequently, the parties to a proceeding are able to achieve a resolution that is more tailored to their needs than would be an ALJ's determination of the dispute. At the initial Prehearing Conference, the ALJ and the parties to the proceeding will consider both informal settlement opportunities and the potential for formal mediation.

(1) Informal Settlement Conference: The ALJ may continue a proceeding for an agreed upon period of time to allow the parties to privately discuss settlement alternatives.

(2) Formal Mediation: The Commission has, under [IC 4-21.5-3.5](#), approved the use of mediation as an alternative means of resolving disputes.

- a) The parties may hire a private mediator at their expense or the ALJ may appoint a mediator from the [Indiana Shared Neutrals Program](#).
- b) Mediation provides the parties to a proceeding the opportunity to discuss the dispute with an uninvolved, objective, third party who will attempt to facilitate the parties' resolution of the dispute without the need to conduct an

Administrative Hearing. The mediator may not impose terms of a settlement upon any party.

- c) The mediator will control the process of the mediation session, which may involve a group session with all parties engaged in discussion together or may entail discussion between the mediator and each party privately.
- d) Regardless of the process used during formal mediation, each party's perspectives will be considered. Statements made during mediation may-not be used as evidence at a formal Administrative Hearing.
- e) More detailed information about formal mediation is available in the Commission's nonrule policy entitled "[Mediation in Administrative Proceedings before the Natural Resources Commission and the Department of Natural Resources](#)", Information Bulletin #13 (Third Amendment, February 1, 2017).

VII. Administrative Hearing

In the event the dispute cannot be resolved through settlement or mediation, an Administrative Hearing provides each party an opportunity to present evidence to an ALJ in support of the party's respective position on the issues under administrative review. A party may present evidence through testimony and exhibits (i.e. photographs or documents).

All witnesses will testify under oath or affirm the truthfulness of the testimony they will provide. Witnesses will testify upon questioning by a party or a party's representative. A party who is self-represented will have the opportunity to provide their own testimony in narrative form. A party may object to an opposing party's presentation of evidence for a legal reason. The ALJ will control the conduct of the Administrative Hearing and will make rulings on a party's objection. The Administrative Hearing will be recorded by a court reporter in a manner that will allow a party to have a transcript prepared.

It is important to remember the NRC renders decisions based upon applicable law and administrative rule. Neither the ALJ, nor the NRC may grant a waiver of or variance to any law or administrative rule. The ALJ's and the NRC's responsibility is to provide a proper interpretation of the laws and administrative rules as applicable to the specific facts presented.

While administrative review proceedings are intended to be conducted in an informal manner there are rules that must be observed in the conduct of an Administrative Hearing. Before the NRC, the [INDIANA RULES OF TRIAL PROCEDURE](#) and the [INDIANA RULES OF EVIDENCE](#) may be applicable unless inconsistent with applicable laws and administrative rules found at [IC 4-21.5-3](#), and [312 IAC 3](#), respectively.

A decision issued will be based solely upon the evidence presented at the Administrative Hearing. If the ALJ is the ultimate authority, the ALJ's decision is a final order to which a party may take judicial review as described in [Section IX](#). If the NRC is the ultimate authority, the ALJ's decision is a nonfinal order to which a party may file objections for additional review by the NRC's AOPA Committee as explained in [Section VIII](#).

Please note: Because the NRC has no day-to-day involvement in the activities of the DNR, the NRC does not have access to the records of the DNR or have knowledge of the actions of the DNR. If that information is relevant to your case, you must provide the information to the ALJ through the presentation of evidence.

VIII. Objections before the AOPA Committee

When the NRC is the ultimate authority in a fully contested proceeding for which the ALJ is required to issue a nonfinal order. The nonfinal order will include the ALJ's findings of fact and conclusions of law with a proposed determination. When the ALJ issues the nonfinal order, the parties will also be notified of their opportunity to file objections to the nonfinal order and the deadline by which the parties must file such objections, if any.

- (A) If no party objects to the ALJ's nonfinal order, the NRC will affirm the nonfinal order causing it to be issued as a final order, which is the NRC's final agency action on the matter.
- (B) If a party files objections to the ALJ's nonfinal order, the objections will be considered by the NRC's AOPA Committee established at [312 IAC 3-1-12](#). Further information about practice before the AOPA Committee is available in "[AOPA Committee](#)", [Information Bulletin #42 \(First Amendment\), December 13, 2006](#).

IX. Judicial Review

A person who wishes to seek judicial review must file a Petition in an appropriate court within 30 days of the NRC's issuance of its final order. Judicial review is controlled by [IC 4-21.5-5](#). Service of a Petition for judicial review is also governed by [312 IAC 3-1-18](#).

X. Access to state laws, administrative rules and other important information

- (A) Procedural Matters: The laws governing the NRC's procedures for administrative review can be found in the "Administrative Orders and Procedures Act", or "AOPA", at [IC 4-21.5-3](#). In addition, the NRC has adopted administrative rules, at [312 IAC 3-1](#), to implement AOPA in proceedings before the NRC. Unless inconsistent with AOPA, the ALJ may apply the [Indiana Rules of Trial Procedure](#) or the [Indiana Rules of Evidence](#). [312 IAC 3-1-10](#).

(B) Substantive Matters: Laws and administrative rules particularly applicable to subject matters within the jurisdiction of the DNR actions are [IC 14-1 et seq.](#) and [Title 312 of the Indiana Administrative Code](#). Laws and administrative rules of particular applicability to other subject matter within the jurisdiction of the NRC are as follows:

- Timber buyer disputes - [IC 25-36.5 et seq.](#) and [312 IAC 14 et seq.](#)
- Soil scientist registration - [IC 25-31.5 et seq.](#) and [307 IAC 1 et seq.](#)
- Geologist licensure - [IC 25-17.6 et seq.](#) and [305 IAC 1 et seq.](#)

(C) Prior Decisions:

- **NRC Decisions**: A compilation of decisions entered by the NRC or an ALJ following contested administrative review proceedings are available in a searchable database called [CADDNAR](#). CADDNAR is frequently updated to include new decisions and also tracks decisions through Judicial Review and Appeal, if applicable.
- **Court Decisions**: In many instances, decisions entered by Indiana's Supreme Court or Court of Appeals as well as decisions entered by Indiana federal courts or the U.S. Supreme Court may have applicability to a proceeding.

(D) NRC Guidance Documents: The NRC has also adopted [Nonrule Policy Documents](#) pertaining to some subject matters. These documents may offer greater understanding associated with the interpretation and application of a statute or administrative rule.

(E) Laws and Administrative Rules: The Indiana Code and the Indiana Administrative Code are available on the Indiana General Assembly website at:

Indiana Code - <http://iga.in.gov/legislative/laws/2019/ic/titles/001>

Indiana Administrative Code - <http://www.in.gov/legislative/iac/>.

Please remember, nearly all libraries in Indiana have Internet access, and if you need assistance, you can ask a librarian.