

Two applications were formally abandoned (one Administrative Amendment and one Major) and two Minor applications were formally dismissed in CY2018 following years of applicant inactivity. The total time for these records was removed when calculating average processing times (for details, see footnote to Performance Standards table above).

In CY2018, 55% of all major and minor permit decisions were issued within 60 days. When Administrative Amendments are added, the percentage for all applications issued in 60 days or less rises to 73% for the same timeframe. A total of 89% were issued within 120 days

Two Major permit applications were denied in CY2018, representing 6.3% of major decisions issued.

Five of the 32 District Commission major decisions issued, or 16%, were appealed in CY2018. This compares to an appeal rate of 42% of major decisions in 2017. In addition, there were three NRB Jurisdictional Opinions appealed in 2018.

Performance Standards

Statutory and internal performance standards guide the performance of the District Coordinators and Commissions. Average CY2018 performance is listed below.

PERFORMANCE STANDARDS - CY2018

Category	Standard	CY2018 Performance ³
All Applications Average Days for Initial Application Completeness Review (Internal Standard)	7 Days	4.6 Days
Minor Applications Average Days to Issue after End of Comment Period or Last Item Received (Internal Standard)	10 Days	7.5 Days
Major Applications Average Days to Issue After Adjournment (Act 250 Rule Standard)	20 Days	7.6 Days
Major Applications Average Days from Deemed Complete to Pre-Hearing or Hearing (Statutory Standard)	40 Days	42.1 Days ⁴
Minor-to-Major Applications Average Days from End of Comment Period to Pre-Hearing or Hearing (Statutory Standard)	20 Days	21.5 Days

³ These figures do not include time periods for decisions on motions to alter, decisions remanded from the court, corrections made to permits to clarify simple errors, formal abandonment proceedings, or application withdrawal proceedings for permit applications that had been inactive for years. Specifics on the omissions are available upon request.

⁴ This average figure includes one case wherein a District Commission granted an applicant's request for additional time to revise their application materials prior to scheduling a hearing. This extended period lasted more than three and a half months. If this one unusual case were omitted, this average would be 39.9 days.

PERFORMANCE STANDARDS – COMPARISON WITH PRIOR YEARS

Category	CY2014	CY2015	CY2016	CY2017	CY2018 ⁵
All Applications Average Days for Initial Application Completeness Review (Internal Standard)	2.5 Days	1.4 Days	2.9 Days	2.6 Days	4.6 Days
Minor Applications Average Days to Issue After End of Comment Period or Last Item Received (Internal Standard)	3 Days	3.9 Days	7 Days	NR	7.5 Days
Major Applications Average Days to Issue After Adjournment (Act 250 Rule Standard)	3 Days	7.3 Days	15 Days	4.3 Days	7.6 Days
Major Applications Average Days from Deemed Complete to Pre-Hearing or Hearing (Statutory Standard)	37 Days	42 Days	38 Days ⁶	NR	42.1 Days ⁷
Minor-to-Major Applications Average Days from End of Comment Period to Pre-Hearing or Hearing (Statutory Standard)	NA	NA	NA	NA	21.5 Days

NR = not reported; NA = not available because not previously presented in annual reports.

⁵ These figures do not include time periods for decisions on motions to alter, decisions remanded from the court, corrections made to permits to clarify simple errors, formal abandonment proceedings, or application withdrawal proceedings for permit applications that had been inactive for years. Specifics on the omissions are available upon request.

⁶ This average does not include 2 cases where the District Commission granted the applicant and parties additional time to resolve contested issues prior to scheduling a hearing.

⁷ This average figure includes 1 case wherein a District Commission granted an applicant's request for additional time to revise the application materials prior to scheduling a hearing. This extended period lasted more than three and a half months. If this one unusual case were omitted, this average would be 39.9 days.

NRB Special Fund – Permit Application Fees

The NRB is funded by a combination of General Funds and Special Funds generated by Act 250 application fees. Act 250 permit application fees are based on the estimated cost of construction for each development at \$6.65 per \$1,000.00 of construction cost. Additionally, the NRB directs \$0.75 per \$1,000.00 of its application fees to the Agency of Natural Resources to help offset the cost of ANR's participation in the Act 250 process. Other fees include \$125.00 per subdivided lot and a minimum application fee of \$187.50 for new Act 250 applications. State and municipal projects are exempt from fees (10 V.S.A. § 6083a). Fees are deposited into the Act 250 Special Fund. In FY2019, the NRB is relying on Special Funds to cover 81% of its annual expenditures for personal service and operating costs, with the remaining 19% covered by General Funds.

Total fees collected by Act 250 in the last five fiscal years:

FY 2014	\$2.035M
FY 2015	\$2.407M
FY 2016	\$2.397M
FY 2017	\$2.881M
FY 2018	\$1.773M

Special Fund spending authority for the NRB for the last five fiscal years:

FY 2014	\$2.017M
FY 2015	\$2.017M
FY 2016	\$2.330M
FY 2017	\$2.274M
FY 2018	\$2.245M

Certification of Actual Construction Cost Fees

Following the completion of project construction, each permittee is required to file a form certifying actual construction costs (CACC) and pay any additional Act 250 permit fees due. Since CACC fees are directly related to the actual costs of construction, total annual fees can vary significantly from one year to the next. CACC fees collected for the last five years are presented below:

FY 2014	\$ 29,253
FY 2015	\$ 72,894
FY 2016	\$ 133,611
FY 2017	\$ 49,884
FY 2018	\$ 105,421

Participation in Court Appeals (CY2018)

The NRB has statutory authority to participate as a party in Act 250 appeals to the Superior Court, Environmental Division. In CY2018, the NRB reviewed 5 Act 250 permit decisions and 3 Jurisdictional Opinions that were appealed to the Superior Court, Environmental Division. The NRB participated, through its attorneys, as a party in all 8 of these appeals. Through its attorneys, the NRB works toward resolution of appeals either by settlement or through the court process. The Board participated in 3 appeals at the Vermont Supreme Court through representation by the Attorney General's Office.

Enforcement and Compliance

The NRB is authorized to enforce Act 250 pursuant to the Environmental Enforcement Act, Title 10, Chapter 201. The NRB has direct authority to issue Administrative Orders, Emergency Administrative Orders, Assurances of Discontinuance, and Civil Citations with respect to violations of Act 250; and, the NRB cooperates with ANR on mixed Act 250/ANR enforcement matters. The NRB's enforcement staff consists of the General Counsel, the Associate General Counsel and one full-time Enforcement and Compliance Officer. The Chair of the Board directs the enforcement program.

2018 ENFORCEMENT ACTIVITY

This year, the NRB's Enforcement Officer investigated approximately 93 complaints. Some of these complaints were not deemed violations. Others were referred to the Agency of Natural Resources. The Enforcement Team initiated 4 formal enforcement actions and resolved 9 violations through formal enforcement.

Act 250 violations fall into two general categories: (1) activities commenced prior to the issuance of a required Land Use Permit or permit amendment and (2) activities that violate a condition of an existing permit. 44% of the resolved cases involved violations of permit conditions, and the remaining 56% involved commencement of construction without an Act 250 permit.

The Board assessed \$47,895 in penalties this year and assessed enforcement costs of approximately \$3,407. Several enforcement cases resulted in environmental protection, such as restoration or reclamation activity not reflected in penalty amounts.

The NRB enforcement program resolved 5 cases this year through Assurances of Discontinuance and 4 were resolved through Civil Citations. Assurances of Discontinuance are settlement agreements that often include civil penalties and compliance requirements. Civil Citations are tickets issued by the Enforcement Officer that levy fines of up to \$3,000 per citation. The Enforcement Team issued 10 Notices of Alleged Violation in eight different Act 250 Districts in 2018. Notices of Alleged Violation are warning letters that set out the facts of an alleged violation and invite a response. These often include compliance directives and may be followed up with further enforcement action. In 2018, the resignation of the Associate General Counsel and the promotion of the Compliance and Enforcement Officer created the need for recruitment and impacted the number of enforcement actions initiated. As a result, the number of cases resolved fell in 2018.