

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-C 600 ADMINISTRATIVE FINES

Statutory Authority: RSA 125-C:15, I-b(a); RSA 125-D:4, I; RSA 125-I:3-a, I; RSA 125-J:8, I-a(a); RSA 141-E:4, XIV; RSA 141-E:16, I(b); RSA 146-A:15, I(a) & (b); RSA 146-C:10-a, I & II; RSA 147-A:17-a, I(a) & (b); RSA 149-M:7, IX-XI; RSA 149-M:16, I & II; RSA 149-M:37, III & IV; RSA 482:89, V(a) & (b); RSA 482-A:11, I & 13; RSA 482-B:16, II(a) & (b); RSA 483-B:17, V; RSA 485:58, V(a) & (b); RSA 485-A:22, V(a) & (b); RSA 485-A:28, II(a) & (b); RSA 485-A:43, V(a) & (b); RSA 485-A:54, V(a) & (b); RSA 485-C:18, I & II; RSA 486-A:14, I; RSA 487:7, II(a) & (b); RSA 488:9, V & VI; RSA 541-A:16, I(b)

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PART Env-C 601 PURPOSE AND APPLICABILITY

Env-C 601.01 Purpose. The purpose of this chapter is to establish:

- (a) The procedures that will be followed by a division when proposing that the commissioner impose an administrative fine;
- (b) The procedures that will be followed by the commissioner when determining whether to impose an administrative fine;
- (c) The schedules of fines to be used in field citation cases;
- (d) A methodology for calculating a fine for which a scheduled fine has not been adopted; and
- (e) The schedules of fines for all programs within the department other than those that are required to use the fine matrix established in RSA 125-C:15, I-b(b).

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 601.02 Applicability.

- (a) Env-C 603 shall apply to all administrative fine cases that are not field citation cases.
- (b) Env-C 604 shall apply to all field citation cases.
- (c) Env-C 605 shall apply to all administrative fine hearings.

Source. (See Revision Note) #10752, eff 12-29-14

PART Env-C 602 DEFINITIONS

Env-C 602.01 Statutory Definitions Incorporated. For any term used in this chapter that is defined in the statute(s) or rule(s) under which the fine is sought, the definition contained therein shall apply to these rules.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 602.02 Chapter-Specific Definitions.

(a) “Administrative fine case (AF case)” means a contested case proceeding initiated by a division to request the commissioner to impose an administrative fine against the respondent. Unless specifically stated to the contrary, the term includes field citation cases.

(b) “Calculated fine” means the dollar amount of an administrative penalty determined in accordance with Env-C 610 or RSA 125-C:15, I-b(b), as applicable to a particular violation.

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- (c) “Commissioner” means the commissioner of the department.
- (d) “Department” means the department of environmental services.
- (e) “Division” means the air resources division, the waste management division, or the division of water, as applicable based on the context.
- (f) “Field citation” means an alternative form of written notice of a proposed fine, as specified in Env-C 604.
- (g) “Field citation case” means an AF case initiated under Env-C 604.
- (h) “Field citation fine” means the administrative fine sought using a field citation.
- (i) “Inspector” means an individual employee of the department who inspects a site or facility and who has been authorized to issue a field citation.
- (j) “Notice of proposed fine (NPF)” means the written notice prepared by a division to initiate an AF case. Unless specifically stated to the contrary, the term includes a field citation.
- (k) “Person” means, for each administrative fine imposed, “person” as defined by the statute that authorizes the imposition of the administrative fine.
- (l) “Presiding officer” means the individual designated by the commissioner under Env-C 204.02 to be the presiding officer for an AF case.
- (m) “Repeat violation” means:
  - (1) A subsequent violation at the same site or facility of a statute or rule for which a notice of violation (NOV), a letter of deficiency (LOD), or an administrative order (AO) has previously been issued by the department; or
  - (2) A subsequent violation by the same respondent of a statute or rule for which an NOV, LOD, or AO has previously been issued by the department.
- (n) Respondent” means the person against whom a fine is sought to be imposed.
- (o) “Scheduled fine” means the dollar amount of the administrative monetary penalty established for a particular violation, as specified in Env-C 608 for field citation cases and in Env-C 611 or Env-C 615 et seq. for all other administrative fines except those that are subject to the fine matrix established in RSA 125-C:15, I-b(b).

Source. (See Revision Note) #10752, eff 12-29-14

PART Env-C 603 PROCEDURES FOR AF CASES THAT ARE NOT FIELD CITATION CASES

Env-C 603.01 Initiating an AF Case. To initiate an AF case other than a field citation case, the division shall:

- (a) Determine the fine to be sought as specified in Env-C 603.02;
- (b) Prepare a notice of proposed fine (NPF) as specified in Env-C 603.03; and
- (c) Send or deliver the NPF to the respondent as specified in Env-C 603.04.

Source. (See Revision Note) #10752, eff 12-29-14

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Env-C 603.02 Determination of Total Fine Sought.

- (a) To determine the total fine to be sought, the division shall first identify the violation(s) for which a fine will be sought and then determine the amount of fine to be sought for each.
- (b) To determine the amount of fine to be sought for a specific violation, the division shall:
  - (1) Use the amount of the scheduled fine if a scheduled fine has been adopted for that violation; or
  - (2) Calculate a fine pursuant to Env-C 610 if a scheduled fine has not been adopted for the violation.
- (c) The total fine sought by the division shall be the sum of the scheduled fine or calculated fine for each violation for which a fine is sought.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 603.03 NPF Contents.

- (a) The NPF required by Env-C 603.01(b) shall inform the respondent of the following:
  - (1) The violation(s) alleged by the division and the facts on which the allegations are based;
  - (2) The statutory section(s) that authorize(s) the commissioner to impose a fine;
  - (3) The statutory section(s) or rule(s) that specify the amount of the fine and the amount of the fine specified therein;
  - (4) The total amount of fine(s) being sought;
  - (5) That the respondent has a right to a hearing prior to the imposition of the fine; and
  - (6) That the respondent is required by Env-C 603.05 to respond to the notice by the date specified in the notice.
- (b) The NPF shall be accompanied by the response form that Env-C 603.05 requires the respondent to complete, sign, and submit as specified on the form.
- (c) The response form shall identify the individual in the commissioner's office to whom the respondent shall respond and the date by which the response shall be submitted.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 603.04 Delivery of NPF. An NPF issued pursuant to Env-C 603.01, including the form identified in Env-C 603.03(b), shall be:

- (a) Mailed by certified mail, return receipt requested, to the respondent; or
- (b) Delivered in hand to the respondent or, if the respondent is not available, to the respondent's representative.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 603.05 Required Response to NPF.

- (a) After receiving an NPF issued pursuant to Env-C 603.01, a respondent who is an individual shall complete the response form provided by:
  - (1) Checking the appropriate location to indicate that the respondent will attend a hearing or is waiving the hearing and paying the proposed fine; and

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(2) Signing and dating the form.

(b) After receiving an NPF issued pursuant to Env-C 603.01, a respondent that is an entity shall authorize an official of the entity to complete the response form provided by:

(1) Checking the appropriate location to indicate that the respondent is waiving the hearing and paying the proposed fine or that an authorized representative of the respondent will attend a hearing; and

(2) Printing his or her name and title and signing and dating the form.

(c) The respondent shall return the response form to the address identified in the response form by the date specified in the response form, which shall be no sooner than 25 days from the date of the NPF.

(d) If the respondent waives the hearing, the respondent shall include full payment of the fine with the returned response form.

(e) Any respondent who does not waive the hearing shall inform the department employee identified on the response form of any change in the respondent's mailing address that occurs prior to the final resolution of the matter.

Source. (See Revision Note) #10752, eff 12-29-14

PART Env-C 604 PROCEDURES FOR FIELD CITATION CASES

Env-C 604.01 Establishing a Field Citation Program. Prior to initiating any field citation case, the division shall:

- (a) Identify the violations that will be subject to field citations;
- (b) Establish a schedule of field citation fines that is separate from those used for other AF cases; and
- (c) Create the field citation form as specified in Env-C 604.02.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 604.02 Field Citation Parameters.

- (a) The division shall not propose a field citation fine of more than \$100 per violation.
- (b) The division shall not issue a field citation if the total proposed fine will exceed \$1,000.
- (c) The division shall not establish a field citation fine or issue a field citation for any violation that:
  - (1) Has a major potential for harm as determined pursuant to Env-C 610.04; or
  - (2) Conferred a significant economic benefit on the respondent.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 604.03 Field Citation Form.

- (a) A field citation form shall contain the following:
  - (1) A place for the inspector to enter the name, address, and daytime telephone number of the respondent, and, if the respondent is an entity, the name and title of an official of the respondent;
  - (2) A place for the inspector to enter the date and time the field citation is prepared and issued;

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- (3) Identification of the section(s) of the statute(s), rule(s), or permit(s) for which there is a scheduled field citation fine, together with a brief description of the violation(s);
  - (4) Identification of the statutory section that authorizes the commissioner to impose a fine;
  - (5) Identification of the statutory section(s) or rule(s) that specify the amount of the fine and the amount of the fine specified therein;
  - (6) A place for the inspector to enter the total amount of fine(s) sought;
  - (7) A place for the inspector to enter his or her name and business telephone number;
  - (8) A place for the inspector to sign the field citation;
  - (9) A place for the signature of the individual who receives the field citation on behalf of the respondent, and for the printed name of the individual if different from the name identified in (1), above;
  - (10) The name, address, and telephone number of the division issuing the field citation;
  - (11) A statement that, pursuant to Env-C 604.04, the respondent is required to respond to the field citation within 25 days of the date of the field citation;
  - (12) A statement that the respondent has the right to a hearing; and
  - (13) The name and address of the individual in the commissioner's office to whom the respondent shall respond to pay the fine or request a hearing.
- (b) Each field citation form shall be produced in sets of 2 or more, either by having one original and at least one copy, such as is produced using a multi-part carbonless form, or by having multiple originals, such as is produced by a portable computer and printer.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 604.04 Initiating a Field Citation Case.

- (a) To initiate a field citation case, the division shall issue a field citation as described in (b) and (c), below.
- (b) The inspector shall complete a field citation form by:
  - (1) Entering the name, address, and daytime telephone number of the respondent in the designated location on the form, and, if the respondent is an entity, entering the name and title of an official of the respondent, if known;
  - (2) Entering the date and time the field citation is prepared and issued in the designated location on the form;
  - (3) Identifying each specific section of the statute, rule, or permit for which a fine is being sought;
  - (4) Entering the total amount of fine sought in the designated location on the form;
  - (5) Entering the name and telephone number of the inspector issuing the field citation in the designated location on the form; and
  - (6) Signing the field citation in the designated location on the form.

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(c) After completing the field citation as specified in (b), above, the inspector shall present the field citation to the respondent or, if the respondent is unavailable or is an entity, to the respondent's representative, for signature.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 604.05 Required Response to Field Citation.

(a) The respondent or, if the respondent is unavailable, the respondent's representative shall:

- (1) Sign the field citation when the inspector presents the field citation for signature;
- (2) Keep a copy of the signed field citation; and
- (3) Return the original and any remaining copies of the signed field citation to the inspector.

(b) The signature of the respondent or the respondent's representative on the field citation shall not constitute any admission of liability on the part of the respondent.

(c) After receiving a field citation, the respondent shall either:

- (1) Correct the deficiencies and pay the proposed fine, subject to (d), below; or
- (2) Request a hearing.

(d) If the total fine proposed on the field citation exceeds \$500, the amount in excess of \$500 shall be suspended. If the respondent corrects the violations and pays the \$500 fine within 25 days of the date of the field citation, the department shall waive payment of the suspended portion of the fine.

(e) Subject to (f), below, the respondent shall request a hearing by sending or delivering a written request for a hearing to the following address within 25 days of the date of the field citation:

DES Legal Unit  
Attn: Legal Assistant  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

(f) In lieu of sending or delivering a written request for a hearing, the respondent may request a hearing via email sent to [appeals@des.nh.gov](mailto:appeals@des.nh.gov) within 25 days of the date of the field citation.

Source. (See Revision Note) #10752, eff 12-29-14

PART Env-C 605 HEARING PROCEDURES; DETERMINATION OF TOTAL FINE ASSESSED

Env-C 605.01 Scheduling and Notice of Hearings.

(a) Within 5 working days of receiving a request for a hearing, the presiding officer shall establish a date and time for a hearing to determine whether an administrative fine should be imposed.

(b) The hearing scheduled pursuant to (a), above, shall be not sooner than 20 days from the date of the notice provided pursuant to (c), below, unless both the respondent and the division agree to an earlier date.

(c) The presiding officer shall provide written notice of the hearing in accordance with RSA 541-A:31 and the provisions of Env-C 200 that apply to notice of adjudicative proceedings.

Source. (See Revision Note) #10752, eff 12-29-14

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Env-C 605.02 Conduct of Hearings. The presiding officer shall conduct administrative fine hearings in accordance with the provisions of RSA 541-A and Env-C 200 that apply to the conduct of adjudicative proceedings.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 605.03 Determination of Total Fine Due Following a Hearing. If a hearing is held, the fine shall be determined in accordance with the following:

(a) The commissioner shall not impose a fine for a specific violation unless the division proves by a preponderance of the evidence that the violation for which a fine is sought occurred and that the respondent is legally liable for the violation; and

(b) Subject to Env-C 605.04 and Env-C 605.05, if the division proves by a preponderance of the evidence that the violation for which a fine is sought occurred and that the respondent is legally liable for the violation, the commissioner shall impose a fine for that specific violation, with reference to the applicable scheduled fine or calculated fine.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 605.04 Reduction in Fine Imposed Following Hearing. The amount of fine imposed for a specific violation shall be reduced by 10% for each of the following that apply to that specific violation:

(a) In the case of a non-continuing or one-time offense, where all of the following are true:

(1) The respondent proves, by a preponderance of the evidence, that as of the time of the violation, the respondent did not know and did not have reason to know about the statute(s), rule(s), or permit(s) that were violated;

(2) The violation has not continued or recurred as of the time of the hearing;

(3) No environmental harm occurred, and any environmental threat caused by the violation has been alleviated; and

(4) The respondent did not derive any direct or indirect economic benefit from the violation;

(b) The respondent proves, by a preponderance of the evidence, that s/he made a good faith effort to comply with the statute(s), rule(s), or permit(s) involved and that the violation occurred despite those efforts;

(c) The respondent proves, by a preponderance of the evidence, that s/he has no history of non-compliance with the statute(s), rule(s), or permit(s) of the department; or

(d) The respondent proves, by a preponderance of the evidence, information favorable to his/her case which was not known to the division at the time the fine was proposed.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 605.05 Increase in Fine Imposed Following Hearing.

(a) Subject to (b), below, the amount of fine imposed for a specific violation shall be increased by 10% for each of the following that apply to that specific violation:

(1) The division proves, by a preponderance of the evidence, that the respondent was aware of the requirements applicable to the activity(ies) that formed the basis for the division's allegations as of the time of the violation;

(2) The division proves, by a preponderance of the evidence, that the violation caused environmental harm;



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- (3) The division proves, by a preponderance of the evidence, that the respondent derived some direct or indirect economic benefit from the offense;
- (4) The division proves, by a preponderance of the evidence, that the respondent did not act in good faith to remedy the violation(s) for which the fine is sought;
- (5) The division proves, by a preponderance of the evidence, that the respondent has a history of non-compliance with the statute(s), rule(s), or permit(s) of the department; or
- (6) The division proves, by a preponderance of the evidence, other factors, not specifically identified above, that cause the violation to be more serious, for instance because a large area of land was impacted by the violation or an ecosystem was destroyed by the violation.

(b) The fine(s) shall not be increased beyond the maximum fine stated in the statute under which the division is seeking the fine(s).

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 605.06 Notice of Decision.

(a) Subject to (d), below, after the close of the record the presiding officer shall issue a written decision stating the final determination on the proposed administrative fine.

(b) In the decision, the presiding officer shall state the findings of fact and rulings of law upon which the determination is based.

(c) The presiding officer shall send the decision by first class mail to the respondent and shall give a copy of the decision to the division's representative in the matter.

(d) If a hearing is held pursuant to the provisions of Env-C 200 that allow a hearing to be held in the respondent's absence if notice has been given as required, the presiding officer shall not render a decision prior to the expiration of the time period allowed by those rules for the respondent to request the hearing to be reconvened.

Source. (See Revision Note) #10752, eff 12-29-14

Env-C 605.07 Payment of Fines.

(a) If the respondent waives the right to a hearing, the respondent shall pay the fine:

- (1) By the date specified in the notice, which shall not be less than 25 days from the date of the notice of the proposed fine; or
- (2) If the case is settled, in accordance with the settlement agreement signed by the respondent, the division, and the commissioner.

(b) In all other cases where a fine is imposed, the respondent shall pay the fine within 30 days of the date of the presiding officer's decision, or such longer time period as is specified in the decision.

(c) Payment shall be sent or delivered to the department employee identified in the notice, decision, or settlement agreement, as applicable.

(d) Payment made by check or money order shall be made payable to "Treasurer, State of New Hampshire".

Source. (See Revision Note) #10752, eff 12-29-14

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APPENDIX

| Rule Number           | Statute(S) Implemented                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Env-C 601 - Env-C 605 | RSA 125-C:15, I-b; RSA 125-D:4; RSA 125-I:3-a; RSA 125-J:8, I-a; RSA 141-E:16, I(a); RSA 146-A:15, I; RSA 146-C:10-a; RSA 147-A:17-a, I; RSA 149-M:16; RSA 149-M:38, VI; RSA 482:89, V; RSA 482-A:13; RSA 482-B:16, II; RSA 483-B:18, III(b); RSA 485:58, V; RSA 485-A:22, V; RSA 485-A:28, II; RSA 485-A:43, V; RSA 485-A:54, V; RSA 485-C:18; RSA 486-A:14, I; RSA 487:7, II; RSA 488:8, I |

**OLS REVISION NOTE:**

Document #10752, effective 12-29-14, re-adopted with amendments Part Env-C 601 titled “Administrative Fine Procedures” and renumbered it as Part Env-C 601 through Part Env-C 605 in Chapter Env-C 600 titled “Administrative Fines.” The existing rules in the former Part Env-C 601 had last been filed under Document #8748, effective 10-28-06, but they did not expire on 10-28-14 but were extended pursuant to RSA 541-A:14-a until superseded by the rules in Document #10752, effective 12-29-14. The other provisions in the former Chapter Env-C 600 had expired by 2-25-12 as noted below.

The former Env-C 602, Env-C 603.01 through Env-C 603.09, Env-C 604 through Env-C 607, Env-C 608.01 through Env-C 608.07, and Env-C 609 through Env-C 616, last filed under Document #9093 (Interim), effective 2-24-08, had expired 8-22-08. Former Env-C 608.08, last filed under Document #7445, effective 2-6-01, had expired 2-6-09. Former Env-C 603.10, last filed under Document #8047, effective 2-25-04, had expired 2-25-12.

Document #10752 supersedes all prior filings affecting the provisions in the former Chapter Env-C 600. The prior filings affecting the former Chapter Env-C 600 include the following documents:

- |                     |                                      |
|---------------------|--------------------------------------|
| #4654, eff 7-27-89  | #6382, eff 11-26-96                  |
| #4655, eff 7-27-89  | #6899, eff 12-3-98                   |
| #4732, eff 1-22-90  | #7204, eff 2-24-00                   |
| #5265, eff 10-31-91 | #7235, eff 4-25-00                   |
| #5266, eff 10-31-91 | #7296, eff 5-25-00                   |
| #5267, eff 10-31-91 | #7297, eff 5-25-00                   |
| #5376, eff 4-17-92  | #7445, eff 2-6-01                    |
| #5861, eff 7-1-94   | #8047, eff 2-25-04                   |
| #6303, eff 7-26-96  | #8748, eff 10-28-06                  |
| #6352, eff 10-5-96  | #9093, INT, eff 2-24-08, EXP 8-22-08 |