

CHAPTER Env-A 200 PROCEDURAL RULES

Statutory Authority: RSA 125-C:4; RSA 541-A:16, I(b)

PART Env-A 201 PURPOSE

Env-A 201.01 Purpose.

(a) The purpose of this chapter is to establish uniform procedures for providing public notice of hearings and public comment periods conducted by the department on matters relating to air pollution control. These rules are intended to supplement the procedures established by RSA 541-A and Env-C 200.

(b) The purposes of any proceeding governed by this chapter are to enable the department to acquire sufficient information to make a reasoned decision and to afford persons who may be affected by decisions of the department relative to air pollution control the opportunity to present data and argument prior to the decision being made.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss by #6057-B, eff 6-30-95; EXPIRED: 6-30-03

New. #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

PART Env-A 202 VARIANCES

Env-A 202.01 Applicability. This part shall apply to any person seeking a variance, as authorized by RSA 125-C:16, from any provision of RSA 125-C or any rule adopted thereunder in subtitle Env-A.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (from Env-A 203.01); EXPIRED: 6-30-03

New. #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 202.02 Limitations. Pursuant to RSA 125-C:16, III, no variance shall be granted for more than one year.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (from Env-A 203.02); EXPIRED: 6-30-03

New. #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 202.03 Filing a Petition for Variance.

(a) The person seeking the variance shall:

(1) Prepare a written petition for variance that contains the information specified in Env-A 202.04; and

(2) Sign and date the petition.

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(b) The signature required by (a)(2), above, shall constitute certification that:

- (1) The information contained in the petition is true, complete, and not misleading to the knowledge and belief of the petitioner; and
- (2) The signer understands that:
 - a. The submission of false, incomplete, or misleading information constitutes grounds for the department to:
 1. Deny the petition; and
 2. Revoke any approval that is granted based on the information; and
 - b. The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

(c) The petitioner shall file the original and one copy of the petition with the department at the following address:

NHDES, Air Resources Division
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Source. #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 202.04 Content of Petitions. A petition for variance shall include the following:

- (a) The name, address, and daytime telephone number of the petitioner and, if the petitioner is other than an individual, the name and telephone number of an individual who can answer questions about the petition on behalf of the petitioner;
- (b) The specific relief requested by the petitioner, including the requirement(s) from which the petitioner is specifically seeking relief and the proposed timetables for partial or progressive abatement of the air pollution involved;
- (c) Information addressing the factors identified in RSA 125-C:16, II, including:
 - (1) The progress, if any, the petitioner has made in eliminating or preventing air pollution;
 - (2) The character and degree of injury to, or interference with, the health and physical property of the people if the requested variance is granted; and
 - (3) The social and economic value of the source of air pollution; and
- (d) A demonstration that enforcement of the requirement for which the variance is sought would produce serious economic hardship on such person without equal or greater benefits to the public.

Source. #8128, eff 7-28-04; ss by #10187, eff 9-25-12 (from Env-A 202.03); ss by #13491, eff 11-19-22

Env-A 202.05 Notice of Petition.

(a) Within 10 working days after the receipt of a petition for a variance, the department shall issue public notice of the petition by publishing the notice in a newspaper of general daily circulation in the area in which the source is located and on the department's web site.

(b) The public notice shall contain the following information:

- (1) The name and address of the petitioner;
- (2) The location of the source for which the variance is being requested;
- (3) A brief description of the relief requested, including the requirement(s) for which suspension of enforcement is sought;
- (4) The location(s) where interested persons may examine the petition for variance and hours during which that examination can be conducted;
- (5) The deadline for filing written comments and the address to which they should be sent; and
- (6) The date and location of the public hearing to be held before the department as required by RSA 125-C:16, I and Env-A 202.06.

Source. #8128, eff 7-28-04; ss by #10187, eff 9-25-12 (from Env-A 202.04); ss by #13491, eff 11-19-22

Env-A 202.06 Public Hearing.

(a) The department shall schedule and hold a public hearing on the petition no sooner than 30 days following the public notice required by Env-A 202.05.

(b) The hearing shall be conducted as a non-adjudicative proceeding in accordance with Env-C 205 and Env-A 203.

Source. #8128, eff 7-28-04; ss by #10187, eff 9-25-12 (from Env-A 202.05); ss by #13491, eff 11-19-22

Env-A 202.07 Decision.

(a) Within 15 working days after the public hearing, the department shall issue a written decision on the petition that sets forth the findings on which the decision is based.

(b) The department shall grant a variance if the department determines that:

- (1) The petitioner has taken reasonable steps to eliminate or prevent air pollution;
- (2) Granting a variance would not create a danger to public health, welfare, or safety;
- (3) The source of air pollution has social and economic value to the area in which it is located; and
- (4) Enforcement of the requirement for which the variance is sought would produce serious economic hardship on the petitioner without equal or greater benefits to the public.

(c) The department shall include in the variance any conditions necessary to minimize the threat to or impact on the public health and safety.

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(d) If the department determines that the petitioner has not met the criteria listed in (b)(1)-(4), the department shall deny the petition.

Source. #8128, eff 7-28-04; ss by #10187, eff 9-25-12 (from Env-A 202.06); ss by #13491, eff 11-19-22

Env-A 202.08 Appeals. Any person aggrieved by the department's decision may appeal the decision to the air resources council in accordance with RSA 21-O:14 and Env-AC 200.

Source. #10187, eff 9-25-12 (from Env-A 202.07); ss by #13491, eff 11-19-22

PART Env-A 203 HEARINGS

Env-A 203.01 Applicability; Types of Procedures.

(a) A non-adjudicative hearing shall be conducted in accordance with the provisions of Env-C 200 applicable to non-adjudicative proceedings, as supplemented by this part, whenever requested or required to be held under the following:

- (1) Env-A 621, with regard to the issuance of, or amendment to, a temporary permit or permit to operate;
- (2) Env-A 622, with regard to the issuance or renewal of, or significant modification to, a title V operating permit;
- (3) Env-A 609.19, with regard to a reopening of a title V operating permit;
- (4) Env-A 202, with regard to a petition for variance; and
- (5) Env-A 1200 or Env-A 1300, with regard to the issuance of a reasonably available control technology (RACT) order.

(b) An adjudicative hearing shall be conducted in accordance with the provisions of RSA 541-A and Env-C 200 applicable to adjudicative proceedings when required to be held under Env-A 623 regarding the suspension, revocation, or modification of a permit.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, 6-30-95 (formerly Env-A 204.01); EXPIRED: 6-30-03

New. #8128, eff 7-28-04; ss by 10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 203.02 Public Participation in Non-Adjudicative Hearings. Any person may participate in a non-adjudicative hearing while the hearing record is open by:

- (a) Testifying orally;
- (b) Submitting written testimony pursuant to Env-C 205.06;
- (c) Submitting written or oral questions through the presiding officer; or

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- (d) Any combination of (a) through (c), above.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (formerly Env-A 204.02); EXPIRED: 6-30-03

New. #8128, eff 7-28-04; ss by 10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 203.03 Record of Non-Adjudicative Proceedings. The record of a non-adjudicative proceeding shall consist of the following:

- (a) The application or petition for which the non-adjudicative proceeding was commenced;
- (b) All written comments received by the department on the application or petition;
- (c) The recorded testimony of the hearing;
- (d) A transcript of the hearing, if one is made from the recording or by a stenographer; and
- (e) All exhibits submitted in conjunction with the proceeding by the applicant or petitioner and by the public.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; ss and moved by #6057-B, eff 6-30-95 (formerly Env-A 204.03); EXPIRED: 6-30-03

New. #8128, eff 7-28-04; ss by 10187, eff 9-25-12; ss by #13491, eff 11-19-22

PART Env-A 204 PUBLIC HEARINGS ON THE STATE IMPLEMENTATION PLAN

Env-A 204.01 Required Notice.

(a) At least 30 days before the date of any public hearing related to revisions to the state implementation plan (SIP), the department shall cause a public notice to be published in a newspaper of general daily statewide circulation.

- (b) The notice shall contain the following information:

- (1) An explanation of the proposed SIP revision;
- (2) The location(s) where, and the hours during which, a copy of the proposed SIP revisions may be reviewed;
- (3) The date by which, and the address where, written comments must be filed; and
- (4) The date, time, and location of the hearing if one has been scheduled, or the deadline for requesting a hearing if one has not already been scheduled.

(c) Any person may request a hearing by submitting a written request for a hearing to the address specified in (b)(3), above, on or before the deadline for requesting a hearing specified in (b)(4), above.

(d) If a hearing date is not contained in the notice published under (b), above, but a hearing is requested during the comment period, the department shall set a date, time, and location of the hearing and

cause that information to be published in a newspaper of general daily statewide circulation and on the department's web site at least 30 days prior to the hearing date.

(e) The department shall send the required notice(s) to the U.S. Environmental Protection Agency, Region I (EPA), at least 30 days prior to the end of the comment period or the hearing date, as applicable.

Source. #1710, eff 2-19-81; ss by #2332, eff 4-29-83; ss by #2938, eff 12-27-84; ss by #5033, eff 12-27-90; rpld by #6057-B, eff 6-30-95; ss by #6782-B, eff 6-30-98; ss by #8128, eff 7-28-04; ss by 10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 204.02 Hearing Procedures. Public hearings requested or required pursuant to the SIP shall be conducted in accordance with the provisions of Env-C 200 applicable to non-adjudicatory public hearings.

Source. #10187, eff 9-25-12; ss by #13491, eff 11-19-22

PART Env-A 205 WAIVERS

Env-A 205.01 Purpose. The purpose of the rules in this part is to accommodate those situations where strict adherence to the rules would not be in the best interest of the public.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 205.02 Applicability. These rules shall apply to any person who is or would be directly and adversely affected by the strict application of a rule in Env-A 100, et seq., and who wishes to request a waiver from the rule.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 205.03 Waiver Requests: Preparation and Filing.

(a) The person requesting a waiver shall:

(1) Prepare a written request for a waiver that contains the information specified in Env-A 205.04; and

(2) Sign and date the request.

(b) The signature required by (a)(2), above, shall constitute certification that:

(1) The information contained in the request is true, complete, and not misleading to the knowledge and belief of the signer; and

(2) The signer understands that:

a. The submission of false, incomplete, or misleading information constitutes grounds for the department to:

1. Deny the request; and

2. Revoke any waiver or other approval that is granted based on the information; and

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b. The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

(c) The person requesting the waiver shall file the original and one copy of the waiver request with the department at the following address:

NHDES, Air Resources Division
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

(d) Any waiver request that relates to an application for a permit shall be submitted with the permit application or as soon thereafter as the applicant identifies the need for the request.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 205.04 Waiver Requests: Content. A waiver request shall include the following information:

(a) The name, mailing address, and daytime telephone number of the requestor and, if available, an e-mail address of the requestor;

(b) The name and location of the facility or activity to which the request relates;

(c) A specific citation to the Env-A rule from which the waiver is sought;

(d) A complete explanation of why a waiver is being requested, including an explanation of the operational and economic consequences of complying with the rule as written;

(e) A complete explanation of any alternate procedure, method, or activity that is sought to be substituted for the procedure, method, or activity that is required by the rule from which a waiver is being sought;

(f) The estimated length of time the waiver will be needed; and

(g) A complete explanation of why the requestor believes that the waiver request meets the criteria in Env-A 205.06.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04; ss by #10187, eff 9-25-12 (from Env-A 205.03); ss by #13491, eff 11-19-22

Env-A 205.05 Waiver Requests: Review.

(a) Upon receipt of a waiver request, the department shall review the request.

(b) If the request relates to an application, the request shall be reviewed as part of the application review procedures.

(c) Submission of a waiver request relating to a previously-filed application shall constitute an agreement by the applicant that the time period for processing the application recommences upon submission of the request.

Source. #6506-B, eff 5-1-97; ss by #8128, eff 7-28-04; ss by #10187, eff 9-25-12; ss by #13491, eff 11-19-22

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Env-A 205.06 Waiver Criteria. The department shall grant a waiver if it determines that the following criteria have been met:

- (a) Granting a waiver will not result in an adverse impact on public health, public safety, the environment, or the natural resources of the state of New Hampshire;
- (b) Granting a waiver will not have the effect of waiving or modifying a statutory requirement, unless the statute specifically authorizes the department to waive or modify the requirement;
- (c) Granting a waiver will not have the effect of waiving or modifying a federal requirement, unless the statute or regulation that establishes the requirement specifically authorizes waivers or modifications to the requirement and EPA approves the waiver; and
- (d) Strict compliance with the Env-A rule:
 - (1) Will result in an adverse effect to the public health, public safety, the environment, or the natural resources of the state of New Hampshire;
 - (2) Will result in economic hardship for the person requesting the waiver that outweighs the benefit to the public or the environment of complying with the rule; or
 - (3) Is technologically infeasible.

Source. #10187, eff 9-25-12 (from Env-A 205.04); ss by #13491, eff 11-19-22

Env-A 205.07 Decision on Waiver Requests; Conditions.

- (a) The department shall notify the person requesting the waiver of the decision in writing.
- (b) If the waiver request is submitted as part of a permit application and a waiver is granted, the department shall incorporate the waiver into any permit issued.
- (c) If the waiver request is denied, the department shall identify the specific reason(s) for the denial.
- (d) The department shall include such conditions in a waiver as are necessary to ensure that the criteria of Env-A 205.04 will be met for the duration of the waiver.
- (e) The waiver shall specify the date on which it will expire, which shall be no later than one year from the date it is granted.

Source. #10187, eff 9-25-12; ss by #13491, eff 11-19-22

Env-A 205.08 Compliance with Waiver Conditions.

- (a) Any person who receives a waiver shall comply with the conditions set forth therein and with all applicable sections of subtitle Env-A 100.
- (b) Failure to comply with the conditions of a waiver shall constitute grounds for reopening and revising the underlying permit as specified in Env-A 609 or Env-A 612, as applicable, or suspension or revocation of the underlying permit as specified in Env-A 613, as well as enforcement in accordance with the authority set forth in RSA 125-C:15.

Source. #10187, eff 9-25-12; ss by #13491, eff 11-19-22

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APPENDIX

RULE	STATUTE IMPLEMENTED
Env-A 201.01	RSA 541-A:16, I(b); RSA 125-C:6, X
Env-A 202.01	RSA 125-C:16, I
Env-A 202.02	RSA 125-C:16, III
Env-A 202.03	RSA 125-C:16, I; RSA 541-A:16, I
Env-A 202.04 - Env-A 202.06	RSA 125-C:16, I & II; RSA 541-A:16, I
Env-A 202.07	RSA 125-C:16, III
Env-A 202.08	RSA 125-C:14
Env-A 203.01 - Env-A 203.03	RSA 125-C:6, X; RSA 541-A:16, I
Env-A 204.01, Env-A 204.02	RSA 125-C:6, X; RSA 541-A:16, I
Env-A 205.01 - Env-A 205.08	RSA 125-C:6, X; RSA 541-A:22, IV