

**STATE OF VERMONT  
VERMONT SUPREME COURT  
FEBRUARY TERM, 2025**

**Order Promulgating Amendments to Rules 3, 4(a)(2), (d)(6)(A), (e)(5), 5(a)(2), (b)(1), (b)(4)(A), (c), (f), (h)(1)(A) and (k)(1), of the Vermont Rules for Environmental Court Proceedings**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3 of the Vermont Rules for Environmental Court Proceedings be amended as follows (deleted matter struck through):

**RULE 3. CIVIL ACTIONS**

The following actions within the original jurisdiction of the Environmental Court shall be commenced and conducted as civil actions under the Vermont Rules of Civil Procedure, ~~the 2010 Vermont Rules for Electronic Filing,~~ and the Vermont Rules of Appellate Procedure, so far as those rules are applicable and except as they may be modified by subdivisions (b)-(e) of Rule 2:

(1) Revocation of state land use permits granted under 10 V.S.A., ch. 151, as provided in 4 V.S.A. § 1001(b).

(2) Enforcement of final administrative orders of the Secretary as provided in 10 V.S.A. § 8014(a).

(3) Certain civil ordinance violations relating to enforcement under 24 V.S.A., Chapter 117, as provided in 24 V.S.A. § 1974a(b).

(4) Enforcement of final municipal solid waste orders as provided in 24 V.S.A. § 2297a(j).

(5) Actions to recover penalties for violations of bylaws enacted under 24 V.S.A., Chapter 117, as provided in 24 V.S.A. § 4451.

(6) Actions by municipal administrative officers to prevent, restrain, correct, or abate violations of bylaws enacted under 24 V.S.A., Chapter 117, as provided in 24 V.S.A. § 4452.

(7) Actions by the Attorney General to challenge the validity of a bylaw or its administration on the grounds that it violates 24 V.S.A. § 4412(1) relating to equal treatment of housing and adequate provision of affordable housing, as provided in 24 V.S.A. § 4453.

(8) Actions by municipalities or interested persons to enforce decisions of appropriate municipal panels under 24 V.S.A., Chapter 117, by mandamus, injunction, process of contempt, or otherwise, as provided in 24 V.S.A. § 4470(b).

(9) Actions by municipalities to revoke a municipal land use permit issued under 24 V.S.A. chapter 117, as provided in 24 V.S.A. § 4455.

(10) Any other original action concerning a subject matter within the jurisdiction of the Environmental Court in which the relief sought is not available under other provisions of these rules or by action pursuant to paragraphs (1)-(9) of this rule.

## Reporter's Notes—2025 Amendment

Rule 3 is amended to delete the reference to the 2010 Vermont Rules for Electronic Filing, which were abrogated and replaced with the 2020 Vermont Rules for Electronic Filing. The State Court Administrator Administrative Directive PG-14, dated September 18, 2020, made the 2020 Vermont Rules for Electronic Filing applicable in the Environmental Division. Specific reference to the electronic filing rules is no longer necessary.

2. That Rule 4(a)(2), (d)(6)(A), and (e)(5) of the Vermont Rules for Environmental Court Proceedings be amended as follows (deleted matter struck through):

### **RULE 4. REVIEW OF ENVIRONMENTAL ENFORCEMENT ORDERS**

#### **(a) Applicability of Rules.**

(1) This rule applies to review of environmental enforcement orders in the Environmental Court under 10 V.S.A. §§ 8001-8013 and 24 V.S.A. § 2297b and to appeals from the Environmental Court to the Supreme Court in those proceedings.

(2) The Vermont Rules of Civil Procedure, as modified by Rules 2(b)-(e), ~~the 2010 Vermont Rules for Electronic Filing~~, and the Vermont Rules of Appellate Procedure apply to all proceedings under this rule except as otherwise provided in paragraph (3) of this subdivision and except where another procedure is expressly provided by subdivisions (b)-(e) of this rule.

(3) The following provisions of the Vermont Rules of Civil Procedure shall not apply to proceedings under this rule: Rules 3 (Commencement of Action), 4 (Process), 4.1 (Attachment), 4.2 (Trustee Process), 7(a) and (c) (Pleadings Allowed), 8(a)-(f) (General Rules of Pleading), 9 (Pleading Special Matters), 10 (Form of Pleadings), 12 (Defenses and Objections), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 18 (Joinder of Claims and Remedies), 22 (Interpleader), 23 (Class Actions), 23.1 (Derivative Actions), 24(a)(2) (Nonstatutory Intervention as of Right), 24(b)(2) (Nonstatutory Intervention by Permission), 38-39 (Jury Trials), 40(b) (Progress Calendar), 47—49 (Jurors and Juries), 51 (Argument of Counsel; Instructions to Jury), 53 (Masters), 56 (Summary Judgment), 57 (Declaratory Judgments), 64 (Replevin), 68 (Offer of Judgment), 72 (Appeals from Probate Courts), 74 (Appeals from Decisions of Governmental Agencies), 75 (Review of Governmental Action), the last sentence of Rule 77(d) (Lack of Notice of Entry), 80.1 (Foreclosure of Mortgages and Judgment Liens), 80.2 (Naturalization of Aliens), 80.4 (Habeas Corpus), 80.5 (District Court Procedures for Civil License Suspensions and Penalties for DWI), 80.6 (Judicial Bureau Procedures), 80.7 (Procedures for Immobilization or Forfeiture Hearings Pursuant to 23 V.S.A. § 1213c), and 80.8 (Transfer from District to Superior Court).

\* \* \* \* \*

#### **(d) Procedure for Review of Administrative Orders.**

(1) *Generally.* This subdivision governs request for review of any order issued by the Secretary pursuant to 10 V.S.A. § 8008, except as otherwise provided for emergency orders issued pursuant to 10 V.S.A. § 8009 and subdivision (c) of this rule.

(2) *Notice of Request; Stay.* Review of an order of the Secretary shall be taken by filing a notice of the request with the clerk of the Environmental Court and with the Secretary within 14 days of receipt of the order or decision. The notice operates as a stay of an order issued, and payment of any penalty imposed, under 10 V.S.A. § 8008 pending the hearing. The court also

may hear and determine a motion for an emergency order under subdivision (c) of this rule with regard to the alleged violation that is the subject of the proceeding under this subdivision.

(3) *Intervention*. Upon timely motion under Rule 24 of the Vermont Rules of Civil Procedure, the court may grant party status to an aggrieved person as provided in 10 V.S.A. § 8012(d).

(4) *Scheduling; Discovery; Pretrial Proceedings*.

(A) As soon as the Secretary receives proof that an administrative order has been served upon a respondent, the Secretary shall file the order and proof of service with the court.

(B)(i) Within 7 days of the filing of a notice of request for hearing, the Secretary shall file a pretrial memorandum which shall include a list of witnesses and a summary of any evidence which the Secretary plans to present in support of the administrative order.

(ii) Within 14 days of the filing of the Secretary's memorandum, the respondent shall file a pretrial memorandum which shall state respondent's agreement or disagreement with each element of the "statement of facts" in the administrative order; shall include a list of witnesses and a summary of any evidence which respondent plans to present to contest such facts; shall state with particularity whether respondent accepts or contests each element of the "order" section of the administrative order; if a penalty was imposed by the order, shall include a summary of any evidence respondent plans to present regarding mitigating or other factors affecting the penalty calculation; and shall include a preliminary statement of the legal and jurisdictional issues which respondent plans to raise in the proceeding.

(C) The court shall promptly thereafter convene a pretrial conference, and shall thereupon issue appropriate orders, including orders for the disposition of legal issues prior to the hearing, orders for discovery necessary to a full and fair determination of the proceeding, and other appropriate orders consistent with 10 V.S.A. § 8012, as provided in Rule 2(d).

(5) *Trial De Novo; Judgment*. Review shall be de novo, but, if a violation is found, the court's review of the remedy imposed shall be subject to 10 V.S.A. § 8012(b). The final judgment in a ruling under this subdivision or paragraph (3) of subdivision (c) may, as appropriate under each specific subsection of 10 V.S.A. § 8012(b), affirm, reverse, modify, or dissolve the decision of the Secretary or may vacate and remand the case for further proceedings consistent with the order of the court. In addition to the requirements of Rule 52 of the Vermont Rules of Civil Procedure, the judgment shall contain the statements required by 10 V.S.A. § 8012(c)(4) and (5).

(6) *Appeal to Supreme Court; Stay Pending Appeal*.

(A) A final judgment under this rule shall be appealable as of right to the Supreme Court pursuant to 10 V.S.A. § 8013(c). The notice of appeal shall be filed within 14 days of the date of receipt of the judgment appealed from ~~in accordance with 2010 Vermont Rule for Electronic Filing 5(f)~~.

(B) Notwithstanding Rule 62 of the Vermont Rules of Civil Procedure and Rule 8 of the Vermont Rules of Appellate Procedure, an appeal to the Supreme Court by the Secretary shall stay the dissolution of an emergency judicial order. An appeal by the respondent or the Attorney General shall not stay the operation of an emergency or other order but shall stay payment of a penalty. A respondent may seek a stay in the Supreme Court pursuant to Rule 8 of the Vermont Rules of Appellate Procedure.

**(e) Procedure for Review of Final Municipal Solid Waste Orders.**

(1) *Generally*. This subdivision shall govern requests for review under 24 V.S.A. § 2297b of a final solid waste order issued by the legislative body of a municipality pursuant to 24 V.S.A. § 2297a.

(2) *Notice of Request; Stay*. Review of a municipal solid waste order shall be taken by

filing a notice of the request with the clerk of the Environmental Court and with the municipal clerk within 14 days of receipt of the final order. The notice operates as a stay of any order issued, and payment of any penalty imposed, pending the hearing.

(3) *Hearing.* Review shall be de novo and shall be governed by paragraph (d)(5) of this rule, substituting “legislative body” for “Secretary.”

(4) *Judgment.* The court may reverse, affirm, modify, or vacate the order in accordance with 24 V.S.A. § 2297b(c), (d). In making its determination, the court shall consider the factors set forth in 24 V.S.A. § 2297a(a).

(5) *Appeals; Stay on Appeal.* Appeals from Environmental Court decisions under this rule are governed by ~~the 2010 Vermont Rules for Electronic Filing~~ and the Vermont Rules of Appellate Procedure. On an appeal of a final judgment under this rule, Rule 62 of the Vermont Rules of Civil Procedure and Rule 8 of the Vermont Rules of Appellate Procedure shall govern stays, and the decision of the Environmental Court on all matters other than penalties shall be deemed to be judgments in an action for an injunction for purposes of those rules.

### **Reporter’s Notes—2025 Amendment**

Rule 4 is amended to delete the references in 4(a)(2), (d)(6)(A), and (e)(5) to the 2010 Vermont Rules for Electronic Filing, which were abrogated and replaced with the 2020 Vermont Rules for Electronic Filing. The State Court Administrator Administrative Directive PG-14, dated September 18, 2020, made the 2020 Vermont Rules for Electronic Filing applicable in the Environmental Division. Specific reference to the electronic filing rules is no longer necessary.

3. That Rule 5(a)(2), (b)(1), (b)(4)(A), (c), (f), (h)(1)(A), and (k)(1) of the Vermont Rules for Environmental Court Proceedings be amended as follows (new matter underlined; deleted matter struck through):

### **RULE 5. APPEALS**

#### **(a) Applicability of Rules.**

(1) This rule governs appeals to the Environmental Court from an act or decision of an appropriate municipal panel pursuant to 24 V.S.A. §§ 4471, 4472; from an act or decision of the secretary of the agency of natural resources, or a commissioner or department of the agency, under the provisions of law listed in 10 V.S.A. § 8503(a); from a district commission, or from a district coordinator jurisdictional opinion, under 10 V.S.A., ch. 151; and from decisions of the secretary of the agency of agriculture, food and markets pursuant to 6 V.S.A. §§ 4855, 4861.

(2) Except as modified by this rule and by subdivisions (b)-(e) of Rule 2, the Vermont Rules of Civil and Appellate Procedure, ~~and the 2010 Vermont Rules for Electronic Filing~~, so far as applicable, govern all proceedings under this rule.

#### **(b) Notice of Appeal.**

(1) *Filing the Notice of Appeal.* An appeal under this rule shall be taken by filing with the clerk of the Environmental Court ~~by certified mail or other means, including electronic filing in accordance with the 2010 Vermont Rules for Electronic Filing~~, a notice of appeal containing the items required in paragraph (3) of this subdivision within 30 days of the date of the act, decision, or jurisdictional opinion appealed from, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure. The appellant shall pay to the clerk with the notice

of appeal any required entry fee. If a notice of appeal is mistakenly filed with the tribunal appealed from, or the Natural Resources Board, or either of its panels or its predecessor boards, the appropriate officer of the tribunal, board, or panel shall note thereon the date on which it was received and shall promptly transmit it to the clerk of the Environmental Court, and it shall be deemed filed with the Environmental Court on the date so noted. Failure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal.

(2) *Cross- or Additional Appeals.* If a timely notice of appeal is filed, any other person entitled to appeal may file a notice of appeal within 14 days of the date on which the statement of questions is required to be filed pursuant to Rule 5(f), or within the time otherwise prescribed by this rule, whichever period last expires, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure.

(3) *Contents of Notice of Appeal.* The notice of appeal must specify the party or parties taking the appeal and the statutory provisions under which each party claims party status; must designate the act, order, or decision appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. In addition, the notice of appeal must (A) advise all interested persons that they must enter an appearance in writing with the court within 21 days of receiving the notice, or in such other time as may be provided in subdivision (c) of this rule, if they wish to participate in the appeal and (B) give the address or location and a description of the property or development with which the appeal is concerned and the name of the applicant for any permit involved in the appeal. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(4) *Service.*

(A) *Appeal from an Appropriate Municipal Panel.* Upon the filing of a notice of appeal from an act or decision of an appropriate municipal panel, the appellant ~~shall~~ must at the same time mail a copy of the notice of appeal to the clerk or other appropriate officer of the panel and serve the applicant by certified mail. Upon receipt of the copy of the notice of appeal, the clerk or other officer shall, within 7 days, provide to the appellant a list of interested persons, with instructions to serve a copy of the notice upon each of them by certified mail. A copy of the notice shall thereupon be served by the appellant by certified mail upon each interested person.

(B) *Appeal from the Secretary of the Agency of Natural Resources, a District Commission, or a District Coordinator.* Upon the filing of a notice of appeal from an act or decision of the secretary of the agency of natural resources, a district commission, or a district coordinator, the appellant shall serve a copy of the notice of appeal in accordance with Rule 5 of the Vermont Rules of Civil Procedure upon the secretary, district commission, or district coordinator as appropriate and upon any party by right as defined in 10 V.S.A. § 8502(5), the Natural Resources Board, and every other person to whom notice of the filing of an appeal is required to be given by 10 V.S.A. § 8504(c) or (e), as appropriate. In addition, if the appeal is from an act or decision of the secretary or a district commission, the appellant shall publish a copy of the notice of appeal not more than 14 days after serving the notice as required under this subparagraph, at the appellant's expense, in a newspaper of general circulation in the area of the project which is the subject of the act or decision appealed from.

(C) *Appeal from the Secretary of Agriculture.* If the appeal is from a decision of the secretary of the agency of agriculture, food and markets under 6 V.S.A. § 4855, the appellant

shall serve a copy of the notice of appeal upon the secretary. If the appeal is from a decision or ruling of the secretary under 6 V.S.A. § 4861, the appellant shall serve a copy of the notice upon the secretary, the applicant if other than the appellant, and any person entitled under rules adopted by the secretary to receive individual notice of an animal waste permit hearing pursuant to 6 V.S.A. § 4858.

(c) **Appearance.** An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within 21 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4)(B) of this rule, by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with Rule 5 of the Vermont Rules of Civil Procedure ~~and the 2010 Vermont Rules for Electronic Filing~~; provided that any person enumerated in 10 V.S.A. § 8504(n)(1)-(3) may file and serve an appearance in a timely fashion. Any other person who has not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene. Attorneys shall comply with Civil Rule 79.1(i).

\* \* \* \* \*

(f) **Statement of Questions.** Within 21 days after the filing of the notice of appeal, the appellant shall file with the clerk of the Environmental Court a statement of the questions that the appellant desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure ~~and the 2010 Vermont Rules for Electronic Filing~~. No response to the statement of questions shall be filed. The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

\* \* \* \* \*

**(h) Appeals to the Environmental Court on the Record.**

(1) *From an Appropriate Municipal Panel.*

(A) An appeal from an appropriate municipal panel from which appeals may be on the record pursuant to 24 V.S.A. §§ 4471 and 4472 shall be governed by the Vermont Rules of Appellate Procedure, ~~and the 2010 Vermont Rules for Electronic Filing~~ so far as applicable and except as modified by this rule. The record on appeal shall consist of the original papers filed with the municipal panel; any writings or exhibits considered by the panel in reaching the decision appealed from; and a written transcript of the proceedings, whether recorded electronically or stenographically, certified by the presiding officer of the municipal panel as the full, true and correct record of the proceedings. Within 30 days after the filing of the notice of appeal, the clerk or other appropriate officer of the municipal panel shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure.

(B) Within 14 days after filing the notice of appeal, appellant shall send to the municipal panel an order for a transcript of all proceedings, unless all parties involved in the appeal stipulate to a transcript of less than all proceedings. A copy of the order shall be served on the clerk of the Environmental Court and all persons upon whom copies of the notice of appeal have been served pursuant to subdivision (b) of this rule. It shall thereupon be the responsibility of the municipal panel to cause a transcript to be made by a Court-approved transcription service pursuant to V.R.A.P. 10(b)(1) and (2). Appellant shall pay to

the municipal panel at the time of ordering the deposit amount required under V.R.A.P. 10(b)(7). Before the transcription begins, the municipal panel shall pay the transcription service a deposit pursuant to that provision.

(C) In cases where the proceedings before the appropriate municipal panel were recorded electronically, the court, on motion of the appellant and a showing of financial hardship or other good cause made before a transcript has been ordered, may allow the electronic recording to be accepted as part of the record in place of a transcript. If the court grants the motion, the appellant must order copies of the electronic recording from the clerk or other appropriate officer of the municipal panel, who shall send one copy to the clerk of the environmental division, one to the appellant, and one to every other party, billing the appellant for the copies.

(2) *From the Commissioner of Forests, Parks, and Recreation.* An appeal from a decision of the commissioner of forests, parks, and recreation under 10 V.S.A. § 2625(f) shall be on the record of the proceedings before the commissioner. Within 30 days after the filing of the notice of appeal, the commissioner shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure. If those proceedings have been electronically recorded, the provisions of paragraph (1) of this subdivision concerning electronic recording apply.

\* \* \* \* \*

**(k) Appeals to the Supreme Court.**

(1) *Rules Applicable.* Except as modified by this subdivision, the Vermont Rules of Appellate Procedure ~~and the 2010 Vermont Rules for Electronic Filing~~, so far as applicable, shall govern all proceedings under this subdivision.

(2) *Filing and Service.* An appeal from a decision in a proceeding in the Environmental Court under this rule shall be taken by filing with the clerk of the Environmental Court a notice of appeal in the form provided in paragraph (3) of this subdivision within 30 days of the date of the decision appealed from, unless the Environmental Court extends the time as provided in Rule 4 of the Rules of Appellate Procedure. The appellant shall pay to the clerk of the Environmental Court any required entry fee with the notice of appeal. The appellant shall serve a copy of the notice upon the clerk of the Supreme Court and upon counsel of record of each person that appeared in the Environmental Court and held party status at the time when the decision appealed from was rendered.

(3) *Contents of Notice of Appeal.* The notice of appeal must specify the party or parties taking the appeal; must designate the judgment, order, or part thereof appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. In addition, the notice of appeal must give the address and a description of the property or development with which the appeal is concerned and the name of the applicant for any permit involved in the appeal and must set forth facts showing that the appellant is entitled to appeal pursuant to 10 V.S.A. § 8505(a)(1) or (2) or shall be accompanied by a motion requesting the Supreme Court to allow the appeal on the grounds specified in 10 V.S.A. § 8505(a)(3).

(4) *Issues on Appeal.* An objection that was not raised before the Environmental Court may not be considered by the Supreme Court, unless the failure or neglect to raise that objection is excused by the Supreme Court because of extraordinary circumstances.

(5) *Interlocutory Decisions*. An appeal from a decision of the Environmental Court granting or denying party status as provided in subdivision (d) of this rule or issuing a stay pursuant to subdivision (e) of this rule may be taken before final judgment as provided in Rule 5 of the Vermont Rules of Appellate Procedure.

### Reporter's Notes—2025 Amendment

Rule 5 is amended to delete the references in (a)(2), (b)(1), (c), (f), (h)(1)(A), and (k)(1) to the 2010 Vermont Rules for Electronic Filing, which were abrogated and replaced with the 2020 Vermont Rules for Electronic Filing. The State Court Administrator Administrative Directive PG-14, dated September 18, 2020, made the 2020 Vermont Rules for Electronic Filing applicable in the Environmental Division. Specific reference to the electronic filing rules is no longer necessary.

Rule 5(b)(4)(A) is amended to require the appellant to serve the notice of appeal on the applicant immediately upon filing the notice of appeal. The purpose of this amendment is to provide effective notice to applicants and avoid the delay experienced under the former rule while appellants were in the process of identifying other persons to notify.

5. That these Rules, as amended, are prescribed and promulgated to become effective **July 1, 2025**. The Reporter's Notes are advisory.

6. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this 3<sup>rd</sup> day of February 2025.

---

Paul L. Reiber, Chief Justice

---

Harold E. Eaton, Jr., Associate Justice

---

Karen R. Carroll, Associate Justice

---

William D. Cohen, Associate Justice

---

Nancy J. Waples, Associate Justice



Signed by the Vermont Supreme Court