

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

TABLE OF CONTENTS

CHAPTER Env-AC 200 PROCEDURAL RULES

PART Env-AC 201 PURPOSE AND APPLICABILITY

- Section Env-AC 201.01 Purpose
- Section Env-AC 201.02 Applicability

PART Env-AC 202 DEFINITIONS

- Section Env-AC 202.01 Appeals Clerk
- Section Env-AC 202.02 Appellant
- Section Env-AC 202.03 Council
- Section Env-AC 202.04 Council Clerk
- Section Env-AC 202.05 Department
- Section Env-AC 202.06 Director
- Section Env-AC 202.07 General Proceedings
- Section Env-AC 202.08 Intervenor
- Section Env-AC 202.09 Meeting
- Section Env-AC 202.10 Person
- Section Env-AC 202.11 Sitting Member

PART Env-Ac 203 GENERAL PROCEDURES

- Section Env-AC 203.01 Quorum
- Section Env-AC 203.02 Place of Meetings
- Section Env-AC 203.03 Scheduling Meetings
- Section Env-AC 203.04 Notice of Meetings
- Section Env-AC 203.05 Record of Meetings
- Section Env-AC 203.06 Presiding Officer
- Section Env-AC 203.07 Withdrawal of Presiding Officer
- Section Env-AC 203.08 Computation of Time
- Section Env-AC 203.09 Filing of Documents
- Section Env-AC 203.10 Signatures
- Section Env-AC 203.11 Issuance or Filing of Documents
- Section Env-AC 203.12 Communications with the Council
- Section Env-AC 203.13 Appearance Before the Council
- Section Env-AC 203.14 Recess and Adjournment
- Section Env-AC 203.15 Waiver of Rules

PART Env-AC 204 APPEALS; FILING; NOTICE; PARTIES AND REPRESENTATIVES; SCHEDULING; MOTIONS

- Section Env-AC 204.01 Time for Filing of Appeals
- Section Env-AC 204.02 Notice of Appeal
- Section Env-AC 204.03 Determination of Sufficiency of Notice of Appeal
- Section Env-AC 204.04 Identification of Documents
- Section Env-AC 204.05 Intervenors
- Section Env-AC 204.06 Parties
- Section Env-AC 204.07 Representation and Appearances
- Section Env-AC 204.08 Removal of Representatives
- Section Env-AC 204.09 Service List; Service of Documents
- Section Env-AC 204.10 Scheduling

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Env-AC 204.11 Calendar of Hearings
- Section Env-AC 204.12 Extensions of Time
- Section Env-AC 204.13 Continuances
- Section Env-AC 204.14 Expedited Review of Appeals
- Section Env-AC 204.15 Motions and Objections Thereto
- Section Env-AC 204.16 Withdrawal of Appeal

PART Env-AC 205 APPEALS; PREHEARINGS; HEARINGS

- Section Env-AC 205.01 Settlement Discussions; Pre-Hearing Conferences
- Section Env-AC 205.02 Supplemental Materials
- Section Env-AC 205.03 Pre-hearing Exchange of Information
- Section Env-AC 205.04 Opening the Proceeding
- Section Env-AC 205.05 Hearing Record
- Section Env-AC 205.06 Testimony
- Section Env-AC 205.07 General Evidence
- Section Env-AC 205.08 Exhibits
- Section Env-AC 205.09 Requests for Findings and Conclusions
- Section Env-AC 205.10 Close of the Record
- Section Env-AC 205.11 Reopening of the Record
- Section Env-AC 205.12 Failure to Appear
- Section Env-AC 205.13 Reconvening of Hearings
- Section Env-AC 205.14 Burden of Proof
- Section Env-AC 205.15 Decisions
- Section Env-AC 205.16 Motion for Reconsideration or Rehearing

PART Env-AC 206 RULEMAKING PETITIONS AND HEARINGS

- Section Env-AC 206.01 Filing
- Section Env-AC 206.02 Form and Content of Petition
- Section Env-AC 206.03 Processing of Rulemaking Petitions
- Section Env-AC 206.04 Public Comment on Proposed Council Rules

PART Env-AC 207 DECLARATORY RULINGS

- Section Env-AC 207.01 Filing
- Section Env-AC 207.02 Form and Content of Petition
- Section Env-AC 207.03 Processing of Petitions for Declaratory Rulings

PART Env-AC 208 EXPLANATION OF RULES

- Section Env-AC 208.01 Explanation of Rules

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-AC 200 PROCEDURAL RULES

Statutory Authority: RSA 21-O:14, IV; RSA 541-A:16, I; RSA 541-A:30-a

PART Env-AC 201 PURPOSE AND APPLICABILITY

Env-AC 201.01 Purpose. The purpose of these rules is to set forth the general procedures that will be used in the proceedings of the New Hampshire air resources council. The rules relative to conducting adjudicatory proceedings are established for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within the council's statutory jurisdiction, and shall be construed to secure the just, efficient and accurate resolution of council proceedings in accordance with recognized principles of due process and the requirements of RSA 541-A.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 201.02 Applicability.

(a) The provisions of Env-AC 202 and Env-AC 203 shall apply to general proceedings and appeal hearings held by the council.

(b) The provisions of Env-AC 204 and Env-AC 205 shall apply to all appeals allowed by law to be taken to the council.

(c) The provisions of Env-AC 206 shall apply to any petition to amend, adopt, or repeal a rule submitted to the council pursuant to RSA 541-A:4 and to any rulemaking proceeding initiated by the council.

(d) The provisions of Env-AC 207 shall apply to any petition for a declaratory ruling as defined by RSA 541-A:1, V.

(e) The provisions of Env-AC 208 shall apply to any request for an explanation of council rules.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

PART Env-AC 202 DEFINITIONS

Env-AC 201.01 "Appeals clerk" means the individual designated by the commissioner of the department pursuant to RSA 21-O:3, VIII as support staff for appeals to the council.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.02 "Appellant" means the person who initiates an appeal by filing a notice of appeal in accordance with Env-AC 204.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.03 "Council" means the air resources council established by RSA 21-O:11.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.04 "Council clerk" means the individual designated by the commissioner of the department pursuant to RSA 21-O:3, VIII as clerical support staff to the council for all matters other than appeals.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.05 "Department" means the department of environmental services.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.06 “Director” means the director of the air resources division of the department of environmental services.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.07 “General proceedings” means council business other than appeals.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 202.08 “Intervenor” means a person allowed by the council to intervene in an appeal proceeding pursuant to RSA 541-A:32.

Source. #8267-A, eff 1-25-05

Env-AC 202.09 “Meeting” means a gathering of a quorum of council members, at which general proceedings or appeals or both may be conducted.

Source. #8267-A, eff 1-25-05

Env-AC 202.10 “Person” means:

(a) For the purpose of general proceedings, any individual, partnership, joint venture, association, corporation, trust, private or municipal corporation, and any political subdivision or agency of the state or the United States; or

(b) For the purpose of an appeal of a decision under a specific statute, “person” as defined by that statute.

Source. #8267-A, eff 1-25-05

Env-AC 202.11 “Sitting member” means an individual who has been appointed to the council and to whom the oath of office has been administered, and includes any member of the council whose term has expired until such time as a replacement is appointed, but does not include any member who has resigned from the council, regardless of whether a replacement has been appointed.

Source. #8267-A, eff 1-25-05

PART Env-AC 203 GENERAL PROCEDURES

Env-AC 203.01 Quorum.

(a) A quorum of the council shall be a simple majority of the total number of sitting members, provided, however, that in the context of an appeal proceeding, a quorum shall be a simple majority of those sitting members who have not recused themselves from the proceeding.

(b) The council shall take formal or official action only when a quorum is present.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 203.02 Place of Meetings.

(a) All regular meetings of the council shall be held in Concord.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) Special meetings, including meetings held to inform the public or solicit public comments, shall be held in Concord or such other places as the council shall determine based on consideration of maximizing access of interested parties to the meeting.

Source. #8267-A, eff 1-25-05

Env-AC 203.03 Scheduling Meetings.

(a) Regular meetings of the council shall be held at least quarterly.

(b) Special meetings shall be those which are other than quarterly meetings and shall be held at the call of the chairman or of 3 council members.

Source. #8267-A, eff 1-25-05

Env-AC 203.04 Notice of Meetings. Notice of meetings shall be publicized as required by RSA 91-A, Access to Public Records. The notice shall contain the time, date and place of meeting and the scheduled agenda for the meeting. The council clerk shall maintain a record demonstrating that all statutory notice requirements have been met.

Source. #8267-A, eff 1-25-05

Env-AC 203.05 Record of Meetings. A record of all regular and special meetings of the council shall be kept by tape recording. Minutes of the meeting shall be prepared by the council clerk and distributed to the council members.

Source. #8267-A, eff 1-25-05

Env-AC 203.06 Presiding Officer.

(a) The presiding officer for general proceedings or for an appeal shall be the chairman of the council if present and willing to preside. If the chairman is unavailable for any reason, the presiding officer shall be the vice-chairman, if available, or a member of the council selected by those members present at the meeting.

(b) The presiding officer at a prehearing conference shall be the chairman of the council or the council member who is designated to preside by the chairman.

(c) The presiding officer for general proceedings shall regulate the course of the proceedings and take such other action that is necessary for the efficient and orderly conduct of the proceedings, consistent with these rules and any other applicable state law.

(d) Unless otherwise provided, the presiding officer at an appeal hearing or prehearing conference shall:

- (1) Rule on issues of evidence;
- (2) Regulate the course of the proceeding;
- (3) Rule upon issues of procedure;
- (4) Administer oaths or affirmations; and
- (5) Take such other action that is necessary for the efficient and orderly conduct of the proceeding, consistent with these rules and any other applicable state law.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) Exceptions to rulings of the presiding officer in an appeal shall be considered to have been preserved if a contemporaneous oral or written objection is made on the record of the appeal.

(f) Objections to procedural rulings by the presiding officer in an appeal may be included in a party's proposed conclusions of law or in a petition for reconsideration.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.07 Withdrawal of Presiding Officer.

(a) Upon individual initiative or upon the motion or request of any party, a presiding officer shall, for good cause or to avoid the appearance of impropriety or lack of impartiality, withdraw from serving as presiding officer for that appeal.

(b) For purposes of this section, good cause means evidence of any fact that would cause a reasonable person to conclude that the presiding officer cannot be impartial.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.08 Computation of Time.

(a) Any time period referenced in these rules shall be calendar days unless otherwise specified.

(b) Computation of any period of time referred to in these rules shall begin with the first day following the day on which the act or other occurrence which initiates such period of time occurs, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or state legal holiday, then the time shall be extended to include the first business day following the Saturday, Sunday or state legal holiday.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.09 Filing of Documents.

(a) Any document required to be filed with the council other than correspondence relating to an appeal shall be filed by mailing or delivering the original to the following address:

Air Resources Council
c/o DES, Air Resources Division
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095
ATTN: ARC Council Clerk

(b) Any document required or allowed by these rules to be filed in conjunction with an appeal shall be filed by mailing or delivering the original and 15 copies of the document to the appeals clerk at the following address:

Air Resources Council
Attn: Appeals Clerk
c/o DES Legal Unit
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Source. #8267-A, *eff 1-25-05*

Env-AC 203.10 Signatures.

(a) Every document filed with the council that is not related to an appeal shall be signed by the individual submitting the document or, if the document is filed on behalf of an entity, by a duly-authorized representative of the entity.

(b) Every document filed with the council that relates to an appeal, including any notice of appeal, petition, motion, objection, brief, or other document but not including exhibits submitted at a hearing, shall be signed and dated by the filing party or by the representative of the filing party who has filed an appearance in accordance with Env-AC 204.07.

(c) The signature on a document filed with the council shall constitute a certification that:

- (1) The signer has read the document;
- (2) The signer is authorized to file it;
- (3) To the best of the signer's knowledge, information, and belief, there are good grounds to support it; and
- (4) The document has not been filed for purposes of delay or harassment.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.11 Issuance or Filing of Documents.

(a) All orders, decisions, notices, or other written correspondence or documents issued by or at the direction of the council shall be deemed to have been issued on the date noted on the document.

(b) All written correspondence or documents issued by or at the direction of the council that are sent to the addressee's last address of record shall be presumed to have been received by the addressee.

(c) All written documents governed by these rules, including but not limited to notices of appeal, requests for findings or conclusions, correspondence, and motions shall be deemed to have been filed with or received by the council on the actual date of receipt by:

- (1) The council clerk, for items that do not relate to an appeal; or
- (2) The appeals clerk, for items that do relate to an appeal.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.12 Communications with the Council.

(a) All communications with the council shall be filed in accordance with Env-AC 203.09 and shall identify the name and address of the communicator and the subject matter of the communication.

(b) No person shall submit any documents or exhibits or otherwise communicate any information which pertains either directly or indirectly to the subject matter of a pending appeal directly to any member of the council, other than at a hearing or prehearing conference for which all parties have been given notice in accordance with these rules.

(c) Any member of the council who receives any direct communication from any person which pertains directly or indirectly to the subject matter of a pending appeal shall, at the next council meeting,

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

inform the council on the record of the improper communication and submit a copy of the same, or, if the communication was made orally, relate the substance of the communication to the council on the record.

(d) No information shall be considered as evidence or made part of the record of an appeal before the council unless the information is introduced as evidence in accordance with Env-AC 205.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.13 Appearance Before the Council.

(a) Any person may request the opportunity to present information to the council as part of general proceedings.

(b) If made in advance of a council meeting, the request shall be filed in writing in accordance with Env-AC 203.09(a).

(c) If made at a council meeting, the request may be made in writing or orally on the record.

(d) The request shall include:

- (1) The name of the individual who wishes to present the information;
- (2) The name of the person represented by the individual, if any;
- (3) The subject of the information; and
- (4) The length of time needed to present the information.

(e) The council shall allow the individual to present the information as part of general proceedings if the council determines that:

- (1) The information does not relate to a matter that is the subject of a pending appeal or for which the time in which to file an appeal has not expired;
- (2) The information relates to a subject over which the council has statutory jurisdiction; and
- (3) Allowing the information to be presented will not unduly prolong or otherwise unreasonably interfere with the conduct of the meeting.

(f) If the council grants the request to provide information, the council shall inform the individual of the date and time at which the information can be presented.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.14 Recess and Adjournment. The council shall, from time to time, recess or adjourn any meeting as might be necessary for the orderly conduct of the meeting on its own initiative or at the request of:

- (a) Any person scheduled to present information as part of general proceedings; or
- (b) Any party to an appeal.

Source. #8267-A, *eff 1-25-05*

Env-AC 203.15 Waiver of Rules. Any person may request the council to waive, for good cause, the application of any of these rules not mandated or required by any New Hampshire statute. Requests made prior to or subsequent to a hearing shall be made in writing and shall state the basis for the request. Requests

made at a hearing may be made orally, stating the basis for the request, and shall be entered into the record. If no party objects to the waiver and if the council determines that good cause for the waiver exists and the interests of the parties to the proceeding will not be prejudiced by the waiver, the council shall grant the request. For purposes of this section, good cause shall be determined with reference to the specific rule for which a waiver is sought.

Source. #8267-A, eff 1-25-05

PART Env-AC 204 APPEALS: FILING; NOTICE; PARTIES AND REPRESENTATIVES;
SCHEDULING; MOTIONS

Env-AC 204.01 Time for Filing of Appeals.

(a) Subject to (b), below, pursuant to RSA 125-C:15, I, any appeal of an order shall be filed no later than 30 days after the date of issuance of such order.

(b) Pursuant to RSA 125-C:15, I-a, any appeal of an order relating to a Stage II vapor recovery requirement shall be filed no later than 10 days after the date of issuance of such order.

(c) Pursuant to RSA 125-C:12, III, any appeal of a decision to grant or deny a permit shall be filed no later than 10 days after the date of issuance of the decision.

(d) Any appeal of a decision to grant or deny a variance pursuant to RSA 125-C:16 shall be filed no later than 30 days after the date of issuance of the decision.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 204.02 Notice of Appeal.

(a) An appeal shall be commenced by filing a notice of appeal as specified by this section with the council.

(b) A notice of appeal shall include the following:

(1) For each appellant, the appellant's full legal name, mailing address, and daytime telephone number and, if available, a fax number and e-mail address;

(2) If the notice of appeal is being filed by the appellant's representative, the representative's name, mailing address, and daytime telephone number and, if available, a fax number and e-mail address;

(3) If the notice of appeal is being filed by a group of appellants, the group representative's name, mailing address, and daytime telephone number and, if available, a fax number and e-mail address;

(4) A citation to the statutory provision(s) that authorize(s) the council to hear the appeal;

(5) A clear and concise statement as to why the appellant has standing to bring the appeal which shows why the appellant will suffer a direct and adverse affect or injury in fact as a result of the decision being appealed in a way that is actual and imminent and is particularized to the appellant and that is more than any impact of the decision on the general public. If the appellant is a group, its statement shall include information showing that at least one of its members possesses standing;

(6) A clear and concise statement of the:

a. Relief sought;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- b. Facts upon which the council is expected to rely in granting relief; and
- c. Law which supports the requested relief;

(7) A copy of the decision or order which is being appealed; and

(8) Notice of and support for a request for expedited review, if one is being made pursuant to Env-AC 204.14.

(c) A notice of appeal may also include such other information as the appellant deems pertinent and relevant, including attachments of exhibits, illustrations, and sworn written testimony if needed to support factual allegations in the petition.

(d) The appeals clerk shall provide a copy of the notice of appeal to the director and to the commissioner of the department.

(e) If the appeal relates to the issuance of a permit and the appellant is not the permit holder, the appellant shall serve a copy of the notice of appeal on the permit holder in accordance with Env-AC 204.09.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 204.03 Determination of Sufficiency of Notice of Appeal.

(a) Upon receipt of a document filed as a notice of appeal, the appeals clerk shall assign a docket number to the document and review the document for compliance with the requirements of Env-AC 204.01 and Env-AC 204.02(b).

(b) If the document appears to comply with the requirements of Env-AC 204.01 and Env-AC 204.02(b), the appeals clerk shall distribute a copy of the notice of appeal to the council.

(c) If the document was not filed within the applicable time limit as specified in Env-AC 204.01, the appeals clerk shall distribute a copy of the document to the council with a statement that the appeal was not timely filed.

(d) If the document was timely filed but does not appear to comply with the requirements of Env-AC 204.02(b), the appeals clerk shall:

(1) Send a written notice to the person who filed the document to inform the person that:

a. The document does not meet the requirements of Env-AC 204.02(b); and

b. If the person wishes to pursue the appeal, the person has 30 days in which to file a document that meets the requirements of Env-AC 204.02(b); and

(2) Provide a copy of the written notice and the document to the council.

(e) After the expiration of the 30-day period referred to in (d)(1)b., above, the appeals clerk shall:

(1) Provide the council with a copy of any document received from the person; or

(2) If no document was received, so inform the council at the first council meeting following the end of the 30-day period.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-AC 204.04 Identification of Documents. Subsequent to the filing of a notice of appeal, the docket number assigned by the appeals clerk pursuant to Env-AC 204.03(a) shall be used by all parties to identify all correspondence and other documents submitted to the council relating to the appeal, including any written testimony or exhibits used at a hearing.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 204.05 Intervenors.

(a) A request to intervene in an appeal shall be filed in accordance with RSA 541-A:32, I and Env-AC 203.09(b).

(b) The council, or, if an expedited review has been requested, the presiding officer, shall consider and grant or deny all petitions for intervenor status in accordance with the provisions of RSA 541-A:32.

(c) The order issued pursuant to RSA 541-A:32, V shall specify the extent to which the intervenor shall be considered a party for purposes of these rules.

(d) Once granted leave to intervene, an intervenor shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 204.06 Parties.

(a) The parties to an appeal of an administrative order shall be:

- (1) The person to whom the order was issued;
- (2) The department; and
- (3) Any person allowed by the council to intervene.

(b) The parties to an appeal of the denial of a permit application shall be:

- (1) The person who filed the permit application;
- (2) The department; and
- (3) Any person allowed by the council to intervene.

(c) The parties to an appeal of the issuance of a permit shall be:

- (1) The person who filed the appeal;
- (2) The department;
- (3) The permit holder, if not the appellant; and
- (4) Any person allowed by the council to intervene.

(d) The parties to an appeal of a decision to grant a variance pursuant to RSA 125-C:16 shall be:

- (1) The person who filed the appeal;
- (2) The department;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) The person who received the variance, if not the appellant; and
 - (4) Any person allowed by the council to intervene.
- (e) The parties to an appeal of a decision to deny a variance pursuant to RSA 125-C:16 shall be:
- (1) The person who requested the variance;
 - (2) The department; and
 - (3) Any person allowed by the council to intervene.

Source. #8267-A, eff 1-25-05

Env-AC 204.07 Representation and Appearances.

(a) Any party to an appeal before the council may be represented by an attorney or such other individual as the party may designate. This provision shall not be construed to permit the unauthorized practice of law as defined by the New Hampshire supreme court or the New Hampshire general court.

(b) Each party's representative shall file an appearance with the appeals clerk which identifies the party being represented, the representative's name, mailing address, and daytime telephone number and, if available, a fax number and e-mail address. If the representative files the original notice of appeal which includes the information specified by this paragraph, a separate appearance shall not be required.

(c) All representatives shall obtain and become familiar with these procedural rules prior to appearing before the council.

(d) For each appeal, the department shall designate a representative for purposes of that appeal. The designated representative shall file an appearance pursuant to (b), above.

(e) Each party and representative shall update the contact information filed pursuant to this section as necessary to reflect current information.

Source. #8267-A, eff 1-25-05

Env-AC 204.08 Removal of Representatives.

(a) Upon making a finding of misconduct on the part of any representative appearing before the council, the council shall prohibit that individual from acting as a representative for the pending matter.

(b) For purposes of this section, misconduct means:

- (1) Behavior that is disruptive to the orderly conduct of the appeal; or
- (2) A consistent or recurring failure to:
 - a. Meet deadlines;
 - b. Comply with the provisions of Env-AC 200; or
 - c. Provide information that has been requested by the council or by other parties, unless the representative believes in good faith that the information is protected by law from disclosure.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) Prior to making a finding of misconduct so as to warrant the imposition of such prohibition, the council shall:

- (1) Inform the representative, the party represented by the representative, and all other parties and their representatives, if any, to the proceeding of the proposed prohibition; and
- (2) Provide an opportunity for the representative, the party represented by the representative, and all other parties and their representatives, if any, to the proceeding to address the council regarding why the prohibition should or should not be imposed.

Source. #8267-A, *eff 1-25-05*

Env-AC 204.09 Service List; Service of Documents.

(a) For each appeal, the appeals clerk shall maintain a service list that identifies:

- (1) Each party or, if the party is represented and the representative filed the notice of appeal or has otherwise filed an appearance, the party's representative;
- (2) Each person who has filed a motion to intervene that has not yet been ruled on by the council; and
- (3) The mailing address, daytime telephone number, and, if available, fax number and e-mail address of each person identified in (1) and (2), above.

(b) The appeals clerk shall provide a copy of the service list to any person upon request.

(c) Any person who files an appeal-related document with the council shall serve a copy of the document on each person identified on the service list.

(d) Service as required by (c), above, shall be made:

- (1) By first class mail, postage prepaid, or by delivery in hand;
- (2) On or before the date of filing of the original document with the appeals clerk; and
- (3) On the representative of a party for whom a representative has filed an appearance, provided however that timely service inadvertently made on a party for whom a representative has filed an appearance shall be sufficient regardless of whether the party's representative also was served.

(e) Except for exhibits distributed at a prehearing conference or hearing, every document required to be served upon the parties to an appeal shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service and the person(s) served.

(f) If time is of the essence in a filing and service will be made by mail, the person filing the document shall send a copy of the document by fax or e-mail to all other parties for whom a fax number or e-mail address is available, and shall notify any party for whom a fax number or e-mail address is not available of the filing by telephone.

Source. #8267-A, *eff 1-25-05*

Env-AC 204.10 Scheduling.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) The council shall schedule an appeal hearing no later than the second regularly-scheduled council meeting following receipt by the council of a complete notice of appeal that complies with Env-AC 204.02(b).

(b) Except in the case of an appeal of a permit issued pursuant to Title V of the Clean Air Act, 42 U.S.C. 7001 et. seq., once a hearing has been scheduled, the appeals clerk shall send a written notice to the parties or, as applicable, their representatives, and to all other persons who have filed an appearance with the appeals clerk. The notice shall contain the information required by RSA 541-A:31, III.

(c) In the case of an appeal of a permit issued pursuant to Title V of the Clean Air Act, the appeals clerk shall send a written notice containing the information required by RSA 541-A:31, III to the parties or, as applicable, their representatives and shall cause notice of such hearing to be published in a newspaper with statewide circulation no less than 30 days prior to such hearing.

(d) If the hearing is rescheduled, the appeals clerk shall send a notice of the date, time, and place of the rescheduled hearing to the parties or their representatives, as applicable.

Source. #8267-A, *eff 1-25-05*

Env-AC 204.11 Calendar of Hearings. The appeals clerk shall maintain a record of all appeals pending before the council.

Source. #8267-A, *eff 1-25-05*

Env-AC 204.12 Extensions of Time.

(a) Any party to an appeal may petition the council to extend any time limit established by Env-AC 200 in accordance with this section, excluding time limits or deadlines established by statute.

(b) Prior to filing an extension request, the party shall seek concurrence with the request from all other parties to the appeal.

(c) A request for an extension shall be in writing and shall be filed in accordance with Env-AC 203.09(b) at least 10 business days prior to the expiration of the prescribed period.

(d) The request shall state the reason(s) for the extension request and whether the other parties to the appeal agree or disagree with the request or did not respond to the request for concurrence.

(e) A copy of the request shall be served in accordance with Env-AC 204.09. If the request is filed within 20 days of the expiration of the prescribed period, the party filing the request shall implement the procedure specified in Env-AC 204.09(f).

(f) Any party who did not concur with the request may object to the request by filing a written objection with the council within 5 business days of receipt of the request, stating the reasons why the request should not be granted.

(g) The council shall grant the request if the council determines that the delay will not prejudice the interests of any party to the appeal and:

- (1) Meeting the prescribed time limit would unduly burden the party making the request; or
- (2) An extension is otherwise necessary to conduct a more effective hearing.

(h) The council shall, in a timely manner, render a decision with respect to the request for extension and notify all parties in writing of its decision.

Source. #8267-A, eff 1-25-05

Env-AC 204.13 Continuances.

(a) Any party may request that a hearing conducted pursuant to this part be continued for reasonable cause and reconvened or rescheduled.

(b) Prior to filing a request for a continuance of a hearing made in advance of the hearing, the party seeking the continuance shall seek concurrence with the request from all other parties to the appeal.

(c) A request for a continuance made in advance of a hearing shall:

(1) Be in writing;

(2) State the reason(s) for the request;

(3) Be filed at least 5 business days prior to the scheduled hearing date; and

(4) State whether the other parties to the appeal agree or disagree with the request or did not respond to the request for concurrence.

(d) A request for continuance made at a hearing may be made orally provided it is entered in the record of the hearing.

(e) The council shall grant the request if the council determines that reasonable cause exists and that no other party will be prejudiced by the delay.

(f) For purposes of this section, reasonable cause shall include, but not be limited to:

(1) Unavailability of an individual party, a representative, or critical witness;

(2) The parties believe that an informal resolution is possible and need more time to resolve the matter; or

(3) One or more of the parties are awaiting information, reports, data, or a related court decision which is material to the appeal.

(g) The council shall deny the request if the council determines that the request is not supported by reasonable cause.

(h) Grounds for determining that the request is not supported by reasonable cause shall include, but shall not be limited to:

(1) An individual party, representative, or critical witness is chronically unavailable;

(2) No progress towards a settlement has been demonstrated by the parties; or

(3) There have been repeated or unreasonable delays in obtaining information, reports, data, or a related court decision which is material to the appeal.

(i) All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Source. #8267-A, eff 1-25-05

Env-AC 204.14 Expedited Review of Appeals.

- (a) Any party may request the council to provide an expedited review of an appeal.
- (b) If the request for expedited review is filed after the notice of appeal has been filed, the party wishing to file the request shall seek concurrence with the request from all other parties to the appeal prior to filing the request.
- (c) The request for an expedited review shall include the following:
 - (1) The docket number assigned to the appeal, unless the request is part of the notice of appeal;
 - (2) The date on which the notice of appeal was or is being filed with the council;
 - (3) The reason(s) why the expedited review is being sought; and
 - (4) If the request is being filed after the notice of appeal was filed, a statement that the other parties to the appeal agree or disagree with the request or did not respond to the request for concurrence.
- (d) If not included in the notice of appeal, the party shall file the request for an expedited review in accordance with Env-AC 203.09(b) at least 10 business days prior to the next scheduled council meeting.
- (e) The presiding officer shall review the request and determine whether to grant the request.
- (f) The presiding officer shall grant the request for an expedited review if the presiding officer determines that the expedited review will not unduly burden the opposing party and:
 - (1) There is an imminent and substantial threat to public health or the environment that will remain unaddressed until the appeal is resolved; or
 - (2) The party will suffer an economic hardship if the appeal is not promptly resolved.
- (g) If the presiding officer grants the request, the presiding officer shall direct the appeals clerk to schedule the appeal hearing for the next scheduled council meeting.

Source. #8267-A, *eff 1-25-05*

Env-AC 204.15 Motions and Objections Thereto.

- (a) Any party may file a written motion or make an oral motion in accordance with this section.
- (b) Prior to filing a written motion, the party shall seek concurrence with the relief requested in the motion from all other parties to the appeal, provided however that if the motion would result in a ruling that is adverse to another party's interests, the moving party shall not be required to seek concurrence from that party.
- (c) All motions shall be in written form unless the nature of the relief requested requires that the motion be made spontaneously in the context of an oral proceeding. Written motions shall be included in the record of the appeal. Oral motions shall be recorded in full on the tape recording of the hearing.
- (d) A motion shall include:
 - (1) The specific relief or ruling being requested;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) A clear and concise statement of the facts and law which support the motion; and
- (3) A statement that the other parties to the appeal agree or disagree with the motion or did not respond to the request for concurrence.

(e) All parties who would be adversely affected by the ruling sought in a motion shall have an opportunity to respond to the motion. For a written motion, responses shall be in writing and shall be filed no later than 5 days after receipt of the motion. For an oral motion, responses shall be made during the hearing at which the oral motion was made unless the presiding officer determines, based on the nature of the motion, that it is appropriate to grant additional time to prepare a response to the motion.

(f) Repetitious motions shall not be submitted.

Source. #8267-A, *eff* 1-25-05

Env-AC 204.16 Withdrawal of Appeal.

(a) The appellant may withdraw the appeal at any time prior to a final decision being made by the council.

(b) To withdraw the appeal, the appellant shall submit a written notice of withdrawal to the appeals clerk stating that the appeal is being withdrawn and shall serve a copy on all other parties to the appeal pursuant to Env-AC 204.09. If the appeal was resolved by a settlement, the appellant shall attach a copy of the settlement to the notice of withdrawal.

Source. #8267-A, *eff* 1-25-05

PART Env-AC 205 APPEALS: PREHEARINGS; HEARINGS

Env-AC 205.01 Settlement Discussions; Pre-Hearing Conferences.

(a) After receiving a notice of appeal, the department's designated representative shall contact the appellant and all other parties to the appeal to offer the opportunity to meet to determine whether the matter can be resolved without the need for a formal hearing. If the parties meet and agree to a resolution of the matter, then the appellant shall withdraw the appeal in accordance with Env-AC 204.16.

(b) If the parties agree to meet but cannot schedule time to do so prior to the council meeting for which the hearing has been scheduled, the department's representative shall inform the appeals clerk and the hearing shall be rescheduled for the following council meeting.

(c) Nothing herein shall preclude any party or the council from requesting a prehearing conference in accordance with RSA 541-A:31, V, in lieu of or in addition to a discussion scheduled or held pursuant to (a), above.

(d) If a formal prehearing conference is held, the parties shall be prepared to discuss the issues identified in RSA 541-A:31, V(c).

(e) The council shall cause prehearing conferences to be recorded unless all parties consent to discuss possible settlement off the record.

Source. #6586, *eff* 9-23-97; *ss* by #8267-A, *eff* 1-25-05

Env-AC 205.02 Supplemental Materials. Memoranda, briefs, and other written materials designed to supplement a notice of appeal shall be filed in accordance with Env-AC 203.09(b) and shall be served in accordance with Env-AC 204.09 at least 10 business days prior to the scheduled hearing on the appeal.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.03 Pre-hearing Exchange of Information.

(a) More than one week prior to the commencement of a hearing, the parties shall exchange the following:

- (1) A list identifying each witness expected to be called at the hearing with a brief description of that witness's testimony;
- (2) A list of all exhibits expected to be presented at the hearing; and
- (3) Any requests for changes to or waivers of the standard procedures as specified in these rules or other matters concerning the conduct of the hearing.

(b) If a party wishes to obtain information other than that specified in (a), above, from another party, the requesting party shall request the information in writing and shall file a copy of the request with the appeals clerk and serve a copy on the party from whom the information is sought.

(c) Requests pursuant to (b), above, shall be limited to information directly related to the matter for which the hearing will be conducted.

(d) A party receiving a request for information pursuant to (b), above, shall respond to the request within 10 days by:

- (1) Providing the information requested;
- (2) Explaining why the information will not be provided; or
- (3) Identifying a date and time when the information can be made available for inspection, which date and time shall be sufficiently in advance of the hearing on the matter that the information can be reasonably reviewed prior to the hearing.

(e) A party who has received a request for information pursuant to (b), above, may decline to provide information which the party believes is:

- (1) Confidential;
- (2) Privileged;
- (3) Not directly related to the matter at hand; or
- (4) Excessively burdensome to produce.

(f) If a party declines to provide information pursuant to (e), above, the explanation provided pursuant to (d)(2), above, shall include a detailed explanation of the reason(s) why the information is not being provided.

(g) A party who has requested information pursuant to (b), above, that is not provided may request the presiding officer to require the party of whom the information was requested to provide the information. Such requests shall be in the form of a written motion and shall be filed and handled in accordance with Env-AC 204.15.

(h) The party shall file a motion pursuant to (g), above, within 7 days of receiving the denial of the information under (e), above, but no later than 5 days prior to the scheduled hearing. No motion shall be

accepted within 5 days before a scheduled hearing unless the presiding officer determines that good cause exists for the late filing. For purposes of this paragraph, “good cause” means that the party requesting the information did not discover the existence of the information in time to request the information, receive the denial, and file a timely motion and could not have discovered the existence of the information with reasonable diligence.

(i) The presiding officer shall grant a motion filed pursuant to (h), above, if the presiding officer determines that:

- (1) The information is directly related to the matter at hand such that the requesting party will be materially prejudiced in the case by the lack of the requested information; and
- (2) The information is not confidential, privileged, or excessively burdensome to produce.

(j) If the presiding officer grants the motion and the party asked to provide the information fails or refuses to provide it, the presiding officer shall:

- (1) Delay the hearing until the information is provided;
- (2) Rule that such information shall not be admissible at the hearing on the matter or in any subsequent proceeding on the matter, unless the information is already a matter of public record; or
- (3) Refer the matter to the council for a determination of whether the requesting party cannot reasonably present its case without the requested information. If the council finds that the requesting party cannot reasonably present its case without the requested information, the council shall find in favor of the requesting party on the matter(s) sought to be proved by the requested information.

(k) For purposes of this section, in making a determination of whether it would be excessively burdensome to produce requested records, the presiding officer shall consider:

- (1) The volume of records requested;
- (2) The amount of time that would be needed to find, organize, and copy the records; and
- (3) The relevance of the requested records to the subject matter of the appeal.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.04 Opening the Proceeding. The presiding officer at an appeal hearing or prehearing conference shall open the proceeding by describing in general terms the purpose of the proceeding and the general procedures governing its conduct.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.05 Hearing Record.

(a) The record of the hearing shall include:

- (1) The notice(s) of the hearing;
- (2) The tape recording of the hearing;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) All exhibits, motions, requests for findings and conclusions, and other written materials submitted by the parties at or for the hearing;
- (4) Any other item(s) specified by RSA 541-A:31,VI; and
- (5) All decisions of the presiding officer on procedural matters and the decision of the council on the merits.

(b) Pursuant to RSA 541-A:31,VII and subject to (c), below, the entirety of all oral proceedings shall be recorded. Upon request of a party, the council shall provide, at cost, a duplicate tape of the hearing. Any person desiring a transcript of the hearing prepared by a qualified stenographer shall provide the stenographer and shall bear all expenses associated with the preparation of the transcript. Any transcript so prepared shall be made available to the council for copying at the council's expense.

(c) If the appeal relates to an order constituting a disciplinary action against an occupational licensee, the provisions of RSA 541-A:31, VII-a shall apply.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.06 Testimony.

- (a) All testimony of witnesses shall be made under oath or affirmation.
- (b) Any individual testifying before the council shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.
- (c) Any individual testifying before the council shall be subject to cross-examination as provided in (f) below.
- (d) Whenever it appears that testimony to be offered at the hearing would be more readily understood if presented in written form, the presiding officer shall require the party offering such testimony to submit the testimony in written form, provided such requirement will not substantially prejudice the interests of any party to the hearing. Upon request of the party who has been requested to submit written testimony, the presiding officer shall direct that the record be held open after the close of the hearing or that the hearing be continued to a later date for the sole purpose of allowing sufficient time to prepare the written submission. All persons offering testimony in written form shall be subject to cross-examination as provided in (f) below.
- (e) Unless otherwise agreed at a prehearing conference, direct testimony shall be offered in the following order:

- (1) The person who filed the notice of appeal and such witnesses as the person may call;
- (2) Any other non-state party and such witnesses as the party may call; and
- (3) The department, by such staff members and other witnesses as the department may call.

(f) If the presiding officer, members of the council, or legal counsel to the council have questions regarding a witness's testimony, the individual having the question shall cross-examine the witness during or at the conclusion of the testimony of that witness, as allowed by the presiding officer. The presiding officer shall allow other parties or their representatives a reasonable opportunity to cross-examine each witness. Cross-examination shall be by asking questions directly of the witness, so long as such direct questioning is not disruptive to the orderly conduct of the hearing. If the presiding officer determines that such cross-examination is disruptive to the orderly conduct of the hearing, then the presiding officer shall require the

cross-examination to be conducted indirectly, by addressing questions to the witness through the presiding officer.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.07 General Evidence.

(a) Pursuant to RSA 541-A:33, II, the rules of evidence shall not apply.

(b) Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded. The experience, technical competence, and specialized knowledge of the councilors shall, if relevant, be used in the evaluation of all evidence submitted to the council.

(c) Whenever necessary for a full and fair consideration of the appeal, the presiding officer shall take official notice of any information specified in RSA 541-A:33, V. The final decision of the council shall specifically identify those facts of which official notice were taken.

(d) All documents, materials, and objects offered in evidence as exhibits shall be marked by the offering party with the docket number and shall, if accepted, be numbered or otherwise identified in a sequential manner. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide each member of the council and each party with a copy of such documents or photographs, unless such documents or photographs are determined by the presiding officer to be of such form, size or character as not to be reasonably suitable for reproduction.

(e) All written testimony and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the department's offices in Concord during normal business hours.

(f) In any proceeding involving an application for a permit or other approval, the application filed with the department, including all supplemental information including but not limited to maps, plans, and specifications, and any amendments to the application or supplemental information, shall be placed into evidence by the department.

(g) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds for the objections shall be timely stated during the course of the hearing. Nothing herein shall be construed as independent authorization for interlocutory appeals of rulings of the presiding officer.

(h) No information shall be considered as evidence or made part of the record in any proceeding before the council that is not introduced as evidence in accordance with this part.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.08 Exhibits.

(a) Where evidence to be presented consists of numerical or graphic data and such evidence would make oral presentation difficult to follow, such evidence shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.

(b) Space shall be provided in the upper right hand corner of each exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) The party offering an exhibit shall supply the original and 15 copies thereof to the council and shall provide a copy to all other parties, unless exempted under Env-AC 205.07(d).

Source. #8267-A, *eff 1-25-05*

Env-AC 205.09 Requests for Findings and Conclusions. Any party may submit requests for findings of fact and conclusions of law by the close of the record as established under Env-AC 205.10.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.10 Close of the Record.

(a) After the conclusion of the hearing, no other evidence, testimony or exhibits shall be allowed into the record, except as allowed pursuant to (b) below.

(b) Prior to the conclusion of the hearing, a party may request that the record be left open for a specified period of time in which to file evidence or arguments not available at the hearing. If the council determines that such material is necessary to a full consideration of the issues raised in the appeal, the presiding officer shall set a date by which the additional material shall be filed.

(c) The party filing such additional material shall serve copies of all items filed in accordance with Env-AC 204.09.

(d) If any other party to the hearing requests time to respond to the material submitted, the presiding officer shall set a specific time period following filing of the material for the filing of a response. If any other party to the hearing requests the opportunity to cross-examine on the additional material submitted, the presiding officer shall set a date and time for a hearing at which cross-examination on the additional material submitted shall be allowed, if the presiding officer determines that such cross-examination is required for a full and true disclosure of the facts.

(e) The determination to allow cross-examination shall be based on:

- (1) The nature of the factual and legal issues in dispute in the proceeding;
- (2) The testimony and evidence submitted during the hearing and any cross-examination thereon;
and
- (3) The nature of the additional evidence to be submitted.

Source. #8267-A, *eff 1-25-05*

Env-AC 205.11 Reopening of the Record.

(a) At any time prior to a final decision on the appeal, any party to a proceeding or any member of the council may request the presiding officer to reopen the record to consider relevant, material, and non-duplicative testimony, evidence, arguments, or exhibits not previously considered.

(b) If the request is made after one or more parties have left the hearing, the request shall be in writing and a copy of the request shall be served in accordance with Env-AC 204.09.

(c) If the presiding officer determines that such testimony, evidence, arguments, or exhibits are necessary to a full consideration of the issues raised by the appeal, the record shall be reopened to accept the offered items.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) The presiding officer shall give written notice of the acceptance into the record of the offered items to all parties if the parties are no longer present. The presiding officer shall also set a time within which other parties may respond to or rebut the items made part of the record.

Source. #8267-A, eff 1-25-05

Env-AC 205.12 Failure to Appear. If any party to whom notice of a hearing has been given in accordance with these rules fails to appear and fails to advise the appeals clerk of such non-appearance in advance of the hearing, and the council determines that delaying the hearing to a later date would cause undue inconvenience or prejudice to the party or parties present, the council shall hear the evidence and testimony of the parties present and shall render a decision thereon, subject to the provisions of Env-AC 205.13.

Source. #8267-A, eff 1-25-05

Env-AC 205.13 Reconvening of Hearings.

(a) If a hearing is held in a party's absence pursuant to Env-AC 205.12, the party may file a motion to reconvene the hearing within 10 days after the date of the hearing.

(b) The motion shall:

- (1) State the reason(s) why the party was absent from the hearing;
- (2) State why the appeals clerk was not notified of the absence in advance of the hearing; and
- (3) Be supported by affidavits or other evidence.

(c) If the council determines that good cause exists to explain the party's failure to appear at the hearing and to explain the party's failure to notify the appeals clerk in advance of the hearing, the council shall reconvene the hearing by scheduling another hearing. Good cause shall mean accident, sudden illness, death of a family member or other circumstance beyond the control of the party which prevents the party from attending the hearing and from notifying the appeals clerk.

Source. #8267-A, eff 1-25-05

Env-AC 205.14 Burden of Proof.

(a) The appellant shall bear the burden of proving, by a preponderance of the evidence, that the decision that is being appealed was:

- (1) Contrary to case law, statute or rules; or
- (2) Arbitrary and capricious.

(b) For motions, waiver requests, and other non-dispositive matters, the party asserting the truth of a statement shall have the burden of proving, by a preponderance of the evidence, that the statement is true.

(c) For purposes of this section, proof by a preponderance of the evidence means that what is sought to be proved is more probable than not.

(d) Without limiting (a), above, all moving parties and all petitioners shall have the burden of persuading the council that their motion or petition should be granted.

Source. #8267-A, eff 1-25-05

Env-AC 205.15 Decisions.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) Unless the appeal is withdrawn pursuant to Env-AC 204.16, the council shall issue a final decision in writing in an appeal affecting a permit issued pursuant to Title V of the Clean Air Act, as amended, no later than 60 days following the close of the record.

(b) In all other appeals, the council shall issue a final decision in writing unless the appeal is withdrawn pursuant to Env-AC 204.16. A final decision adverse to a party in an appeal shall include findings of fact and conclusions of law separately stated. Findings of fact shall include a concise and explicit statement of the underlying facts supporting the findings.

(c) If a party has submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

(d) The appeals clerk shall serve a copy of the council's decision on each party in accordance with Env-AC 204.09.

(e) The appeals clerk shall keep a copy of each decision on file in the council's public records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of archives and records management of the department of state sets a longer retention period pursuant to rules adopted under RSA 5:40.

Source. #8267-A, *eff* 1-25-05

Env-AC 205.16 Motion for Reconsideration or Rehearing.

(a) Any party whose rights are directly and adversely affected by a decision of the council may file a motion for rehearing with the council within 20 days of the date the written decision is issued. No distinction shall be made between the terms "reconsideration" and "rehearing."

(b) A motion for rehearing shall set forth in detail the following:

- (1) The basis of the moving party's aggrievement;
- (2) The finding(s), conclusion(s), or condition(s) to which the moving party objects;
- (3) The basis for each objection;
- (4) Whether the moving party seeks to present new or additional evidence, and if so, the nature of such evidence to be offered; and
- (5) The nature of the relief requested, such as whether the moving party is seeking a full rehearing, clarification of a finding or ruling, or some other relief.

(c) New or additional evidence shall be accepted when offered to:

- (1) Cure any deficiencies in the original notice of appeal or testimony;
- (2) Correct errors of form in the decision;
- (3) Request reconsideration of the conditions of the approval or of the denial; or
- (4) Challenge any facts of which official notice was taken.

(d) The council shall, at its first scheduled meeting following the receipt of such a motion, grant or deny the motion, or any part thereof, on its merits, or treat the motion as one for reopening and grant it pending the receipt of such additional data or additional argument as it considers necessary. Any hearing held

under this section shall be limited to the issues raised in the motion for rehearing. The council shall provide reasonable notice to the parties of any rehearing that is ordered.

(e) A council decision shall become final if no motion for reconsideration is filed within the period specified in (a), above.

Source. #8267-A, eff 1-25-05

PART Env-AC 206 RULEMAKING PETITIONS AND HEARINGS

Env-AC 206.01 Filing. Any person wishing to petition the council to amend, adopt, or repeal a council rule shall file the original and one copy of the petition with the council clerk as provided in Env-AC 203.09(a).

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 206.02 Form and Content of Petition.

(a) A petition to adopt, amend, or repeal a council rule shall be in writing and shall be signed by the person who is seeking the ruling.

(b) A rulemaking petition shall include the following:

- (1) The name, mailing address, and daytime telephone number of each person filing the petition and, if available, a fax number and e-mail address for each such person;
- (2) Whether the person is asking the council to adopt, amend, or repeal a rule;
- (3) If the petition is to adopt a rule:
 - a. The chapter, part, and section, by alphanumeric code, where the person proposes the rule to be inserted; and
 - b. The language that the person wants to have adopted as a rule;
- (4) If the petition is to amend a rule:
 - a. The specific rule, by alphanumeric code, that is the subject of the petition; and
 - b. The language that the person wants to have adopted as a rule;
- (5) If the petition is to repeal a rule, the specific rule, by alphanumeric code, that is the subject of the petition; and
- (6) A concise and explicit statement of why the petitioner wants the council to undertake the action requested.

(c) A petition to adopt, amend, or repeal a council rule may also include such other information as the person filing the petition deems pertinent and relevant, and the person may attach exhibits, illustrations and sworn written information to the petition.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 206.03 Processing of Rulemaking Petitions.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) Upon receipt of a petition to adopt, amend, or repeal a council rule, the council clerk shall forward the petition to the council.

(b) At its first meeting following receipt of a petition to adopt, amend, or repeal a council rule, the council shall review the petition and proceed in accordance with RSA 541-A:4, I.

(c) The petition shall be granted and a rulemaking proceeding shall be initiated if the council determines that the proposed action is:

(1) Consistent with state and federal law and policy; and

(2) Necessary to secure the just, efficient, and accurate resolution of council proceedings in accordance with recognized principles of due process and the requirements of RSA 541-A.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 206.04 Public Comment on Proposed Council Rules. The council shall provide notice of and receive public comment on proposed council rules as follows:

(a) The council shall give notice of the proposed rulemaking in accordance with RSA 541-A:6;

(b) Any person wishing to submit written comments shall file the comments as specified in the notice of proposed rulemaking;

(c) A public hearing shall be held during a meeting of the council and shall be identified on the agenda for the meeting as a hearing to receive public comment on the proposed council rules;

(d) The presiding officer shall open the public hearing and shall ask any person wishing to comment on the proposed council rules to identify himself or herself for the record and to proceed with his/her comments;

(e) All comments shall be recorded in full by tape recording or other method which will provide a verbatim record of the hearing;

(f) After all persons who wished to comment have done so, the presiding officer shall close the public hearing on the proposed council rules;

(g) For rulemaking hearings, the record shall remain open until the date specified in the notice published in the Rulemaking Register; and

(h) Hearings on proposed rules shall be continued or postponed only in accordance with RSA 541-A:11, III or IV, respectively.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

PART Env-AC 207 DECLARATORY RULINGS

Env-AC 207.01 Filing. Any person seeking a declaratory ruling from the council shall file the original and one copy of a petition for declaratory ruling with the council clerk at the address identified in Env-AC 203.09(a).

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 207.02 Form and Content of Petition.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) A petition for a declaratory ruling shall be in writing and shall be signed by the person who is seeking the ruling.

(b) A petition for a declaratory ruling shall include the following:

(1) The name, mailing address, and daytime telephone number of each person requesting the declaratory ruling and, if available, a fax number and e-mail address for each such person;

(2) A precise and complete citation to the statute or administrative rule, or identifying information concerning the order, upon which the petitioner seeks a ruling; and

(3) A concise and explicit statement explaining the background, facts, and considerations which led to the petition in order for the council to understand the nature and specific reasons for the petition and why the ruling is being requested.

(c) A petition for a declaratory ruling may also include such other information as the person filing the petition deems pertinent and relevant, and the person may attach exhibits, illustrations and sworn written information to the petition.

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

Env-AC 207.03 Processing of Petitions for Declaratory Rulings.

(a) Upon receipt of a petition for a declaratory ruling, the council clerk shall forward the petition to the council.

(b) At its first meeting following receipt of a petition for declaratory ruling, the council shall review the petition to determine:

(1) Whether additional information or explanation is needed; and

(2) Whether the complexity of the petition, including but not limited to the issue in question and the legal implications thereof, will cause the council to seek assistance from the department of justice.

(c) The council shall inform the petitioner in writing of the results of its review under (b), above. If additional information or explanation is needed, the council shall identify the needed information or explanation and shall establish a deadline for the petitioner to provide the information, which shall be no sooner than 20 days after the date of the notice. If the council will be seeking assistance from the department of justice, the council shall inform the petitioner of the anticipated amount of time that will be needed to obtain such assistance.

(d) If assistance from the department of justice is not required, the council shall issue a written response to the person filing the petition for declaratory ruling within 30 days of the first council meeting following receipt of a complete petition.

(e) If assistance from the department of justice is required, the council shall issue a written response to the person filing the petition for declaratory ruling within 30 days of the first council meeting following receipt of assistance from the department of justice.

(f) Declaratory rulings issued by the department shall be filed with the director of legislative services in accordance with RSA 541-A:16, II(b).

Source. #6586, eff 9-23-97; ss by #8267-A, eff 1-25-05

PART Env-AC 208 EXPLANATION OF RULES

Env-AC 208.01 Explanation of Rules.

(a) As specified in RSA 541-A:11, VII, any interested person may, at any time before 30 days after final adoption of a rule by the council, request the council to issue an explanation of the rule that it has adopted.

(b) The request shall be:

(1) In writing; and

(2) Filed in accordance with Env-AC 203.09(a).

(c) As specified in RSA 541-A:11, VII, the explanation shall include:

(1) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(2) An explanation of why the council overruled the arguments and considerations against the rule.

(d) The explanation shall be issued within 30 days following the first council meeting after receipt of the request.

Source. #6586, eff 9-23-97; ss by #8267-B, eff 1-25-05

Appendix

Rule	Statute Rule is Intended to Implement
Env-AC 201	RSA 21-O:11; RSA 21-O:14; RSA 541-A:16, I; RSA 541-A:30-a; RSA 541-A:31-36
Env-AC 202	RSA 21-O:11; RSA 21-O:14; RSA 541-A:7; RSA 541-A:16, I; RSA 541-A:30-a
Env-AC 203 (Sections implementing specific statutes are listed below)	RSA 21-O:11; RSA 21-O:14; RSA 541-A:16, I; RSA 541-A:30-a; RSA 541-A:31, 35, 36
Env-AC 203.06	RSA 541-A:30-a, III(f)
Env-AC 203.09 – 203.10	RSA 541-A:30-a, III(a)
Env-AC 203.12	RSA 541-A:36
Env-AC 203.13	RSA 541-A:30-a, III(b)
Env-AC 203.15	RSA 541-A:30-a, III(j)
Env-AC 204 (Sections implementing specific statutes are listed below)	RSA 21-O:11; RSA 21-O:14; RSA 541-A:16, I; RSA 541-A:30-a; RSA 541-A:31, IV and 32
Env-AC 204.01-204.04	RSA 541-A:30-a, III(a)
Env-AC 204.05	RSA 541-A:30-a, III(g)
Env-AC 204.06-204.08	RSA 541-A:30-a, III(b)
Env-AC 204.09	RSA 541-A:30-a, III(a)
Env-AC 204.12	RSA 541-A:30-a, III(f), (j)
Env-AC 204.13	RSA 541-A:30-a, III(h)
Env-AC 205 (Sections implementing specific statutes are listed below)	RSA 21-O:11; RSA 21-O:14; RSA 541-A:16, I; RSA 541-A:30-a; RSA 541-A:31, IV; RSA 541-A:31,V; RSA 541-A:33, 38
Env-AC 205.01-205.03	RSA 541-A:30-a, III(c)
Env-AC 205.09	RSA 541-A:35
Env-AC 205.11	RSA 541-A:30-a, III(i)
Env-AC 205.14	RSA 541-A:30-a, III(d), (e)
Env-AC 206	RSA 541-A:16, I
Env-AC 207	RSA 541-A:16, I
Env-AC 208	RSA 541-A:11, VII