

Subchapter 4 - Appeals; Declaratory Rulings; Revocations; Enforcement

§ 1-401 Administrative Reconsideration of Permitting Decisions

- (a) An applicant, or following issuance of a permit, a permittee or any person whose interests are directly affected by the permitted project, may request, in writing, that a decision made in a Regional Office be reviewed by the Regional Office Programs Manager. The decision shall be issued in writing within 30 days.
- (b) Any person who has requested a reconsideration under subsection (a) of this section may, within 30 days of the date of the decision, request that the decision of the Regional Office Programs Manager be reviewed by the Director using the following procedures:
 - (1) The person shall submit a written request for reconsideration to the Director. This request must specify which aspects of the decision are at issue, the reasons why the person believes the decision to be in error, and the decision requested of the Director.
 - (2) As soon as possible but no later than 15 days after receipt of the request, the Director shall convene a meeting with affected persons, their representatives and Division personnel. The Director may call on other individuals within or outside the Department who have expertise appropriate to the case to assist in her/his review.
 - (3) The Director shall issue a written decision within 15 days of the meeting. This time period may be extended if the affected persons agree.
- (c) Any person who requested a reconsideration under subsection (b) above may, within 30 days of the date of the decision, submit a request for reconsideration of the Director's decision to the Commissioner using the following procedure:
 - (1) The person shall submit a written request for reconsideration to the Commissioner. This request must specify which aspects of the decision are at issue, the reasons why the person believes the decision to be in error, and the decision requested of the Commissioner.
 - (2) The Commissioner may hold additional meetings at her/his discretion or act on the basis of the record.
 - (3) The Commissioner shall issue a written decision within 30 days from the date of the request or the last meeting held on the matter, whichever is later. This written decision shall constitute the final decision by the Secretary.

§ 1-402 Appeal of Final Agency Action

- (a) A person aggrieved by a final act or decision, other than an enforcement decision, of the Secretary under these Rules may appeal to the Environmental Court in accordance with 10 V.S.A. Chapter 220.

§ 1-403 Declaratory Rulings

- (a) **General:** On petition of the Division or of a person who may be affected by the enabling statutes for this Rule or by this Rule itself, the Secretary shall render a declaratory ruling as to the applicability of any enabling statutory provision or this Rule as provided for in 3 V.S.A. §808.
- (b) **Content of Petition for Declaratory Ruling:** The petition shall contain:
 - (1) the name, address, and telephone number of the petitioner;
 - (2) the signature of the petitioner;
 - (3) identification of the specific statutory provision or section of this Rule in question;
 - (4) a statement of the controversy or uncertainty involved;
 - (5) a statement of the petitioner's interest in the subject matter, including the reasons for the submission of the petition;
 - (6) a statement of the petitioner's contentions; and
 - (7) a memorandum of legal authorities in support of such position or contention.
- (c) **Hearing:** Although in the usual course of disposition of a petition for a declaratory ruling a hearing will not be required, the Secretary may require a hearing in response to a request or by his/her own motion.
- (d) **Hearing Procedure:** Hearings on petitions for declaratory rulings shall be conducted in accordance with the provisions of 3 V.S.A. §809-814, and this section, except that the burden of proceeding and proof that the facts in the petition are correct shall be upon the petitioner.
- (e) **Secretary's Action:** The Secretary shall issue a decision within 30 days of the receipt of a petition for declaratory ruling unless a hearing is held, in which case the Secretary shall issue a decision within 30 days following the close of the hearing. This decision shall constitute the final decision of the Secretary.
- (f) **Record of Declaratory Rulings:** All declaratory rulings shall be in writing. The Department shall maintain a file of all declaratory rulings and make copies of the rulings available to the public upon request.

§ 1-404 Revocation of Permits

- (a) **General:** The Secretary may revoke a permit either in response to a petition or on his or her own motion. The Division may file a petition and may participate in revocation proceedings.

- (b) **Bases for revocation:** The bases for revocation are:
 - (1) violation of a permit condition;
 - (2) false or misleading information submitted in support of the permit;
 - (3) untrue or incorrect design or installation certifications and/or design or installation related information that do not reflect the exercise of reasonable professional judgment;
 - (4) violation or failure to comply with the provisions of these Rules or authorizing statutes;
 - (5) a petition to revoke submitted by a municipality based on the expiration of the municipality's approval to connect to its wastewater treatment plant or public water supply; or
 - (6) a petition to revoke submitted by the permittee.

- (c) **Petition for Revocation:** All petitions for revocation shall be addressed to the Secretary, shall be copied to the permittee and the landowner(s), and shall include:
 - (1) the name, address, and telephone number of the petitioner;
 - (2) the signature of the petitioner;
 - (3) identification of the specific statutory provision, rule, permit condition, or expired municipal approval in question;
 - (4) a statement of the petitioner's interest in the matter and the petitioner's contentions, including the alleged basis for the revocation of the permit; and
 - (5) a statement that a copy of the petition for revocation has been sent by the petitioner to the permittee and landowner(s).

- (d) **Party Status:** The Secretary shall determine the right of the petitioner or other persons requesting party status to participate in the proceedings. In determining party status, the Secretary shall consider whether a person or his/her property is directly affected by the permitted project. The Division and the municipality in which the project at issue is located are automatically parties in a revocation proceeding.

§ 1-404(e) Revocation of Permits

- (e) **Notice of Revocation Hearing:** Notice of a Petition for Revocation of a permit shall be sent to the permittee, the municipality in which the project is located, and all other potentially affected parties. The notice shall be issued at least two weeks prior to hearing and shall include the following information:
- (1) the legal authority for revocation;
 - (2) a brief statement of facts upon which the proposed action is based;
 - (3) a statement that the Secretary will hold a hearing for the purpose of determining whether the permit shall be revoked; and
 - (4) the date, time, and place where the hearing will be held.
- (f) **Hearing:** The hearing in a contested case shall be conducted by the Secretary. Any party to the revocation proceedings shall either appear in person or shall be represented by an attorney. The burden of proceeding and of proving that the permit should be revoked shall be upon the party petitioning for revocation. The admissibility of evidence in all revocation proceedings shall be determined under criteria set forth in 3 V.S.A. §810. Upon the request of a party, a hearing shall be transcribed by a qualified stenographer or recorded on an electronic sound device at the election of the party. If transcription by a stenographer is requested, the request shall be in writing and filed at least 10 days before the hearing. Costs shall be borne by the requesting party. The requesting party shall provide one copy of the transcript to the Secretary without cost; other parties wishing a copy shall reimburse the requesting party on a prorated basis.
- (g) **Examination of Evidence, Decision and Order:** The examination of evidence, decision and order shall be governed by the provisions of 3 V.S.A. §§811 and 812. The final decision shall be made within 30 days after the close of the hearing. This decision shall constitute the final decision of the Secretary. Copies shall be sent to the permittee, other parties, the legislative body of the municipality, and all affected municipal and regional planning commissions.
- (h) **Voluntary Revocation:** Notwithstanding the other provisions of this section, the permittee may voluntarily waive the right to have a hearing, in which case the permit may be administratively revoked by the Secretary.
- (i) **Recording:** If the final decision of the Secretary is to revoke the permit, that revocation decision shall be recorded and indexed, by the party who petitioned for revocation, in the land records for the municipality in which the project is located upon close of the appeal period, or upon final resolution of any appeal, whichever is later.

§1-405 Enforcement

- (a) The Secretary may initiate an enforcement action against a person, in accordance with the provisions of 10 V.S.A. Chapter 201 and/or 10 V.S.A. Chapter 211, if the Secretary determines that such person:
- (1) has taken, or caused to be taken, an action that requires a permit or permit amendment under these Rules without first obtaining the required permit or permit amendment;
 - (2) has taken, or caused to be taken, an action that is in non-compliance with a permit or permit amendment issued under these Rules;
 - (3) is, or has been, in non-compliance with any order or assurance of discontinuance which addresses compliance with these Rules;
 - (4) has certified a design, installation or related design or installation information and, as a result of the person's failure to exercise reasonable professional judgment, submits design or installation information that is untrue or incorrect, or submits a design or installs a wastewater system or potable water supply that does not comply with these Rules; or
 - (5) has otherwise not complied with the provisions of these Rules.