

STATE OF VERMONT

AGENCY OF NATURAL RESOURCES DEPARTMENT OF ENVIRONMENTAL CONSERVATION COMPLIANCE & ENFORCEMENT DIVISION

CHAPTER 25 - ENVIRONMENTAL CITATIONS

§ 25-101. Authority

This rule is adopted by the Secretary of the Agency of Natural Resources and the Natural Resources Board pursuant to the authority granted in 10 V.S.A. § 8019 that authorizes the Secretary and the Board to adopt rules for the issuance of civil complaints.

§ 25-102. Definitions

As used in this rule:

- (1) "ANR" means the Agency of Natural Resources
- (2) "Board" means the Natural Resources Board.
- (3) "Citation" means a civil complaint pursuant to 10 V.S.A. § 8019
- (4) "Continuing violation" means a violation that lasts for more than one calendar day.
- (5) "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity.
- (6) "Repeat violation" means the same violation has occurred during the within thirty-six (36) months of a prior violation. To be considered a repeat violation, the previous violation must have been addressed either in a citation or in an administrative or civil action under 10 V.S.A. Chapters 201 or 211. Repeat violations are not continuing violations.
- (7) "Respondent" means a person who has been issued a citation.
- (8) "Secretary" means the Secretary of the Agency of Natural Resources or a duly authorized representative.

- (9) "Violation" means any noncompliance with any statute, rule, regulation, or permit listed in Table 1 of this rule.
- (10) "Waiver" or "Waiver penalty" means the penalty to be paid by the respondent if the citation is not contested or a default judgment is entered.

§ 25-103. Purpose

It is the purpose of these rules to establish the use of citations as a tool to address environmental violations under the jurisdiction of the Secretary and the Board. Further, this rule sets out the minimum, maximum and waiver penalty amounts for each violation for which a citation may be issued.

§ 25-104. Applicability

These rules apply to any citation issued pursuant to 10 V.S.A. § 8019 for any violation listed in Table 1 of this rule.

Table 1 applies only to a citation issued pursuant to 10 V.S.A. § 8019 and is not applicable to calculations for any other penalty.

§ 25-105. Eligible violations and penalties

- (a) A schedule of violations for which a citation may be issued and associated penalties is attached as Table 1. Each listed violation shall be enforceable as prescribed in 10 V.S.A. § 8019.
- (b) The maximum penalty for a single violation is established in Table 1 of this rule. In no case may a penalty for a single violation exceed \$3000 per respondent, excluding court fees.
- (c) The minimum penalty for a single violation is established in Table 1 of this rule. In no case may a penalty for a single violation be less than the minimum amount established by this rule, excluding court fees.
- (d) The waiver penalty for a single violation is established in Table 1 of this rule. The table includes enhanced waiver penalties which may be assessed when a violation is repeated.
- (e) More than one respondent may be issued a citation for the same violation if multiple respondents are responsible and/or liable for the violation.

§ 25-106. Form of citations

Citations issued under this rule shall be in the form approved by the court administrator.

§ 25-107. Effect of citation

- (a) A citation issued under this section shall preclude the Secretary from seeking an additional monetary penalty for the violation specified in the citation when any one of the following occurs:
 - (1) The waiver penalty is paid.
 - (2) Judgment is entered after trial or appeal.
 - (3) A default judgment is entered.
- (b) Notwithstanding this preclusion, the Secretary:
 - (1) may issue additional citations or initiate an enforcement action under chapter 201, including a monetary penalty, when a violation is continuing or is repeated; and
 - (2) may also bring an enforcement action to obtain injunctive relief or remediation and if such an action is brought the Secretary may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation.

§ 25-108. Administration of the citation program

- (a) The Secretary shall be responsible for the implementation and operation of the program established by this rule. The implementation and operation of this rule may be delegated by the Secretary. The Secretary may enter into a memorandum of understanding with the Board to coordinate the operation and implementation of this rule.
- (b) The Secretary shall maintain a list of names of ANR and Board staff authorized to issue citations and the violations for which they are authorized to issue citations.
- (c) The Secretary shall adopt guidelines for the implementation of this rule by ANR staff. At a minimum, these guidelines shall include:
 - (1) The training required before individual staff are authorized to issue citations.
 - (2) The mechanics of drafting and issuing a citation.

- (3) The internal review process that shall take place prior to the issuance of any citation. This internal review process shall include the approval of a supervisor prior to any citation being issued.
- (4) The internal review process that shall take place prior to any citation being amended or dismissed.

§ 25-109. Appeal

An appeal of a decision from a contested citation shall be to the Superior Court Environmental Division. The appeal shall be conducted as an on the record review.

§ 25-110. Severability

The provisions of any section of these rules are severable. If any provision of these rules is found invalid by a court, or if any application of these rules to any person or circumstance is found invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.