
ENVIRONMENTAL Fact Sheet



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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (NHDES) is authorized by several statutes to impose administrative fines for certain violations of those statutes and any rules adopted or permits issued pursuant to those statutes. In order to implement this authority, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 600 to specify the procedures for notifying people that a fine is being proposed and the fine amount for any given violation. An administrative fine proceeding is an adjudicative proceeding, which is governed by RSA 541-A and NH CODE ADMIN. RULES Env-C 200. These rules are available online at <http://des.nh.gov/organization/commissioner/legal/rules/index.htm#cross>.

Administrative fine proceedings follow a defined path. The first step is for a division of NHDES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a **final decision** as to whether to impose the fine **has not been made** - the Notice simply **initiates** the proceeding. The Notice also will inform you that you have an opportunity to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will include a colored form on which you can indicate whether you will attend a hearing or whether you are waiving your opportunity for a hearing and paying the fine that has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules that have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspension of some portion of the fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the hearing process will be governed by Env-C 204. Those rules contain requirements for filing documents and serving them on the other parties to the proceeding, and also require you to submit certain information in advance of the hearing, including a list of witnesses you expect to call, a list of exhibits you expect to present, and any requests for changes to or waivers of the standard procedures as specified in the rules or other matters concerning the conduct of the hearing.

The Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will know about the case only as a result of reading the same Notice you received, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask

questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

After the hearing is over, the hearing officer will compile the record (i.e., all of the notices that were sent to you and all information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 605.04. These include that you have not previously violated a law or rule implemented by NHDES, or that the violation(s) occurred despite your good faith efforts to comply with the applicable requirements. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with NHDES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such cases, NHDES has been willing to craft a settlement agreement which specifically recites that any admission of liability cannot be used in a third-party case.

This fact sheet is intended as a basic source of information concerning NHDES administrative fines. It is not intended to replace the statutes and rules regarding administrative fines or adjudicative proceedings, but merely to provide a summary of some of the pertinent issues.

For more information, contact the NHDES Legal Unit: PO Box 95, Concord, NH 03302-0095, (603) 271-6072; legal@des.nh.gov.