

# The Vermont Statutes Online

## Title 10: Conservation and Development

### ***Chapter 201: ADMINISTRATIVE ENVIRONMENTAL LAW ENFORCEMENT***

#### **§ 8001. Legislative findings**

The general assembly finds it necessary to standardize and enhance the enforcement powers of the secretary of the agency of natural resources and the enforcement powers of the land use panel of the natural resources board in order to:

- (1) enhance the protection of environmental and human health afforded by existing laws;
- (2) prevent the unfair economic advantage obtained by persons who operate in violation of environmental laws;
- (3) provide for more even-handed enforcement of environmental laws;
- (4) foster greater compliance with environmental laws;
- (5) deter repeated violation of environmental laws; and
- (6) establish a fair and consistent system for assessing administrative penalties. (Added 1989, No. 98, { 1; amended 2003, No. 115 (Adj. Sess.), { 67, eff. Jan. 31, 2005.)

#### **§ 8002. Definitions**

As used in this chapter:

- (1) "Board" means the natural resources board defined by subdivision 6001(1) of this title.
- (2) "Compliance" means compliance with the statutes specified in section 8003 of this title, and with any related rules, permits, assurances, or orders.
- (3) "Investigator" means an investigator designated and duly authorized by the secretary or the board.
- (4) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.

(5) "Permit" means any permit, license, certification or transitional operational authority issued under any of the statutes specified in section 8003 of this title.

(6) "Respondent" means a person who has committed or is alleged to have committed a violation.

(7) "Secretary" means the secretary of the agency of natural resources, or the secretary's duly authorized representative.

(8) "Stop work order" means an order to cease construction or other activity.

(9) "Violation" means noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permits, assurances, or orders.

(10) "Land use panel" means the land use panel of the board, as established under chapter 151 of this title.

(11) "Economic benefit" means a reasonable approximation of any gain, advantage, wrongful profit, or delayed avoided cost, financial or otherwise, obtained as a result of a violation. Economic benefit shall not be limited to only competitive advantage obtained.

(12) "Environmental court" or "environmental division" means the environmental division of the superior court established by 4 V.S.A. { 30. (Added 1989, No. 98, { 1; amended 1993, No. 92, { 10; 2003, No. 115 (Adj. Sess.), { 68, eff. Jan. 31, 2005; 2007, No. 191 (Adj. Sess.), { 1; 2009, No. 154 (Adj. Sess.), §§ 53c, 53e, 236.)

### **§ 8003. Applicability**

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

(1) [Deleted.]

(2) 10 V.S.A. chapter 23, relating to air quality;

(3) 10 V.S.A. chapters 47 and 56, relating to water pollution control, water quality standards, and public water supply;

(4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;

(5) 10 V.S.A. chapter 37, relating to wetlands protection and water resources management;

(6) 10 V.S.A. chapter 48, relating to well drillers and groundwater withdrawal;

(7) 10 V.S.A. chapter 53, relating to beverage containers;

- (8) 10 V.S.A. chapter 59, relating to underground storage tanks;
- (9) 10 V.S.A. chapter 64, relating to potable water supplies and wastewater systems;
- (10) 10 V.S.A. chapter 151, relating to land use;
- (11) [Deleted.]
- (12) 10 V.S.A. chapter 159, relating to solid waste, hazardous waste and hazardous materials;
- (13) 10 V.S.A. chapter 161, relating to low-level radioactive waste;
- (14) [Deleted.]
- (15) 29 V.S.A. chapter 11, relating to lands under public waters;
- (16) 10 V.S.A. chapter 162, relating to the Texas Low-Level Radioactive Waste Disposal Compact;
- (17) 10 V.S.A. { 2625, relating to heavy cutting of timber;
- (18) 10 V.S.A. chapter 164, relating to comprehensive mercury management;
- (19) 24 V.S.A. chapter 61, subchapter 10, relating to salvage yards;
- (20) 10 V.S.A. chapter 50, relating to the control of aquatic species and introduction of algicides, pesticides, and herbicides; and
- (21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste.

- (b) The secretary's administrative enforcement authority established by this chapter shall supplement any authority of the secretary established by the chapters set forth in subsection (a) of this section to initiate criminal proceedings, or civil proceedings under chapters 47, 56, 59 and 159 of this title.
- (c) The authority established by this chapter shall not be construed as negating any constitutional, common law or statutory rights of persons. (Added 1989, No. 98, { 1; amended 1989, No. 296 (Adj. Sess.), { 10, eff. June 29, 1990; 1991, No. 71, { 3; 1993, No. 137 (Adj. Sess.), { 3; 1997, No. 15, { 4, eff. May 6, 1997; 2001, No. 133 (Adj. Sess.), { 6, eff. June 13, 2002; 2005, No. 13, { 3; 2005, No. 144 (Adj. Sess.), { 6; 2009, No. 31, { 8; No. 46, { 2, eff. July 1, 2010; No. 56, { 20; 2009, No. 79 (Adj. Sess.), { 5, eff. April 19, 2010; No. 146 (Adj. Sess.), { F14.)

#### **§ 8004. Enforcement of Act 250**

In addition to the enforcement of chapter 151 of this title on the secretary's initiative, the secretary shall institute enforcement proceedings under chapter 151 when requested by the land use panel. The secretary and the land use panel shall develop procedures for the cooperative enforcement of chapter 151 of this title. (Added 1989, No. 98, { 1; amended 2003, No. 115 (Adj. Sess.), { 69, eff. Jan. 31, 2005.)

## **§ 8005. Investigations; inspections; affidavit of compliance**

### **(a) Inspections and investigations.**

- (1) An investigator may perform routine inspections to determine compliance.
- (2) An investigator may investigate upon receipt or discovery of information that an activity is being or has been conducted that may constitute or cause a violation.
- (3) An investigator, upon presentation of credentials, may seek permission to inspect or investigate any portion of the property, fixtures, or other appurtenances belonging to or used by a person whose activity is required to be in compliance. The investigator shall state the purpose of the inspection or investigation. An inspection or investigation may include monitoring, sampling, testing, and copying of any records, reports, or other documents relating to the purposes to be served by compliance.
- (4) If permission for an inspection or investigation is refused, the investigator may seek an access order from the district or superior court in whose jurisdiction the property is located enabling the investigator to perform the inspection or investigation.

### **(b) Access orders.**

- (1) A district or superior court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:
  - (A) a provision of a permit that authorizes the inspection; or
  - (B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the secretary or the land use panel; or
  - (C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.
- (2) Issuance of an access order shall not negate the secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the office of the attorney general or a state's attorney.
- (c) At any time, the secretary, the land use panel, or a district commission created pursuant to subsection 6026(b) of this title may require a permittee to file an affidavit under oath or

affirmation that a facility, project, development, subdivision, or activity of the permittee is in compliance with an assurance of discontinuance or order issued under this chapter or a permit issued under a statute identified under subsection 8003(a) of this title or under a rule enforceable under authority set forth under a statute identified under subsection 8003(a) of this title. A request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file an affidavit within the period prescribed by the secretary, land use panel, or district commission or the material misrepresentation of fact in the affidavit shall be a violation and shall also constitute grounds for revocation of the permit to which the affidavit requirement, assurance of dis

continuance, or order under this chapter applies. (Added 1989, No. 98, { 1; amended 2003, No. 115 (Adj. Sess.), { 70, eff. Jan. 31, 2005; 2009, No. 146 (Adj. Sess.), { F16.)

### **§ 8006. Warning; notice of alleged violation**

(a) When the secretary determines that a violation will or is likely to occur, the secretary may issue a written warning which shall be served on the respondent in person or by certified mail, return receipt requested. The warning shall include a brief description of the prospective violation, identification of the statute, rule, permit, assurance, or order that is the subject of the prospective violation and a brief description of the potential enforcement actions which may be taken if the violation occurs.

(b) When the secretary determines that a violation exists, the secretary may issue a written notice of the alleged violation. The notice shall be served on the respondent in person or by certified mail, return receipt requested. The notice shall include a brief description of the alleged violation, identification of the statute, rule, permit, assurance, or order that is the subject of the violation, a brief description of the secretary's intended course of action to address the alleged violation, and, if appropriate, specific time lines and directives to achieve compliance. (Added 1989, No. 98, { 1; amended 2007, No. 191 (Adj. Sess.), { 2.)

### **§ 8007. Assurances of discontinuance**

(a) As an alternative to administrative or judicial proceedings, the secretary, or the land use panel, may accept from a respondent an assurance of discontinuance of a violation. An assurance of discontinuance shall include:

(1) a statement of the facts which provide the basis for claiming the violation exists and a description of the alleged violation determined by the secretary or the land use panel; and

(2) an agreement by the respondent to perform specific actions to prevent, abate or alleviate environmental problems caused by the violation, or to restore the environment to its condition before the violation, including financial responsibility for such actions.

(b) An assurance of discontinuance may include:

(1) prevention, abatement, alleviation, or restoration schedules;

(2) contribution toward other projects related to the violation, which the respondent and the secretary or the land use panel agree will enhance the natural resources of the area affected by the violation, or their use and enjoyment. A contribution under this subdivision shall be subject to the following:

(A) the respondent shall disburse all required contributions to the project or shall be in full and continuing compliance with a payment schedule established by the assurance of discontinuance no later than 180 days after the effective date of the assurance discontinuance requiring the funding of such project;

(B) in the event that a respondent fails to comply with subdivision (A) of this subdivision (2), the respondent shall place the funds into either an attorneys' interest on lawyers' trust account (IOLTA) or an escrow account until such time as the terms of the agreement between the secretary and the respondent authorize the release of the funds, provided that the secretary may, as a term of the agreement, require payment of the funds as a monetary penalty if noncompliance with subdivision (A) of this subdivision (2) continues;

(C) unless otherwise contrary to requirements of federal law and except for contributions from municipalities, a contribution is not permissible where the project primarily benefits the respondent, including activities:

(i) that are required by law, likely to be required by law, or reasonably associated with the respondent's usual course of business; or

(ii) which the respondent has planned, budgeted for, initiated, or completed prior to or during the current enforcement action;

(D) unless otherwise contrary to requirements of federal law, the secretary may allow a contribution from a municipality to primarily benefit the municipality. For purposes of this subsection, "municipality" shall mean a city, town, or village;

(3) for a violation that does not affect the natural environment or cause any environmental harm, contribution toward public educational projects, administered by the agency of natural resource or the natural resources board, that will enhance the public's awareness and compliance with statutes identified in subsection 8003(a) of this title and with any related rules or permits or related assurances of discontinuance or orders issued under this chapter. Contributions under this subdivision shall be used for the purpose stated in this subdivision and shall be deposited as follows:

(A) into the Act 250 permit fund established under section 6029 of this title for the portion of a settlement attributable to the resolution of a violation under authority that the natural resources board enforces under subsection 8003(a) of this title; or

(B) into the treasury for the portion of a settlement attributable to the resolution of a violation under authority that the secretary enforces under subsection 8003(a) of this title, for use by the secretary;

(4) payment of monetary penalties, including stipulated penalties for violation of the assurance.

(c) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. The assurance of discontinuance shall be simultaneously filed with the attorney general and the environmental division. The secretary or the land use panel shall post a final draft assurance of discontinuance to its website and shall provide a final draft assurance of discontinuance to a person upon request. When signed by the environmental division, the assurance shall become a judicial order. Upon motion by the attorney general made within 10 days of the date the assurance is signed by the court and upon a finding that the order is insufficient to carry out the purposes of this chapter, the court shall vacate the order.

(d) If the respondent complies with an assurance of discontinuance signed by the division, the respondent shall not be liable for additional civil or criminal penalties with respect to the facts set forth in the assurance of discontinuance. (Added 1989, No. 98, { 1; amended 1993, No. 164 (Adj. Sess.), { 12; No. 232 (Adj. Sess.), { 38, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), { 71, eff. Jan. 31, 2005; 2007, No. 191 (Adj. Sess.), { 3; 2009, No. 146 (Adj. Sess.), { F17; No. 154 (Adj. Sess.), { 236.)

## **§ 8008. Administrative orders**

(a) The secretary may issue an administrative order when the secretary determines that a violation exists. The order shall be served as provided for under the Vermont Rules of Civil Procedure. A copy of the order also shall be delivered to the attorney general. An order shall be effective on receipt unless stayed under subsection 8012(e) of this title.

(b) An order shall include:

(1) a statement of the facts which provide the basis for claiming the violation exists;

(2) identification of the applicable statute, rule, permit, assurance or order;

(3) a statement that the respondent has a right to a hearing under section 8012 of this title, and a description of the procedures for requesting a hearing;

(4) a statement that the order is effective on receipt unless stayed on request for a hearing filed within 15 days;

(5) if applicable, a directive that the respondent take actions necessary to achieve compliance, to abate potential or existing environmental or health hazards, and to restore the environment to the condition existing before the violation; and

(6) a statement that unless the respondent requests a hearing under this section, the order becomes a judicial order when filed with and signed by the environmental court.

(c) An order may include:

(1) a "stop work" order that directs the respondent to stop work until a permit is issued, compliance is achieved, a hazard is abated, or any combination of the above. In issuing such an order, the secretary shall consider the economic effect of the order on individuals other than the respondent;

(2) a stay of the effective date or processing of a permit under section 8011 of this title; and

(3) a proposed penalty or penalty structure.

(d)(1) The administrative order and proof of service shall be simultaneously filed with the attorney general and the environmental court. The court shall sign the administrative order in the event that:

(A) The administrative order is properly served on a respondent in accordance with subsection (a) of this section;

(B) The respondent does not request a hearing in accordance with subsection (b) of this section; and

(C) the order otherwise meets the requirements of this chapter.

(2) When signed by the environmental court, the administrative order shall become a judicial order. Upon motion by the attorney general made within 10 days of the date the administrative order is signed by the court and upon a finding by the court that the order is insufficient to carry out the purposes of this chapter, the court shall vacate the order. (Added 1989, No. 98, { 1; amended 2007, No. 191 (Adj. Sess.), { 4; 2009, No. 146 (Adj. Sess.), { F18.)

### **§ 8008a. Landfill closure extension orders**

(a)(1) The secretary may issue a landfill closure extension order when the secretary finds that the landfill meets the criteria of section 6605e of this title. That order shall be served upon the landfill owner and operator in person or by certified mail, return receipt requested. A copy of the order also shall be delivered to the attorney general. An order shall be effective on receipt.

(2) If any proposed landfill closure extension order would extend the service area or change a permit condition, including a specified closure date, then before issuing the order, the secretary shall provide notice of the opportunity for public comment on the proposal and on any proposed findings with respect to the order. This notice shall be provided to the persons specified in 10 V.S.A. { 6605d(e)(2)(A) through (D) and to any other persons that, in advance, have requested notice in writing. Upon receipt of a written request for a public informational meeting, signed by no less than 15 persons, the secretary shall warn and hold a public informational meeting on the issuance of the order. An order may be issued no sooner than 14 days after providing notice under this subsection, or if a public informational meeting is held, no sooner than seven days after the date of the meeting.

(b) A landfill closure extension order shall include:

- (1) a statement of the facts which provide the basis for the secretary's determination of compliance with the provisions of section 6605e of this title;
- (2) a statement that the owner and operator have a right to a hearing under section 8018 of this title and a description of the procedures for requesting a hearing;
- (3) a schedule for cessation of operations, closure, and commencement of post-closure care;
- (4) implementation schedules and conditions regarding the operation and closure of the landfill; and
- (5) a requirement that by November 15, 1992, the owner and operator will submit, to the secretary, a revised closure plan that addresses the additional waste that will be accepted. This plan shall be in conformance with the solid waste management rules. (Added 1991, No. 202 (Adj. Sess.), { 4, eff. May 27, 1992.)

#### **§ 8009. Emergency administrative orders; request for hearing**

- (a) Grounds for issuance. The secretary may issue an order under section 8008 of this title as an emergency administrative order when:
  - (1) a violation presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or
  - (2) an activity will or is likely to result in a violation which presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or
  - (3) an activity requiring a permit has been commenced and is continuing without a permit.
- (b) Prerequisites to issuance. An emergency order may be issued by the secretary only if:
  - (1) the order has been presented to the environmental division;
  - (2) all reasonable efforts have been made to notify the respondent of the presentation of the order to the environmental division; and
  - (3) the environmental division has found that the secretary has made a sufficient showing that grounds for issuance of the order exist.
- (c) Effective date of order. An emergency order shall become effective on actual notice to the respondent.
- (d) Request for hearing. If an emergency order is issued, the respondent may request a hearing before the environmental division. Notice of the request for hearing shall be filed with the environmental division and the secretary within five days of receipt of the order. A hearing on the emergency order shall be held at the earliest possible time and shall take precedence over all

other hearings. The hearing shall be held within five days of receipt of the notice of the request for hearing. A request for hearing on an emergency order shall not stay the order. The environmental division shall issue a decision within five days from the conclusion of the hearing, and no later than 30 days from the date the notice of request for hearing was received.

(e) Insufficient grounds. An emergency order shall be dissolved upon a finding that there were insufficient grounds for its issuance.

(f) Appeals. An appeal to the supreme court by the secretary shall stay the dissolution of an emergency order; an appeal to the supreme court by the respondent shall not stay operation of an emergency order. (Added 1989, No. 98, { 1; amended 1993, No. 232 (Adj. Sess.), { 38, eff. March 15, 1995; 2009, No. 154 (Adj. Sess.), { 236.)

## **§ 8010. Administrative penalties**

(a) An administrative penalty may be included in an administrative order issued under section 8008 of this title or in an emergency administrative order issued under subdivision 8009(a)(1) or (3) of this title. An order assessing administrative penalties shall be accompanied by an affidavit setting forth the facts establishing the date of violation.

(b) In determining the amount of the penalty, the secretary shall consider the following:

(1) the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violation;

(2) the presence of mitigating circumstances, including unreasonable delay by the secretary in seeking enforcement;

(3) whether the respondent knew or had reason to know the violation existed;

(4) the respondent's record of compliance;

(5) [Repealed.]

(6) the deterrent effect of the penalty;

(7) the state's actual costs of enforcement; and

(8) the length of time the violation has existed.

(c)(1) A penalty of not more than \$42,500.00 may be assessed for each determination of a separate violation. In addition, if the secretary determines that a violation is continuing the secretary may assess a penalty of not more than \$17,000.00 for each day the violation continues. The maximum amount of penalty assessed under this subsection shall not exceed \$170,000.00.

(2) In addition to any penalty assessed under subdivision (1) of this subsection, the secretary may also recapture economic benefit resulting from a violation up to the \$170,000.00 maximum allowed under subdivision (1) of this subsection.

(d) Notwithstanding the provisions of subsection 8003(b) of this title, imposition of an administrative penalty under this section precludes imposition of any other administrative or civil penalty under any other provisions of law for the same violation.

(e) Penalties assessed under this section shall be deposited in the general fund, except for:

(1) those penalties which are assessed as a result of a municipality's enforcement action under chapter 64 of this title, in which case the municipality involved shall receive the penalty monies; and

(2) those penalties that are assessed as a result of the state's actual cost of enforcement in accordance with subdivision (b)(7) of this section, in which case the penalties shall be paid directly to the agency of natural resources. (Added 1989, No. 98, { 1; amended 2001, No. 133 (Adj. Sess.), { 7, eff. June 13, 2002; 2007, No. 191 (Adj. Sess.), { 5; 2009, No. 146 (Adj. Sess.), { F23.)

## **§ 8011. Permit stays**

(a) An administrative order may stay the effective date or processing of a permit:

(1) when any activity has been commenced illegally without a permit. The order may stay the effective date of the permit for a period of time up to the number of days that the activity was commenced before the permit was issued. This period of time shall not include the time from the date that work was stopped until the date a permit is issued; or

(2) when an applicant for a permit, or for an amendment to a permit, is not in compliance with an administrative order or an assurance of discontinuance with respect to a violation that is directly related to the activity which is the subject of the application; or

(3) when an applicant for a permit, or for an amendment to a permit, has one or more current violations.

(b) A stay shall be issued under this section only if the violation was caused by the applicant, by a person under the applicant's control or by a person who has control of the applicant.

(c) The processing of the application may be stayed until the respondent is in compliance with the directives in the order. An order for a permit stay shall not be stayed pending a hearing.

(d) In lieu of a permit stay under subdivision (a)(2) or (3) of this section, where an applicant for a permit or an amendment to a permit is not in compliance with an administrative order or an assurance of discontinuance, an administrative order may require the applicant to post a bond or other financial surety in an amount reasonably calculated to cover the costs necessary to achieve

compliance as a condition for the processing of the application. (Added 1989, No. 98, { 1; amended 2007, No. 191 (Adj. Sess.), { 6.)

### **§ 8012. Request for hearing**

(a) A respondent or the attorney general may request a hearing on an order issued by the secretary. Notice of a request for hearing shall be filed with the environmental division and the secretary. Upon receipt of the notice, the secretary shall forward a copy of the order to the environmental division.

(b) The environmental division shall have authority to:

(1) determine whether a violation has occurred. An order shall be reversed when it is determined that a violation has not occurred;

(2) affirm, or vacate and remand to the secretary an order issued under subdivision 8008(b)(5) of this title. The environmental division shall vacate and remand an order under this subdivision when a violation is found to exist but the procedure contained in the order is not reasonably likely to achieve the intended result;

(3) to affirm, modify, or reverse any provision of any order issued by the secretary except those identified by subdivision (2) of this subsection. In deciding whether to affirm or reverse a stop work order under this subdivision, the environmental division shall consider the economic effect of the order on individuals other than the respondent;

(4) to review and determine anew the amount of a penalty by applying the criteria set forth in subsections 8010(b) and (c) of this title; and

(5) to affirm, modify, or dissolve an emergency order.

(c) Notice of the request for hearing shall be filed within 15 days of receipt of the order. The hearing shall be held before the environmental division within 30 days of receipt by the division of the notice, unless continued for good cause. The environmental division shall issue a written decision within 20 days of the conclusion of the hearing, and no later than 60 days from the request for hearing, unless the hearing process is extended for good cause. The decision shall be sent to the parties by certified mail, return receipt requested, and shall include:

(1) a statement of conclusion as to whether a violation exists and findings of facts in support of the conclusion;

(2) identification of the applicable statute, rule, permit, assurance or order;

(3) the order to be imposed or penalty to be assessed, or both, if a violation is determined to exist;

(4) a statement that the respondent, the secretary and the attorney general have a right to appeal the decision, and a description of the procedures for requesting an appeal; and

(5) a warning that the decision will become final if no appeal is requested within 10 days of the date the decision is received.

(d) The environmental division may grant party status to an aggrieved person for the purpose of providing evidence and legal arguments only in relation to the sufficiency of an order issued under the authority of section 8008 of this title. As used in this subsection, an "aggrieved person" means a person who demonstrates that the interest of that person is not adequately represented by any other party and who at the time of the alleged violation had:

(1) an ownership, leasehold or contractual interest in real property directly affected by the violation described in the order; or

(2) an interest in the outcome of the proceeding which is distinct from the interest of the public-at-large because of the person's place of residence, place of employment or place of business.

(e) Notice of a request for hearing shall stay the order and payment of the penalty, if imposed, pending the hearing. The secretary may issue an emergency order with regard to the alleged violation that is the subject of the hearing, if grounds for such an order develop during the hearing process.

(f) Any claim a person may have under a private right of action which is not determined in a proceeding under this chapter shall be preserved. (Added 1989, No. 98, { 1; amended 1993, No. 232 (Adj. Sess.), { 38, eff. March 15, 1995; 2007, No. 191 (Adj. Sess.), { 6a; 2009, No. 154 (Adj. Sess.), { 236.)

### **§ 8013. Conduct of hearings; appeal; stay**

(a) The secretary shall have the burden of proof by a preponderance of the evidence.

(b) Parties may be represented by counsel in hearings before the environmental division. The agency of natural resources may represent itself. A party may conduct cross-examination required for a full and true disclosure of the facts.

(c) An appeal from a decision of the environmental division may be taken by the secretary or the respondent to the supreme court. The attorney general also may appeal if the attorney general has appeared as a party.

(d) An appeal by a respondent or the attorney general to the supreme court shall not stay an order, but shall stay payment of a penalty. A respondent may petition the supreme court for a stay of an order. (Added 1989, No. 98, { 1; amended 1993, No. 232 (Adj. Sess.), { 38, eff. March 15, 1995; 2009, No. 154 (Adj. Sess.), { 236.)

### **§ 8014. Enforcement of final orders; collection actions**

(a) The secretary may seek enforcement of a final administrative order or a landfill extension order in the civil, criminal, or environmental division of the superior court.

(b) If a penalty is assessed and the respondent fails to pay the assessed penalty within the time prescribed, the secretary may bring a collection action in any civil or criminal division of the superior court. In addition, when a respondent, except for a municipality, fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel shall stay the effective date or the processing of any pending permit application or renewal application in which the respondent is involved until payment in full of all outstanding penalties has been received. When a municipality fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel may stay the effective date or the processing of any pending permit application or renewal application in which the municipality is involved

until payment in full of all outstanding penalties has been received. For purposes of this subsection, "municipality" shall mean a city, town, or village. The secretary or the land use panel may collect interest on an assessed penalty that a respondent fails to pay within the prescribed time. The secretary or the land use panel shall collect interest on a contribution under subdivision 8007(b)(2) of this title that a respondent fails to pay within the prescribed time.

(c) Notwithstanding 32 V.S.A. { 502, the secretary may contract with private collection agencies, or with attorneys engaged for similar purposes, for the collection of penalties or other monetary awards owed pursuant to assurances of discontinuance, final administrative orders, emergency administrative orders, or judgments after hearing or other judicial rulings. The cost of collection shall be assessed against and added to the penalty assessed against a respondent. The secretary may agree to pay private collection agencies or attorneys a fixed rate for services rendered or a percentage of the amount actually collected by the agencies or attorneys and remitted to the secretary. (Added 1989, No. 98, { 1; amended 1991, No. 202 (Adj. Sess.), { 6, eff. May 27, 1992; amended 1993, No. 232 (Adj. Sess.), { 38, eff. March 15, 1995; 1999, No. 155 (Adj. Sess.), { 8; 2007, No. 191 (Adj. Sess.), { 7; 2009, No. 154 (Adj. Sess.), { 63.)

### **§ 8015. Statute of limitations**

Notwithstanding any other provision of law, actions brought under this chapter or chapter 211 of this title shall be commenced within the later of:

- (1) six years from the date the violation is or reasonably should have been discovered; or
- (2) six years from the date a continuing violation ceases. (Added 1989, No. 98, { 1; amended 2007, No. 191 (Adj. Sess.), { 8.)

### **§ 8016. Rulemaking**

The secretary, in consultation with the land use panel, shall adopt rules defining classes of violations and an appropriate range of administrative penalties to be assessed for each class of

violation. The classes of violation and range of penalties shall take into account the degree of potential impact on public health, safety, and welfare and the environment resulting from the violation. No administrative penalty may be assessed as part of an administrative order pursuant to this chapter until applicable rules and procedures have been adopted. (Added 1989, No. 98, { 1 ; amended 2003, No. 115 (Adj. Sess.), { 72, eff. Jan. 31, 2005.)

### **§ 8017. Annual report**

The secretary and the attorney general shall report annually to the president pro tempore of the senate, the speaker of the house, the house committee on fish, wildlife and water resources, and the senate and house committees on natural resources and energy. The report shall be filed no later than January 15, on the enforcement actions taken under this chapter, and on the status of citizen complaints about environmental problems in the state. The report shall describe, at a minimum, the number of violations, the actions taken, disposition of cases, the amount of penalties collected, and the cost of administering the enforcement program. (Added 1989, No. 98, { 1; amended 2007, No. 191 (Adj. Sess.), { 9.)

### **§ 8018. Requests for hearings on landfill closure extension orders**

(a) The applicant or the attorney general may request a hearing on the decision of the secretary under sections 6605e and 8008a of this title. Additionally, a municipality in which the landfill is located or an interested person may request such a hearing if a proposed landfill closure extension order would increase the volume of waste disposed on a quarterly basis by 30 percent or more over the volume of waste disposed during the first quarter of 1992. Notice of a request for hearing shall be filed with the environmental division and the secretary within 15 days of the date of receipt of the secretary's decision. Upon receipt of the notice, the secretary shall forward a copy of the decision to the environmental division.

(b) The environmental judge shall have authority to determine whether the secretary's decision is in conformance with the provisions of sections 8008a and 6605e of this title. The environmental judge may affirm, modify or reverse the secretary's decision and any provision of any order issued by the secretary under sections 8008a and 6605e of this title.

(c) The hearing shall be held before the environmental division within 30 days of receipt by the division of the notice, unless continued for good cause. The environmental division shall issue a written decision within 20 days of the conclusion of the hearing, and no later than 60 days from the request for hearing, unless the hearing process is extended for good cause. The decision shall be sent to the parties by certified mail, return receipt requested, and shall include:

(1) a statement that the parties have a right to appeal the decision to the supreme court, and a description of the procedures for requesting an appeal; and

(2) a warning that the decision will become final if no appeal is requested within 10 days of the date the decision is received.

(d) Notice of a request for hearing shall not stay the order, pending the hearing.

(e) The environmental division may grant party status to an interested person in a hearing under this section.

(f) As used in this section, "interested person" means a person who demonstrates that the interest of the person is not adequately represented by any other party and who has:

(1) an ownership, leasehold or contractual interest in real property affected by the order; or

(2) an interest in the outcome of the proceeding which is distinct from the interest of the public-at-large because of the person's place of residence, place of employment or place of business.

(Added 1991, No. 202 (Adj. Sess.), { 5, eff. May 27, 1992; amended 1993, No. 232 (Adj. Sess.), { 38, eff. March 15, 1995; 2009, No. 154 (Adj. Sess.), { 236.)

## **§ 8019. Environmental ticketing**

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling statutes or rules adopted under those statutes that are enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any proposed rule under this section shall include both the full and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed \$3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1) of this title.

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so marking the complaint and returning it to the judicial bureau or by notifying the hearing officer at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the judicial bureau on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation. (Added 2009, No. 54, { 57, eff. June 1, 2009.)