

DISPUTE RESOLUTION AND ADMINISTRATIVE APPEALS PROCEDURE INCIDENTAL TAKE PERMITS—4VAC15-30-70 ET SEQ.

Introduction

This document sets forth the procedures for appeals of decisions made pursuant to 4VAC15-30-70. Under authority granted to the Board of Wildlife Resources in §29.1-103 of the Code of Virginia, and subsequently conferred by the Board via 4VAC15-30-5 of the Virginia Administrative Code, the Executive Director of the Virginia Department of Wildlife Resources (Department) has the authority to set permit schedules, establish permit conditions, delegate signature authority, establish protocols for responding to permit decision appeals, and render final permit decisions.

This document pertains to administrative dispute resolution or appeal only, and is not intended to affect any rights to judicial review that may exist under Virginia law. It further does not apply to any criminal enforcement proceedings.

Permit Issuance, Denial, Suspension, or Revocation

As set forth in 4VAC15-30-70, the Department may establish or modify permit conditions, or deny, suspend, or revoke any permit by written notification to the applicant or permittee. The notification will identify the permit or application affected; the permit conditions or the reasons for any modification, denial, suspension, or revocation; the actions necessary to correct any deficiencies, where applicable; and will inform the Applicant or Permittee of the right to appeal.

Method of Appeal

Any request for appeal must be addressed to the Department's Executive Director in writing, signed by the Applicant or Permittee, and received within the timeframes set forth in 4VAC15-30-70.

Within 14 days of receipt of a request for appeal, the Executive Director shall provide to the applicant a Notice of Informal Fact Finding Proceeding. The Informal Fact Finding Proceeding shall be held within 30 days of the Department's receipt of the request for appeal.

In the alternative, where the issues presented are of a legal or other nature such that the Department, in its sole discretion, believes that the recommendation of a Hearing Officer would be appropriate, it may proceed utilizing a Formal Hearing, to be scheduled as soon as may be practicable.

Should the matter be negotiated to resolution through informal consultation between the Department and the Applicant or Permittee prior to any Informal Fact Finding Proceeding or Formal Hearing, such resolution and agreement shall be documented, and no Informal Fact Finding Proceeding or Formal Hearing shall be necessary.

If the regulated activity is the subject of an ongoing criminal or administrative investigation and the ongoing investigation provided grounds for the subject permit revocation or suspension, no administrative appeal shall be considered pending conclusion of said investigations and proceedings or adjudication by the courts. The Executive Director may order an Informal Fact Finding Proceeding upon conclusion of such criminal investigations and proceedings, or at any other time deemed appropriate.

Informal Fact Finding Proceeding

Informal Fact Finding Proceedings will be conducted by a panel of three persons appointed by the Executive Director. The panel will hear and accept documentary evidence from the Applicant/Permittee and from Department staff knowledgeable of the issues under consideration. The panel may also receive any information received from third parties prior to the Informal Fact Finding Proceeding; however, such third parties shall not participate in the proceeding unless requested by the panel. The burden of proof will exist with the appellant, and any final decision will be based on the preponderance of the evidence. Within 10 days of conclusion of the Informal Fact Finding Proceeding, the panel will forward a written summary of the proceeding and recommendations to the Executive Director. Within 30 days of the Informal Fact Finding Proceeding, the Executive Director shall issue a final determination to the Applicant/Permittee.

Formal Hearing

Formal Hearings shall be conducted in the manner prescribed by the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) before a Hearing Officer selected from the list of hearing officers maintained by the Executive Secretary of the Virginia Supreme Court. Where the Department elects to proceed utilizing a formal hearing, appointment of a Hearing Officer shall be requested by the Department within 14 days of receipt of a request for appeal, with the hearing to be held as soon as practicable to the Hearing Officer, the Applicant or Permittee, and the Department.

Corrective Action Plan

A Corrective Action Plan is a written agreement between the Department and the Applicant or Permittee that details the corrective actions to be taken in response to documented violations of permit terms or conditions. At any time prior to issuance of a final ruling, the Department or the Applicant or Permittee may offer a Corrective Action Plan, which may be proposed by either of the parties and discussed, accepted, modified, or rejected by them during any subsequent informal consultations. Any deficiencies addressed by a Corrective Action Plan shall not require a final decision by the Executive Director.