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# ENVIRONMENTAL Fact Sheet

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## Appealing a Decision of the New Hampshire Department of Environmental Services

When the New Hampshire Department of Environmental Services (NHDES) makes a final decision on a permit application or issues an appealable enforcement decision, the decision may be appealed to one of four councils. The councils are independent legal entities created under NH RSA 21-O.

NH RSA 21-O:14, I(b) defines an appealable enforcement decision as (1) the issuance of an administrative order issued under specific statutory authority for such an order; or (2) the revocation of or refusal to renew a license as defined in NH RSA 541-A:1, VIII, based on the permit holder's non-compliance with the statute, rules, or terms and conditions of the license, or on other good or just cause as defined in rules adopted relative to the license.

NH RSA 21-O:14, I(c) defines a "department decision" as a department permitting decision, a department enforcement decision and any other decision made by the department that is expressly appealable to a council under the statute granting authority to the department to make the decision. The term does not include rulemaking or an agency declaratory ruling as provided for in NH RSA 541-A.

**THE FOUR COUNCILS:** Each state environmental council has members who represent diverse interests, including business and industry, recreation, environment/conservation, and local government. Which council hears the appeal depends on which NHDES program gave rise to the decision.

- The **Air Resources Council** hears appeals relating to programs implemented through the NHDES Air Resources Division.
- The **Waste Management Council** hears appeals relating to programs implemented through the NHDES Waste Management Division.
- The **Water Council** hears appeals relating to most programs implemented through the NHDES Water Division. The Water Council does not hear appeals of decisions on wetlands and shoreland protection, or certain decisions pertaining to NH RSA 482-B, relative to water well contractors or pump installers.
- The **Wetlands Council** hears appeals relating to NH RSA 482-A relative to wetlands and NH RSA 483-B relative to shoreland protection.

On appeal, the council may affirm the NHDES decision or may remand the matter to NHDES with a determination that the decision is unlawful or unreasonable. The councils are supported in appeals by an independent hearing officer designated under state law by the New Hampshire Attorney General. This individual has experience and expertise in conducting administrative hearings and ensuring that all of the parties' due process rights are protected.

**THE APPEAL PROCESS:** If you have been adversely affected by a NHDES permitting decision or enforcement decision appealable under NH RSA 21-O:14, and wish to appeal the decision, you must follow the specific procedures prescribed in NH RSA 21-O:14, and the rules adopted by the council that will hear the appeal. You may represent yourself or have an attorney or other authorized individual represent you. You should obtain and review the complete rules of the council to which you are appealing prior to filing an appeal.

Please note the following important information:

- For all decisions, you must file your appeal **within 30 calendar days** of the date that appears on the document that contains the decision you are appealing. If the 30th day is a weekend or holiday, the appeal must be filed **on or before** the next business day following the 30-day period.
- In order to file an appeal, you must have a direct interest in the order or decision that you wish to have changed. The decision must impact you **directly** and in some way **other** than it impacts the general public. This is called having **standing** to bring an appeal. If you do not have standing to bring an appeal, you may be allowed to **intervene** in an appeal brought by a person who does have standing, if you can show that you have a substantial interest in the appeal. A motion to intervene must be filed with the council that is hearing the appeal.
- If you think you can work out your concerns about a **permitting decision** (only) with NHDES but want to file an appeal in case you can't, you may file a Preliminary Notice of Appeal (PNA) and offer to enter into settlement discussions, which can be mediated or unmediated. The PNA is a much shorter and less complex document than a notice of appeal, but you still must list every reason you have for believing the NHDES permitting decision is unlawful or unreasonable. If you are not able to reach a settlement, you must file a notice of appeal within 45 days of the date of filing the PNA. In a notice of appeal, you may include only those issues you identified in your PNA.
- A notice of appeal must contain all of the information specified in the council's rules, which includes your full name and current address, all pertinent facts, what you would like the council to do (for example, overturn an administrative order), and every reason you have for believing the decision is unlawful or unreasonable. You must also attach a copy of the decision you are appealing. The council's authority is limited to upholding or remanding, in whole or in part, the decision being appealed. Establishing conditions and terms of permits is solely within the authority of NHDES.
- You must submit the **original and a number of copies** (as specified in the council's rules) of any document filed with a council. Also, each council's rules require you to submit enough copies of any documents, photographs or exhibits to be offered as evidence at the hearing for each council member and each other participant in the appeal to have his or her own copy.

- You are **prohibited by law** from directly contacting any member of the council deciding your appeal concerning that appeal, unless all other parties to the appeal have been **notified in advance** and been given an **opportunity to participate** in the discussion.

**THE FINE PRINT:** *This fact sheet is intended as a basic source of information concerning appeals from NHDES permitting decisions and appealable enforcement decisions. It is not intended to replace the administrative rules of each council, but merely to provide a summary of some of the relevant requirements.* This fact sheet is **not** legal advice. NHDES staff may not give legal advice to any party to an administrative appeal.

For more information, contact the NHDES Legal Unit, PO Box 95, Concord, NH 03302-0095; (603) 271-6072; [appeals@des.nh.gov](mailto:appeals@des.nh.gov). For copies of council rules, contact the NHDES Public Information and Permitting Unit; PO Box 95; Concord, NH 03302-0095; (603) 271-8876; [PIP@des.nh.gov](mailto:PIP@des.nh.gov).