

# Chapter 12

## Appeals to the Director for Additional Review

### Overview

---

#### **Introduction**

This chapter contains an overview and the sections that describe the Director's legal authorities when reviewing an appeal. Section 12.1 deals with requests for review (appeals) by the permittee, while section 12.2 deals with requests for review (appeals) by other parties.

---

#### **Two review authorities**

An appeal to the Director to review a permit decision by a CAC must be taken under one of two legal authorities. The authorities have slightly differing requirements which the appellant and Director must follow.

The authorities outlining the two processes are:

1. FAC section 11512.5 and
  2. FAC section 14009 implemented by 3 CCR section 6442 - Permit Review (by the Director)
- 

#### **In this chapter**

This chapter contains the following topics:

<b>Topic</b>	<b>See Section...</b>
Appeal to the Director by Permittees--FAC Section 11512.5	<a href="#">12.1</a>
Appeal to the Director by Others--FAC Section 14009(b) Implemented by 3 CCR Section 6442	<a href="#">12.2</a>

---

## Section 12.1

### Appeal to the Director by Permittees--FAC Section 11512.5

---

**FAC §11512.5 - Appealing the decision to the Director** An appeal pursuant to FAC section 11512.5 shall be in writing and signed by the appellant or his/her authorized agent and state the grounds for the appeal. The CAC's decision shall remain in place pending the outcome of the appeal to the Director.

---

**Time frames**

- Within ten days of filing the appeal, any party may apply to the Director to present new evidence. The Director may allow additional evidence at his/her discretion.
- Thereafter, each party has ten days to rebut the evidence presented and present oral or written arguments.
- If an oral argument is granted, the Director will give the parties at least ten days notice of the time and place set for the argument. The Director will specify the date by which both parties must submit their written argument.

---

**Director's limits**

- The Director shall decide the appeal upon the evidence received at the hearing before the CAC, the argument, and any new or additional evidence the Director may have admitted.
- Upon appeal, the Director may affirm, modify, or reverse the CAC's decision.

---

**Director's decision** A copy of the Director's decision will be given to each party.

---

**Judicial review** If the appellant disagrees with the Director's decision, they can seek court review of the decision within 30 days of the date of the decision. Judicial review of any of the Director's decisions pursuant to this section shall be pursuant to Code of Civil Procedure section 1094.5.

---

## Section 12.2

### Appeal to the Director by Others--FAC Section 14009(b) Implemented by 3 CCR Section 6442

---

**FAC §14009 -  
DPR Director's  
review**

Pursuant to FAC section 14009, a person directly affected by the CAC's decision may appeal to the Director to review the CAC's action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material. The Director may affirm, modify, or reverse the CAC's decision.

---

**Time frames**

The Director shall act on the appeal within ten days of receipt or as soon thereafter as is practicable. The Director may stay the operation of a permit until his/her review is complete.

---

**Documents  
needed for  
Director's  
review**

The law does not specify what the appealing party must provide to the Director in connection with an appeal or even require that they provide notice of the appeal to the CAC. Therefore, the Director will notify the CAC that an appeal has been received. The CAC should be prepared to provide the Director with the following:

- A copy of the original request for review by the CAC, including any supporting documents provided by the requestor or subsequent correspondence;
  - The permit, including all permit conditions, notices of intent, and supporting documentation;
  - Any information reviewed by the CAC in connection with his/her review of the permit; and
  - The CAC's written decision upholding or modifying the permit.
- 

**FAC §14009 -  
Limited issues  
on appeal**

In an appeal of the CAC's decision to the Director, the issues are limited to whether the:

- Proposed permit's use is consistent with applicable pesticide labeling restrictions and applicable regulations;
  - CAC properly considered the provisions of FAC section 14006.5;
  - CAC abused his/her discretion in issuing, refusing, revoking, or conditioning the permit.
- 

*Continued on next page*

## Appeal to the Director by Others--FAC Section 14009(b) Implemented by 3 CCR Section 6442, Continued

---

<b>Public review not required</b>	Unless requested by the affected person, a public review is not required.
-----------------------------------	---

---

<b>Public review is requested</b>	<p>Any interested party may request a public review of the information provided to the Director in connection with the appeal.</p> <ul style="list-style-type: none"><li>• If a public review is requested, the Director shall notify directly, the affected person at least 72 hours in advance of the location and time of the public review.</li><li>• Before acting on an appeal in a specified location open to the public, the Director shall review the information provided to him/her as specified in this section, if requested to do so in writing by any interested person.</li><li>• The Director may request additional testimony or other evidence specified in this section at this public review from any interested person.</li></ul>
-----------------------------------	---

---

<b>Judicial review</b>	If the appellant disagrees with the Director's decision, they can seek court review of the decision within 30 days of the date of the decision. Judicial review of any of the Director's decisions pursuant to this section shall be pursuant to Code of Civil Procedure section 1094.5, and shall be limited to whether the proposed permit use is consistent with the applicable pesticide label restrictions and regulations, and whether the Director abused his/her discretion.
------------------------	--

---

<b><u>3 CCR §6442. (Permit Review) - clarifies Director's review under FAC §14009</u></b>	<ul style="list-style-type: none"><li>• The CAC's decision in issuing, conditioning, refusing, revoking, or suspending a restricted materials permit will be reversed by the Director only for a clear abuse of discretion by the CAC. The burden of establishing an abuse of discretion is on the person requesting the review.</li><li>• The Director's review is limited to the particular permit involved.</li></ul>
---	--

---

*Continued on next page*

## Appeal to the Director by Others--FAC Section 14009(b) Implemented by 3 CCR Section 6442, Continued

---

**3 CCR §6442.**  
**(Permit**  
**Review) -**  
**clarifies**  
**Director's**  
**review under**  
**FAC §14009**  
(continued)

- The person requesting a review may request the Director to stay the operation of the permit for a limited time, or, until the matter is finally decided. The Director determines whether the stay will be granted or refused as soon as practicable based upon:
    1. The reasons stated for the stay in the request for review and supporting documents; any counter documents; or arguments timely submitted to the Director by the CAC or the permittee; **and**
    2. The Director's own preliminary analysis of whether a stay is necessary to avoid a significant health hazard or significant crop, environmental, or property damage.
-