

Comparison of Various Appeal Processes

	Administrative Hearing	Circuit Court Appeal	Current EAB Process
Location	Administrative Hearings Office, Lansing – Constitution Hall.	Appellant’s Home County OR Ingham County Circuit Court <i>M.C.L. 600.631.</i>	Washington, D.C. <i>But personal appearance not necessary.</i>
Decision-Maker	DEQ Administrative Law Judge (final opinion subject to approval of DEQ Director).	Circuit Court Judge.	EAB Administrative Law Judges.
Deadline for Appeal	60 Days After Final Permit Decision (Issuance/Denial)\ <i>NREPA 324.5506(14) & APA 24.304(1).</i>	90 Days After Final Permit Decision (Issuance/Denial) <i>NREPA 324.5505(8).</i>	33 days After Final Permit Decision (40 C.F.R. 124).
Method of Requesting Appeal	Petition filed with DEQ.	An application describing the grounds for appeal must be filed with the court and served upon the DEQ.	Petition filed with EAB.
May Request for Hearing Be Denied?	Yes. If allowed for by rules.	No. Per the RJA, a person has a right to appeal an agency decision.	Yes – at the discretion of the EAB.
Stayed Construction During Appeal?	No. Construction allowed at applicant’s risk.	No. Construction allowed at applicant’s risk, unless the court issues an injunction.	Yes. While EAB considers the appeal, construction will be delayed from 1 mo. to 1+ yrs..
Typical Length of Process	6 Months (if expedited).	Less than 6 Months.	6 mo. to 1½ yr. if appeal considered. 2 mo. if appeal rejected for consideration.
Procedure	All information must be reentered into the hearing record. This includes all information the agency used to reach its decision. New exhibits may be offered to show error in or support the agencies decision.	All official documents (i.e. final permit, response-to-comments document, fact sheets, etc.) must be submitted with application for appeal. Additional exhibits may be presented to show error in the agency’s decision.	EAB reviews the permit record and any additional information submitted by the appellant. EAB may request additional information from the reviewing authority.
Legal Assistance Necessary?	Not required, but the administrative hearing is very similar to a trial. Legal assistance is recommended.	Process requires a hearing in circuit court. Legal assistance is strongly recommended.	Not required.

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Standard of Review	<i>From Scratch.</i> Based upon the evidence presented at the hearing, the administrative law judge may grant the appeal on any rational basis. This makes the contested case hearing function similar to a trial.	<i>Clear error.</i> The appeal will be granted if the judge finds the agency has 1) exceeded its constitutional or statutory authority, 2) used unlawful procedure prejudicing a party, 3) acted arbitrarily and capriciously, 4) acted contrary to the law, or 5) has not made a decision based upon competent and material evidence.	<i>From Scratch.</i> Generally, the EAB is the ultimate EPA authority for interpreting federal rules and guidance. Prior EAB decisions are published and used as precedent.

Prepared for: May 24, 2004 – Air Quality NSR SIP Stakeholders' Meeting
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