

Administrative Procedures – Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” (CVR 04-000-001) adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Environmental Citations

 _____, on 01/02/20
(signature) (date)

Printed Name and Title:
Julie S. Moore, Secretary
Agency of Natural Resources

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Filing Confirmed

1. TITLE OF RULE FILING:

Environmental Citations

2. ADOPTING AGENCY:

Agency of Natural Resources

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: John Beling

Agency: Agency of Natural Resources

Mailing Address: One National Life Drive - Davis 3,
Montpelier, VT 05620

Telephone: 802 522 - 8024 Fax: -

E-Mail: john.beling@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

4. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Katelyn Ellermann

Agency: Agency of Natural Resources

Mailing Address: One National Life Drive - Davis 3,
Montpelier, VT 05620

Telephone: 802 522 - 7125 Fax: -

E-Mail: katelyn.ellermann@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. § 8019

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Section 8019 of Title 10 of the Vermont Statutes Annotated vests the Agency of Natural Resources with authority to adopt rules for the issuance of civil citations for violations of Agency statutes and rules, including the establishment of full, minimum, and waiver penalty amounts for each violation.

8. CONCISE SUMMARY (150 WORDS OR LESS):

This rule amendment simplifies the penalty amounts for which a person may be issued a civil citation in association with their violation of Agency of Natural Resources laws and permits, establishing a consistent amount to be applied across Agency programs. The rule amendment also creates a distinction between the penalty amount that applies to non-responsive recipients of civil violations and those that apply to responsive recipients. In addition, the rule provides that where a recipient of a citation fails to conduct recordkeeping or reporting, there shall be a rebuttable presumption that such recipient failed to conduct the activity which was to be recorded and/or reported. The rule amendment also includes miscellaneous housekeeping edits, such as the removal of references to the Natural Resources Board ("Board"), which has adopted its own, independent citations rule.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

This rule amendment is necessary to simplify the Agency of Natural Resources' approach to civil citations in order to make the rule more understandable and the compliance tool of civil citations a more viable alternative to full civil enforcement proceedings.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The penalty amounts established in this rule amendment are similar to penalty amounts that are currently in rule. The difference is that the proposed penalty amounts are consistent across programs rather than appearing as specialized amounts specific to individual programs. The distinction the rule amendment creates between the penalty amount that applies to non-responsive recipients of civil violations from that which applies to responsive recipients is consistent

with how penalties typically are calculated in other legal contexts in which citations are compliance tools.

11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Individuals or entities who violate Agency of Natural Resource laws and permits and the State of Vermont.

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

Because the penalty amounts are not substantially changing, minimal to no economic impact is anticipated as a result of this rule amendment. To the extent programs within the Agency of Natural Resources are able to employ the compliance tool of civil citations more frequently as a result of this rule amendment, there may be a minor increase to the amount of penalties assessed, monies that are deposited into the General Fund. Given the penalty amounts are not being substantially changed, this amendment would not be the cause of any substantial change in monies collected.

13. A HEARING IS SCHEDULED .

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 2/7/2020
Time: 09:00 AM
Street Address: 1 National Life Drive, Davis Bldg 2nd Flr,
Catamount Room, Montpelier, VT
Zip Code: 05620-3905

Date:
Time: AM
Street Address:
Zip Code:

Date:
Time: AM
Street Address:

Proposed Rule Coversheet

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 2/21/2020

16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

citation

penalty

waiver

maximum penalty

violation

environmental

natural resources

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Environmental Citations

2. ADOPTING AGENCY:

Agency of Natural Resources

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Secretary of State Rule Log #11-044, Environmental Citations, November 20, 2012

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Environmental Citations

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Agency of Natural Resources

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Minimal to no economic impact is anticipated to individuals or entities who violate Agency of Natural Resource laws and permits because the penalty amounts are not substantially changing.

To the extent programs within the Agency of Natural Resources are able to employ the compliance tool of civil citations more frequently as a result of this

Economic Impact Analysis

rule amendment, there may be a minor increase to the overall amount of penalties assessed, monies that are deposited into the General Fund.

Because the Agency's overall goal is a reduction in environmental violations (and a concomitant reduction in necessary enforcement), the Agency is not inclined to predict the amount of potential increase in penalties that will be assessed and collected based on potential increased use of this tool. However, the Agency is able to provide the following numbers to provide context on the number of citations issued and total penalty amounts:

Year	# of Citations	Assessed	Received
2013	20	\$8,300.00	\$6,800.00
2014	36	\$21,150.00	\$19,378.00
2015	31	\$15,800.00	\$14,300.00
2016	14	\$11,100.00	\$6,600.00
2017	24	\$14,300.00	\$12,260.00
2018	27	\$21,900.00	\$15,900.00
2019	35	\$22,050.00	\$10,050.00
Total	187	\$114,600.00	\$85,288.00

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No general economic impact is anticipated for schools. To the extent a school violates an Agency of Natural Resource law or permit, minimal to no economic impact is anticipated because the penalty amounts are not substantially changing.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

An alternatives analysis is unnecessary as no general economic impact is anticipated for schools.

6. IMPACT ON SMALL BUSINESSES:

Economic Impact Analysis

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

No general economic impact is anticipated for small businesses. To the extent a small business violates an Agency of Natural Resource law or permit, minimal to no economic impact is anticipated because the penalty amounts are not substantially changing.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

A small business that complies with Agency of Natural Resources laws and permits will not be impacted by this rule amendment.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

This rule amendment does not substantially change the penalty amounts for violations of Agency of Natural Resource laws and permits. In the alternative, were the Agency to reduce the penalty amounts, the reduction may result in lower compliance and prevent citations from being effective compliance tools. The Agency could also propose higher penalty amounts, but the Agency's goal was to identify an amount commensurate with the types of violations for which the Agency would issue a civil citation in lieu of full civil enforcement proceedings. The Agency believes the proposed amounts are sufficient to achieve deterrence while not being unreasonable.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

This economic analysis provides the Agency's best assessment of the economic impact of this rule amendment based on the information available.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

To the extent programs within the Agency of Natural Resources are able to employ the compliance tool of civil citations more frequently as a result of this rule amendment, and to the extent this serves as a deterrent to violating Agency of Resources laws concerning greenhouse gases, there may be a positive environmental impact in the area of greenhouse gases.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

To the extent programs within the Agency of Natural Resources are able to employ the compliance tool of civil citations more frequently as a result of this rule amendment, and to the extent this serves as a

Environmental Impact Analysis

deterrent to violating Agency of Resources laws concerning water quality, there may be a positive environmental impact in the area of water quality.

5. *LAND: EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

To the extent programs within the Agency of Natural Resources are able to employ the compliance tool of civil citations more frequently as a result of this rule amendment, and to the extent this serves as a deterrent to violating Agency of Resources laws concerning land uses regulated by the Agency, there may be a positive environmental impact in the area of land uses the Agency regulates.

6. *RECREATION: EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
None anticipated.

7. *CLIMATE: EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
None anticipated.

8. *OTHER: EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
None anticipated.

9. *SUFFICIENCY: EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

This economic analysis provides the Agency's best assessment of the economic impact of this rule amendment based on the information available.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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2. ADOPTING AGENCY:

Agency of Natural Resources

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Agency will hold a public hearing, and during the public comment period the Agency will engage with the stakeholders identified below.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

During the public comment period the rule amendment will be posted on the Agency's website and will be distributed by e-mail to the individuals and entities identified below.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Conservation Law Foundation

Vermont Natural Resources Council

Associated Industries of Vermont

Vermont Chamber of Commerce

