

13894, (eff 3-1-24)

CHAPTER Env-C 200 RULES OF PRACTICE AND PROCEDURE

Statutory Authority: RSA 541-A:16, I

*Readopt with amendment Env-C 204.24, effective 03-25-07, (Document #8851-A), cited and to read as follows:*

PART Env-C 204 ADJUDICATIVE PROCEEDINGS

Env-C 204.24 Decisions.

(a) The presiding officer shall make a decision on the merits only after full consideration of the record. In the event an oral adjudicative hearing is held pursuant to Env-C 204.19, no decision shall be made prior to the expiration of the 10-day period allowed for filing of a motion to reconvene the hearing.

(b) If the presiding officer is a designee of the person having the authority to make the decision in the case, the presiding officer shall submit a written recommendation to the decision-maker that contains the following:

- (1) The subject of the proceeding, including identification of the relevant statute(s) and rule(s);
- (2) The names and addresses of all participants;
- (3) The names and affiliations of all individuals who presented testimony either orally or in writing and a summary of the testimony received;
- (4) A description and discussion of all other evidence and argument presented;
- (5) Proposed findings and conclusions, including proposed rulings on any proposed findings of fact and rulings of law submitted by the participants; and
- (6) A recommended decision.

(c) For purposes of an administrative fine proceeding, if the division proves by a preponderance of the evidence that the violation for which a fine is sought occurred and that the respondent is legally liable for the violation, the recommendation in (b) above, shall include a fine for that specific violation, consistent with the applicable schedule of fines, subject to (d) and (e) below.

(d) The amount of fine imposed for a specific violation shall be reduced by 10% for each of the following that apply to that specific violation:

- (1) In the case of a non-continuing or one-time offense, where all of the following are true:
  - a. The violation has not continued or recurred as of the time of the hearing; and
  - b. The respondent did not derive any direct or indirect economic benefit from the violation;
- (2) The respondent proves, by a preponderance of the evidence, that they made a good faith effort to comply with the statute(s), rule(s), or permit(s) involved and that the violation occurred despite those efforts;

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(3) The respondent proves, by a preponderance of the evidence, that they have no history of non-compliance with the statute(s), rule(s), or permit(s) of the department; or

(4) The respondent proves, by a preponderance of the evidence, information favorable to their case which was not known to the division at the time the fine was proposed.

(e) The amount of fine imposed for a specific violation shall be increased by 10% for each of the following that apply to that specific violation, up to the maximum fine stated in the statute under which the division is seeking the fine(s):

(1) The division proves, by a preponderance of the evidence, that the respondent derived some direct or indirect economic benefit from the offense;

(2) The division proves, by a preponderance of the evidence, that the respondent did not act in good faith to remedy the violation(s) for which the fine is sought; or

(3) The division proves, by a preponderance of the evidence, that the respondent has a history of non-compliance with the statute(s), rule(s), or permit(s) of the department.

(f) After reviewing the record of the proceeding and the written recommendation submitted pursuant to (b), above, if applicable, the person having decision-making authority shall issue a written decision to all participants that:

(1) Summarizes the nature of the proceeding;

(2) States the decision;

(3) States the findings and conclusions upon which the decision is based; and

(4) If proposed findings of fact and conclusions of law were submitted, states the rulings made on the proposals.

<b>Rule Section(s)</b>	<b>State Statute(s)</b>	<b>Federal Regulation(s)</b>
Env-C 204.24	RSA 541-A:16, I(b)(2)	