

TIMBER OPERATOR LICENSE--DENIAL, SUSPENSION, OR REVOCATION

5504

(No. 6 January 1999)

The Director may deny, revoke, or suspend a timber operator's license for a number of reasons including the following:

- failure to comply with the Forest Practice Act, the regulations adopted by the board pursuant thereto, or the forest practice rules,
- the applicant is not the real person in interest,
- material misrepresentation or false statements in the application (PRC Sections 4573, 4574 and 4576).

Refusal to allow inspections is further ground for suspension or revocation but not for denial.

Although the Forest Practice Act designates the board as having the authority to deny a license, the board has delegated this authority to the Director (PRC Section 4577, 14 CCR Sections 1020, 1027, and 1027.1).

ACTION AGAINST A TIMBER OPERATOR'S LICENSE

5504.1

(No. 6 January 1999)

An action against the license may be recommended to the Director by the resource management staff and legal counsel, in consultation with the region concerned, when staff review of a case indicates such action is the most effective way to obtain correction or to deter further repeated violations. Normally, disciplinary actions against the license will be initiated as the result of a request and recommendation from a region. If correctable violations remain outstanding, corrective action by the Director normally should be recommended at the same time as an action against the license.

A LE-80, with copies of related inspection reports, violation notices, supplemental investigation reports, the THP or Exemption Notice, and other supporting documents should be submitted when a recommendation for action against the license is made. The resource management staff and legal counsel, with the approval of the Director, will initiate the necessary steps for the action against the timber operator's license.

The Government Code, commencing with Section 11500, provides the following steps in license denial, suspension, or revocation:

- The Director must file an Accusation or Statement of Issues, depending on the type of action.

- This document together with a Notice of Defense, Statement to Respondent, copy of Administrative Code sections violated, copy of GC Section 11507.5 et seq., and Declaration of Service by Certified Mail (if mail service is used) must be served upon the respondent.
- The respondent has 15 days (plus five days if served by mail) to file the Notice of Defense and request a hearing. If he/she does not do so, the Director may hold a default hearing and make a decision in the respondent's absence.
- If a hearing is requested, the Director may conduct the hearing or request an Administrative Law Judge from the office of administrative hearings to conduct it at a stipulated time and place. A hearing for license discipline normally will be conducted by an Administrative Law Judge.
- The Administrative Law Judge conducts the hearing according to the provisions of the Administrative Procedures Act and renders a proposed decision.
- The Director may accept the judge's decision, reject it and ask for a further hearing of evidence, or reduce the proposed penalty. The Director may also issue his/her own decision based upon his/her personal and independent review of the hearing record. Such a decision may be necessary if the proposed penalty is increased.
- The respondent has 30 days after the last day on which reconsideration of the Director's decision can be ordered (which is up to 30 days after delivery or mailing of the decision to the respondent) to appeal the Director's decision to the courts through a Writ of Mandamus.

An administrative hearing is less formal than a court trial. Nevertheless, a very orderly courtroom decorum is always maintained. An attorney from the Attorney General's office normally represents the Director. The same careful preparation of documents, evidence, and testimony by the forest officer concerned is required as for a trial.

TIMBER OPERATOR LICENSE ACTION

5504.2

(No. 6 January 1999)

The process of denying or revoking a timber operator's license is a lengthy, involved process, and must be properly orchestrated to avoid violating the due process rights of the respondent (operator) and to facilitate a timely resolution of the case. In order to enhance and strengthen the license action process, the Department is adopting the following procedural time frames for timber operator license actions.

TIMBER OPERATOR LICENSE DENIAL

5504.3

(No. 6 January 1999)

A license may be denied when the application for an original or renewal is received. There are slightly differing constraints governing the Director's action, depending on when the action is taken. Denial of a renewal license requires that the operator be allowed to continue operating until a hearing has been held and the Director has issued a formal denial. This constraint exists because the courts have held that a currently licensed timber operator possesses a vested interest, a property right which under the Constitution cannot be taken away without due process. The applicant for an original license has no such vested interest and cannot begin operations under the new license until it has been issued.

If license denial is the preferred action the process must start well in advance of submission of the license renewal application to allow Sacramento Staff and the Attorney General time to prepare the necessary legal documents. These documents need to be served on the applicant immediately upon receipt of the timber operator license application. The timetable for taking denial action against a timber operator's license will be the following:

- Sept. 1 - Oct. 15: Sacramento staff is notified of field's desire to take action against a timber operator's license. A complete case file is sent to Sacramento. The case report file includes: a synopsis of the operator's forest practice violations history for the last three (3) years; complete inspection records for THPs involved; copies of citations issued; court documents pertaining to the outcome of criminal cases (case numbers, fines, etc.); a list of potential witnesses (inspector, etc.); and any other supporting documents (investigation reports, etc.). See Section 5504.1 of the Procedures Manual.
- Oct. 15 - Oct. 30: Upon receipt of the case file, Sacramento staff makes contact with the Attorney General. An AG is assigned. AG reviews case to determine if action is appropriate.
- Nov. 1 - Nov. 30: Attorney General prepares Statement of Issues. A hearing date is scheduled.
- Dec. 1 - Dec. 30: Timber Operator license applications are received. Statement of Issues and supporting documentation is served on the respondent (operator). License application fee is returned to the respondent along with Statement of Issues and supporting documents.

If case information is not received in Sacramento by October 15, license denial action will not be taken. When case files are not received by the deadline for action to deny a license the Department's next option is revocation of the license.

TIMBER OPERATOR LICENSE SUSPENSION AND REVOCATION

5504.4

(No. 6 January 1999)

Timber operator license suspension and revocation require the same procedures as timber operator license denial.

Suspension is a notice by the Director invalidating the license for a specified period of time that may range from one day to several months, up to the end of the calendar year when renewal is required, or may run until violations are satisfactorily corrected. At the end of the specified suspension period, the license is again automatically valid or can be renewed in the usual way during the month of December if the suspension runs to the end of the year.

License revocation is the voiding or cancellation of the license by the Director, following the prescribed procedure. When a license has been revoked, the timber operator must apply for and obtain a new license, but he/she may not do so for one year. After that, the operator may apply for a new license, requiring the Director to initiate the denial process to prevent the operator from beginning timber operations again. Because denial of a new license cannot be made for violations more than three years old, revocation cannot be made effective for longer than three years (PRC Section 4573). Practically however, it may be impossible to sustain a denial proceeding after a shorter period than three years.

The drawback in using this option is that the operator has his/her license and can continue to operate until a hearing is held and his/her license is revoked. Information and documentation required for a license revocation is the same as required for license denial.

As you can see from the timetable listed above, it takes a considerable amount of time to coordinate and prepare a case for denial. The same time frames, in a generic sense, apply to the revocation process, so it is imperative that initiation of an action to revoke a license takes place as early in the calendar year as possible.

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