

TITLE 2: NATURAL RESOURCES
DIVISION 3: THE ENVIRONMENT

§ 3804. Violations.

(a) *Notice of violation.* The Department of Public Health through the Bureau of Environmental Health shall have the authority to issue notices of violations to any person not in compliance with §§ 3802 and 3803 of this chapter, or any regulation promulgated hereunder. Within 30 days after issuance of the notice, the aggrieved person shall either:

(1) Take necessary steps to cure the violation and pay any assessed civil fine as provided in subsection (b) of this section at the CNMI Treasury office, or

(2) Submit a written request to the Department of Public Health for an administrative hearing to protest the violation notice.

(b) *Penalty: civil fine.* Any person who fails to comply with 2 CMC §§ 3802 and 3803 is subject to a civil fine of \$100 for each violation and an additional \$50 for each day the person fails to comply with this chapter. The Department of Public Health may waive the fine for good cause shown including but not limited to situations where the violation notice is issued to a person for the first time or where financial hardship prevents a person from complying in a timely manner.

(c) *Administrative hearing.*

(1) All hearings under this section shall be conducted pursuant to 1 CMC §§ 9109 and 9110. For purpose of those sections in the Administrative Procedure Act and this section the term "agency" shall mean such hearing officer as appointed by the Secretary of the Department of Public Health and

(2) The agency shall have the general power to issue subpoenas, summon witnesses, require production, administer oaths, and other powers that may be necessary to implement this section.

(3) All hearings shall be commenced within 30 days of the filing of the written protest by the aggrieved person. Adequate notice shall be given to all parties and opportunity shall be made available to them to present such evidence as they may desire.

(4) Within 30 days after the hearing, the agency shall issue findings, decision and orders pursuant to 1 CMC § 9110, which shall not be judicially reviewable until final.

(d) *Administrative review.*

(1) Within 15 days of receipt by any person or party affected by findings, orders, or decisions of the agency made pursuant to subsection (d) of this section may appeal to the Secretary of the Department of Public Health by written notice. If no appeal is made to the Secretary within 15 days of issuance of the original findings, orders or decision, the findings, orders or decision shall be unreviewable administratively or judicially.

(2) Upon review, the Secretary may at his or her discretion:

(i) Restrict review to the existing record;

(ii) Supplement the record with new evidence;

(iii) Hear oral argument; or

(iv) Hear the matter de novo, in which case the hearing shall be conducted pursuant to 1 CMC §§ 9109 and 9110.

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(3) Within 30 days after completing its review, the Secretary of the Department of Public Health shall in a written decision confirm or modify the agency findings, order or decision. Any modification shall include supplemental findings. The Secretary's decision shall constitute final action for purposes of judicial review.

(e) *Judicial review.* Judicial review of a final action of the Department of Public Health is authorized after exhaustion of administrative remedies, and must be initiated within 15 days of the issuance of the order or decision constituting final action. Judicial review shall be pursuant to 1 CMC § 9112. Notwithstanding any provision of law to the contrary, judicial review shall be confined to the administrative record.

(f) *Deposit of fines.* The Secretary of Finance shall establish a fund to be known as the Environmental Health Enforcement Fund which shall be further divided into three separate subaccounts for each senatorial district as defined under 1 CMC § 1402(e); 90 percent of the fines collected under this section in each senatorial district shall be deposited into respective subaccounts and the remaining ten percent shall be deposited into the general fund. The funds in the environmental health enforcement funds shall be nonlapsing and shall be available for appropriation to fund the administration and enforcement of this chapter under the expenditure authority of the Secretary of the Department of Public Health for the Third Senatorial District subaccount, and the respective resident directors of the Department of Public Health for the First and Second Senatorial Districts subaccounts.

Source: PL 14-15, § 3 (3804), modified.

Commission Comment: PL 14-15 was enacted on June 18, 2004 and contained a short title, findings, severability, and savings clause provisions. See the comment to 2 CMC § 3801 regarding PL 14-15.