

NATURAL RESOURCES BOARD
10 V.S.A. Chs. 151 and 201

Environmental Citations Rule
Effective October 1, 2013

1. Authority

This Rule is adopted pursuant to 10 V.S.A. § 8019.

2. Purpose

This Rule addresses the issuance of citations to resolve environmental violations of the statute, rules and permits under the jurisdiction of the Natural Resources Board and establishes the minimum, maximum, and waiver penalty amounts for each violation.

3. Applicability

This Rule applies to citations issued under the authority of the Natural Resources Board pursuant to 10 V.S.A. § 8019 for violations of 10 V.S.A. Ch. 151, violations of the Act 250 Rules promulgated pursuant to 10 V.S.A. § 6025(b), and violations of Land Use Permits issued pursuant to 10 V.S.A. § 6086(a) by the district commissions established by 10 V.S.A. § 6026.

Table A applies only to citations issued pursuant to 10 V.S.A. § 8019 and is not applicable to calculations for any other penalty.

4. Definitions

(a) The definitions in 10 V.S.A. § 8002 shall apply to this Rule, unless specifically otherwise defined herein.

(b) As used in this Rule:

(1) "Citation" means a civil citation issued pursuant to 10 V.S.A. § 8019.

(2) "Continuing violation" means a violation that continues from one calendar day into the following calendar day or days.

(3) "Respondent" means a person who has been issued a citation.

(4) "Violation" means noncompliance with 10 V.S.A. Ch. 151, the Act 250 Rules adopted pursuant to 10 V.S.A. § 6025(b), or a

Land Use Permit issued pursuant to 10 V.S.A. Ch. 151; or an assurance of discontinuance, administrative or judicial order, or citation relating to Act 250.

(5) "De minimis violation" means a violation that causes little to no actual or potential harm to the public health, safety or welfare or to the environment and which constitutes only a small deviation from the requirements of a statute, rule, permit,.

(6) "Waiver penalty" means the penalty paid by a respondent who voluntarily waives the right to contest a citation.

(7) "Act 250" means 10 V.S.A. Ch. 151.

5. Administration

(a) The Board shall implement and operate the citation issuance program established by this Rule.

(b) The Board may delegate the authority, or the implementation, or operation of any provision of this Rule.

(c) The Board may enter into a memorandum of understanding with the Secretary of the Agency of Natural Resources to coordinate the operation and implementation of this Rule.

(d) The Board shall determine the persons authorized to issue citations pursuant to this Rule. Pursuant to 10 V.S.A. § 8019 the 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 environmental division or by notifying the hearing officer or judge at the hearing.

6. Form of Citations

Citations issued under this Rule shall be in the form approved by the court administrator.

7. Service of Citations

Citations may be served in accordance with Rule 4 of the Vermont Rules of Civil Procedure, or by any person authorized by the Board, or by first-class mail.

8. Violations and Penalties

- (a) Table A of this Rule establishes a schedule of violations for which a citation may be issued and the minimum and full/maximum penalties for each such violation.
- (b) A penalty for a single violation shall not be less than the minimum amount established by Table A of this Rule for each respondent, exclusive of court fees.
- (c) A penalty for a single violation shall not exceed \$3000 for each respondent, exclusive of court fees.
- (d) A respondent who voluntarily waives the right to contest a citation shall be subject to the waiver penalty.
- (e) The amount of a waiver penalty shall be seventy-five (75%) percent of the penalty imposed by the citation.
- (f) The payment of a waiver penalty constitutes a violation for purposes of determining a respondent's record of compliance under 10 V.S.A. § 8010(b)(4).
- (g) A separate citation may be issued for each calendar day that a violation continues.
- (h) When evaluating a respondent's record of compliance in order to calculate a penalty for a present violation under this Rule, only violations that have
 - (i) occurred within the thirty-six month period immediately preceding the date of the said present violation; and
 - (ii) been formally adjudicated or resolved in an administrative or civil enforcement action under 10 V.S.A. Chapter 201 or 211may be considered.
- (i) More than one respondent may be issued a citation for the same violation.
- (j) In determining the amount of a penalty to be assessed in a citation, the Board shall consider the factors set out in 10 V.S.A. § 8010.

9. Appeal/Request for Hearing; Default Judgment

(a) Any respondent may request a hearing before the Superior Court, Environmental Division pursuant to 10 V.S.A. § 8012.

(b) Any respondent who fails:

(i) to pay a waiver penalty or

(ii) to file a timely request for a hearing before Environmental Division,

shall be liable for the amount of the penalty imposed by the citation.

10. Severability

Any provision of any section of this Rule is severable. If any provision of this Rule or any application of this Rule to any person or circumstance is found invalid by a court, such finding shall not affect any other provision or application that can be otherwise given effect.

Table A

VIOLATION	MINIMUM PENALTY	FULL/ MAXIMUM PENALTY
Failure to file a report or documentation as directed	150	\$ 1,000
Failure to file post-construction certification and/or fee	300	\$ 1,500
Failure to establish and/or maintain escrow account or other fund as directed	450	\$ 2,000
Failure to complete project by construction completion date	300	\$ 1,500
Extraction of earth resources beyond date permitted	450	\$ 2,000
Extraction of earth resources in excess of quantity permitted: <i>less than 400 cubic yards</i>	450	\$ 2,000
Extraction of earth resources in excess of quantity permitted: <i>400 cubic yards or more</i>	750	\$ 3,000
Failure to reclaim site as directed	750	\$ 3,000

VIOLATION	MINIMUM PENALTY	FULL/ MAXIMUM PENALTY
Failure to complete landscaping as directed	450	\$ 2,000
Failure to maintain vegetative buffer as directed	450	\$ 2,000
Failure to implement and/or maintain erosion control measures as directed	750	\$ 3,000
Failure to maintain lighting as directed	450	\$ 2,000
Failure to abide by approved hours of operation	450	\$ 2,000
Erection or maintenance of unpermitted sign or banner	300	\$ 1,500
Violation of permitted noise restrictions	300	\$ 1,500
<i>De minimis</i> violation of Act 250, an Act 250 rule or an Act 250 Land Use Permit	300	\$ 1,500
Minor violation of Act 250, an Act 250 rule or an Act 250 Land Use Permit	450	\$ 2,000
More than a minor violation of Act 250, an Act 250 rule, or an Act 250 Land Use Permit	750	\$ 3,000
<i>De minimis</i> violation of an Assurance of Discontinuance, Administrative or Judicial Order, or Citation, relating to a violation of Act 250, an Act 250 rule, or an Act 250 Land Use Permit	750	\$ 3,000