
ENVIRONMENTAL Fact Sheet



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Appealing a Decision of the N.H. Dept. of Environmental Services

Whenever DES makes a final decision on a permit application or issues an appealable enforcement decision,¹ the decision can be appealed to one of four councils. The councils are independent legal entities created under RSA 21-O. Each 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 DES program gave rise to the decision. The Air Resources Council hears appeals relating to programs implemented through the DES Air Resources Division; the Waste Management Council hears appeals relating to programs implemented through the DES Waste Management Division; the Water Council hears appeals relating to programs implemented through the DES Water Division other than wetlands and shoreland protection; and the Wetlands Council hears appeals relating to the wetlands and shoreland protection programs. The job of a council in an appeal is to decide whether the DES decision being appealed is unlawful (*i.e.*, not in accordance with applicable laws and rules) or unreasonable (*i.e.*, arbitrary and capricious). The councils are now supported in appeals by an independent hearing officer appointed under state law by the Attorney General. This individual has experience and expertise in ensuring that all of the parties' due process rights are protected.

If you have been adversely affected by a DES permitting decision or appealable enforcement decision and wish to appeal the decision, you must follow the specific procedures prescribed in 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 individual represent you. You should obtain and review the complete rules of the council to which you are appealing prior to filing an appeal. Some important information is highlighted below.

- For all decisions, you must file your appeal **within 30 calendar days** of the date that appears on the front of 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 last business day of the 30-day period. If an appeal is not filed in time, it may not be heard.
- In order to file an appeal, you must have a direct interest in the order or decision that you wish to have changed. That is, you cannot appeal a decision simply because you don't like it. The decision must impact you **directly** and in some way **other** than it impacts the general

¹ 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 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.

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 and will not be granted automatically.

- If you think you can work out your concerns about the decision with DES but want to file an appeal in case you can't, you may now file a Preliminary Notice of Appeal (PNA) and offer to enter into settlement discussions, which can be mediated or unmediated.² The PNA is a much shorter and less complex document than a full notice of appeal, but you still must list every reason you have for believing the DES decision is unlawful or unreasonable. If you are not able to reach a settlement, you must file a full notice of appeal within 45 days of the date or the original decision. If this happens, your notice of appeal can 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 also must attach a copy of the decision you are appealing. The council's authority is limited to upholding or overturning, in whole or in part, the decision being appealed. Establishing conditions and terms of permits is solely within the authority of DES.
- You must submit the **original and a number of copies** (as specified in the council's rules) of any document filed with the 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. Council members are obligated to report any contact they have with parties outside of the hearing that may come under this prohibition.

This fact sheet is intended as a basic source of information concerning appeals from DES permitting decisions and administrative orders. It is not intended to replace the administrative rules of each council, but merely to provide a summary of some of the relevant requirements.

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

For copies of council rules contact the DES Public Information and Permitting Unit; PO Box 95; Concord, NH 03302-0095; (603) 271-8876; PIP@des.nh.gov; or see <http://des.nh.gov/organization/commissioner/legal/rules/index.htm#boards>.

² See RSA 21-O:14, I-b (Laws of 2012, 246:5, effective June 18, 2012).