

MEMORANDUM

TO: Executive Board of Commissioners
FROM: Sarah Reeves, Executive Director
DATE: November 7, 2024
RE: Compliance Hearing Process

Entities who receive a Notice of Violation for Unlawful Conduct are entitled to request a hearing before the Executive Board of Commissioners for the purpose of determining whether such Unlawful Conduct occurred. This memo outlines the hearing process.

Process:

- When a Notice of Violation is issued, the recipient has 10 business days from receipt of the notice to respond in writing to the Executive Director to request a hearing before the Board of Commissioners. The first step is a hearing with the Executive Board of Commissioners. Upon receipt of the written request for a hearing, the Executive Board must set the date of the hearing within 14 calendar days.
- The hearing on the Notice of Violation is a publicly warned meeting and is held in public session with minutes of the meeting recorded.
- The Chair of the Executive Board calls the meeting to order at the appointed time, determines whether a quorum of the Executive Board is in attendance, and if so, proceeds with and follows the warned Agenda. When the agenda item that designates the Public Hearing is reached, the Chair for a motion to open the Public Hearing, stating the time. If moved and seconded, the Chair calls for a vote on the motion to open the Public Hearing. If the motion carries, the Public Hearing is open.
- The Chair states the nature of the Public Hearing, states that the Executive Board will function in a quasi-judicial manner for the duration of the Public Hearing and turns to the Executive Director to describe the reason for the Public Hearing.
- The Executive Director and associated staff describe the Notice of Violation and present evidence to substantiate the accusations.

- At the conclusion of staff's presentation, the Chair will provide an opportunity for the Notice of Violation recipient to address the accusations and provide additional details for consideration by the Executive Board.
- Upon hearing the presented evidence, Executive Board members may direct their questions to the Chair, who will then direct the question to the appropriate party. Executive Board members may not address the parties directly, nor may the parties address each other. When all questions have been asked and answered, the Chair will ask for a motion to enter deliberative Executive Session, stating the time and asking for a second. If moved and seconded, the Chair calls for a vote on the motion to enter Executive Session. If the motion carries, Executive Session is open and only those formally invited to remain in Executive Session may remain in the room. All others must leave the room for the duration of the deliberative Executive Session. Minutes are not recorded during Executive Session.
- In Executive Session, the Chair will lead the discussion of the presentation of the evidence and the Executive Board will determine whether the Unlawful Conduct described in the Notice of Violation has occurred.
- When deliberations are finished, the Chair will call the public back into the Public Hearing and asks for a motion to exit Executive Session. If moved and seconded, the Chair calls for a vote on the motion to exit Executive Session and notes the time. If the motion carries, public session resumes. The Chair describes any action that needs to be taken as a result of the deliberations during Executive Session.
- The Executive Board may decide to:
 - Uphold the recommendations of staff as presented;
 - Amend the recommendations of staff;
 - Deny the recommendations of staff.
- Should the Executive Board uphold the recommendation of staff to issue a Proposed Order, a Resolution shall be read into the public record and the Chair will ask for a motion and a second to issue the Order.
- The Proposed Order is issued by the Chair within 30 calendar days of the Public Hearing. The Proposed Order presents the findings of the Executive Board, potential enforcement actions, including the amount of a civil penalty based upon consideration of the nine criteria stated in the Ordinance, and the rights of the Violators to request a hearing before the full Board of Commissioners.
 - The nine criteria for determining the amount of civil penalty to be ordered are:
 - The degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation.
 - Whether the Person has cured the violation.
 - The presences of mitigating circumstances.

- Whether the Person knew or had reason to know the violation existed.
 - The Person's record of compliance.
 - The economic benefit gained from violation.
 - The deterrent effect of the penalty.
 - The costs of enforcement.
 - The length of time the violation existed.
- The Violator may appeal the finding of Unlawful Conduct and must request a hearing before the full Board of Commissioners, in writing, to CSWD's Executive Director with 15 business days of the date of receipt of the Proposed Order.
- The full Board, upon request, shall hold a hearing within 14 calendar days and may withdraw or amend the Proposed Order and may issue a Final Order effective on the Date of Receipt. If the Violator does not request a hearing within such allowed time, the Proposed Order shall be deemed a Final Order and shall be effective on the Date of Receipt.
- CSWD may seek Enforcement of a Final Order in the Vermont Environmental Division of the Vermont Superior Court.
- The Violator shall have a right to request a hearing before the Vermont Environmental Division of the Vermont Superior Court. Notice of a request for hearing shall be filed with the clerk of the Environmental Division and with the Secretary of the CSWD Board of Commissioners within 10 business days of receipt of the Final Order. Filing a request for a hearing before the Environmental Division will stop penalties from accruing in the case of a continuing violation.
- The Final Order is issued by the Chair of the CSWD Board of Commissioners. CSWD staff collects the civil penalties until the Violator alerts CSWD, and staff confirms, that Violator is in compliance or is striving to comply.