

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 20 – LEGAL SERVICES

SUBCHAPTER 00 – N/A

PART 1 – Administrative Rules of Practice and Procedure for the Department of Environmental Management

1.1 Authority and Purpose

These Rules are adopted pursuant to R.I. Gen. Laws Chapters 42-35, 42-92 and 42-17.1, specifically R.I. Gen. Laws §§ 42-35-2(a)(2), 42-35-3 and 42-17.1-2(s) for the purpose of assisting the carrying out of the functions, powers and duties assigned to the Department of Environmental Management in § R.I. Gen. Laws 42-17.1-2 and any other provisions of the R.I. Gen. Laws conferring jurisdiction to the Director of the Department, whether in effect prior to or subsequent to the adoption of these Regulations. Issues not addressed in these Rules or for which a party seeks clarity are to be considered in light of R.I. Gen. Laws Chapter 42-35. These Rules shall become effective twenty (20) days after filing and will govern only adjudicatory and Rulemaking proceedings commenced after the effective date.

1.2 Formal Rules

- A. Scope of Rules. These Rules shall govern the proceedings of all Divisions and matters within the Department of Environmental Management's delegated statutory authority that are not properly before the Administrative Adjudication Division and where consistent with the law and Regulations governing the applicable regulatory program.
- B. Construction of Rules. These Rules shall be construed to further the prompt and just determination of every proceeding and in conformity with the Rhode Island Administrative Procedures Act.

Proposal 1-Received via Petition for Rulemaking

1.3 Petition for Rulemaking

- A. Following R.I. Gen. Laws § 42-35-6 (Petition for promulgation of rules) of the Rhode Island Administrative Procedures Act, aAny party ~~specifically affected~~ may petition for the promulgation, amendment or, repeal of a Rule administered by the Department. Such a petition shall clearly and concisely state the petitioner's interest in the subject matter, the specific Rule(s), amendment, or repeal requested (if known), and cite the statutory provision which provides the

basis for the Regulation. ~~Petitions shall be filed with the Department and the affected Divisions in the manner required by §§ 1.4 and 1.5 of this Part.~~

Proposal 2-Proposed by the Department

1.3 Petition for Rulemaking

- A. Any party ~~specifically affected~~ may petition for the promulgation, amendment or, repeal of a Rule administered by the Department. Such a petition shall clearly and concisely state the petitioner's interest in the subject matter, the specific Rule(s), amendment, or repeal requested, and cite the statutory provision which provides the basis for the Regulation. Petitions shall be filed with the Department and the affected Divisions in the manner required by §§ 1.4 and 1.5 of this Part. In addition, petitions may be filed electronically by email sent to the following address: DEM.Petitions@dem.ri.gov.
- B. Upon submission of such a petition, the Department shall, in accordance with R.I. Gen. Laws § 42-35-6, within thirty (30) days either deny the petition in writing (stating its reason for the denials) or initiate rulemaking procedures in accordance with R.I. Gen. Laws § 42-35-3.

1.4 Time

- A. Timely filing. Papers required or permitted to be filed under these Regulations, or any provision of the applicable law must be filed at the Department, Division or office or such other place as the Director shall designate within the time limits for such filings as are set by Department Regulation, the Director, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth herein:
 - 1. Hand-delivery: Papers hand delivered during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day.
 - 2. Mailing: Papers deposited in the U.S. Mail shall be deemed filed on the date stamped as received by the Department. In the event that no date stamp by the Department appears, papers shall be deemed filed on the date so postmarked. All papers shall show the date received by the Director and/or the Hearing Officer.
 - 3. Telecopying: Papers filed by facsimile or telecopier shall not be accepted for filing.
- B. Computation of Time. Unless otherwise specifically provided by law or these Rules, computation of any time period referred to in these Rules, shall begin with the first (1st) day following the act which initiates the running of the time period.

The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Director is closed, in which event the period shall run until the end of the regular business hours of the next following business day. When the time period is less than seven (7) days, intervening days when the Department is closed shall be excluded in the computation.

- C. Extension of Time. It shall be within the discretion of the Director, for good cause shown, to extend any time limit contained in these Rules, unless precluded by statute. All requests for extensions of time shall be made before the expiration of the original or previously extended time period.

1.5 Filings Generally

- A. Title. Papers filed with the Director shall state the Division and the file number, if any, the title of the proceeding, and the name of the person on whose behalf the filing is made.
- B. Signatures. Papers filed with the Director shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative. This signature constitutes a certification that the individual signing the document has read the document, knows the content thereof, and to the best of his/her knowledge, that such statements are true, that it is not interposed for delay, and that if the document has been signed by an authorized representative he/she has full power and authority to do so. Failure to comply may be cause for sanctions.
- C. Designation of Divisions. Any Division as a party to an administrative proceeding shall be designated by its name and not by the name(s) of particular individual(s) holding office, and if while the administrative proceeding is pending, a change occurs in an individual(s) holding office, the proceeding shall not abate, and no substitution of parties shall be necessary.
- D. Form
 - 1. Size and Printing Requirements. All papers, except those submittals and documents which are kept in a larger format during the ordinary course of a party's business shall be submitted on eight and one half inches by eleven inches (8 ½" x 11") paper all papers shall be hand printed or typewritten.
 - 2. Format. The Director or Division may provide forms to be used by the parties.
- E. Copies. The original of all papers shall be filed together with such number of additional copies as the Director may require.
- F. Service. Simultaneously with the filing of any and all papers with the Director, the party filing such papers shall send a copy thereof to all other parties, or their

authorized representative to the proceedings, by delivery in hand, or by U.S. Mail, postage prepaid, properly addressed.

1.6 Petition for Declaratory Rulings

- A. Any person who alleges that a Rule, statute or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights of the petitioner, may in accordance with R.I. Gen. Laws § 42-35-8 and these Regulations, petition the Director for a declaratory ruling as to the applicability of any statute, any provision or Rule or order of the agency. Such petition shall be filed with the Department in the manner required by §§ 1.4 and 1.5 of this Part and the petition shall clearly and concisely identify:
 - 1. The precise statute, Rule or order, including paragraph(s) or subparagraph(s) on which a declaratory ruling is sought;
 - 2. How the petitioner is affected by the statute, Rule or order, including a statement of uncontested facts upon which the request is based;
 - 3. Why the ruling is sought;
 - 4. The petitioner's position on how the applicable statute, Rule or order should be interpreted, including citation to any applicable documents or law that support petitioner's position.
 - 5. Other persons who may be affected if the Department adopts the petitioner's position including any small businesses that may experience a significant adverse economic impact; small business shall be defined in accordance with R.I. Gen. Laws § 42-35-1.
 - 6. Whether the petitioner has, or is aware of, any other matters pending before the Department or the courts that may be affected by the declaratory ruling sought; this shall include, but not be limited to: permit applications, enforcement actions, petitions, contracts and leases or rental agreements;
- B. The petition must contain a certification that a copy of the petition and any supporting documentation was mailed to the affected Division. The Division shall have twenty (20) days in which to file a responsive pleading.
- C. The Director shall consider the petition and any documents submitted in support or opposition thereof and shall:
 - 1. Issue a declaratory ruling which will have the same status as a departmental decision or order in a contested case;
 - 2. If necessary, seek additional clarification of issues raised by the petitioner and upon receipt of the clarifications, promptly issue a declaratory ruling;

3. Find that the petitioner is not in fact an interested person affected by a statute, Rule or order of the Department and decline to issue a declaratory ruling;
 4. Schedule a public hearing if the Director determines that there is widespread public interest in the issues raised by the petitioner and promptly issue a declaratory ruling after the conclusion of the public hearing or;
 5. Refer the matter to the Chief Hearing Officer of the Administrative Adjudication for an adjudicatory hearing and recommended decision.
- D. The Department shall maintain a public file containing all declaratory rulings issued by the Director and such rulings may be cited as precedent and relied upon in the formulation of subsequent rulings.