



State of Vermont

AGENCY OF NATURAL RESOURCES
Department of Environmental Conservation

Department of Fish and Wildlife
Department of Forests, Parks and Recreation
Department of Environmental Conservation
State Geologist
Natural Resources Conservation Council
RELAY SERVICE FOR THE HEARING IMPAIRED
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MEMORANDUM

TO: DEC Division Directors
FROM: William Brierley, Acting Commissioner
DATE: February 22, 1995
SUBJECT: Implementation of Administrative Procedure

I am transmitting the procedure for employees entering private property in the performance of their duties. Please ensure that your staff are conversant with and carry out the policy. There are several key points that I want to stress.

1) What is "private property"?

For purposes of this policy, all lands not owned by the Agency of Natural Resources will be interpreted as private except public rights of way for travel or boatable waters of the State. We will attempt to secure agreement of other State agencies to allow ANR employees unrestricted access. If successful, we will attach an addendum clarifying the exclusion. This would allow ANR employees unrestricted access to all State property for administrative inspection or investigation purposes.

2) Why are we adopting this procedure?

Legislative concern over State employee access to private property was apparent from the language in proposed wetlands legislation last year. The Department requested the Governor veto the bill, proposing instead to adopt a policy in lieu of the legislation. A workgroup evaluated the statutory access provisions, and learned the Legislature effectively rescinded general access authorities in 10 V.S.A. Sec. 551, 901, 1931, and 6609 by supplanting them with 10 V.S.A. §8005 in the Uniform Environmental Law Enforcement Act which was adopted after all the aforementioned rights of access.

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3) What additional steps are required to fully implement the procedure?

- (a) All permit applications must be amended to include the express authorization to perform necessary inspections. Please ensure the following is inserted in all permit applications.

"I recognize that by signing this application I am giving consent to employees of the State to enter the subject property for the purpose of processing this application."

- (b) Please provide your staff with any training you think necessary to assure their understanding and execution of the procedure. Every person shall be given a copy of the policy.
- (c) Division directors are free to issue any more detailed guidance necessary to carry out the provisions of this procedure within their respective programs. Please provide me with a copy.

4) What response is planned if we are not able to adequately perform our duties?

I believe the procedure describes reasonable actions by us as State employees with respect to the property rights of others while allowing us to carry out our Department duties. I will consider amendments to the procedure on development of a significant body of documented experience which shows the procedure prevents execution of Department responsibilities. Such changes may require amending underlying statute.

I am relying on you to promptly and effectively communicate this procedure to your staff. Please assure compliance with the adopted procedure by all your employees.

vlh/1

Attachments

**Employee Access to Private Property
Procedure for the Department of Environmental Conservation**


This procedure is adopted to ensure that Department employees observe and respect the rights of property owners while carrying out their Department duties. Vermont law does not authorize State employees unrestricted or unauthorized access to private property and it is the policy of the Department to contact the landowner or authorized representative to secure his or her consent prior to entering private lands. Any activity conducted by Department staff on private property must be in accord with authority conveyed to the Department by law or by the landowner's consent. Any cases of doubt shall be resolved in favor of the property owner's assumed right to restrict access. "Private property" within the context of this procedure includes privately and publicly owned property, excepting property owned by the Agency of Natural Resources, public rights-of-way, and boatable waters of the State.

This procedure addresses two major areas concerning access to property: the methods used to access the property, and what the employee does with information obtained while on the property.

- 1) Department employees intending to enter private property in the performance of their duties shall obtain permission from the landowner prior to entering the private property, unless responding to an emergency such as a spill response (10 V.S.A. 1283) or other emergency as specifically defined by the Commissioner. An employee, when requesting permission, shall (a) identify him/herself as a State employee and produce identification; (b) clearly explain the basis of the request, including land area of interest and topic(s) of interest; and (c) explain the intended use of the information gained during access. The property owner will be invited to accompany the employee during the investigation or inspection unless the employee receives alternative instruction from the Director of the Enforcement Division or assigned legal counsel.
- 2) An employee entering property shall display appropriate credentials by either : (a) showing credentials to the landowner; or (b) displaying his or her credentials in a plainly visible manner. An employee entering property with other officials (federal, state, or municipal) shall ensure that the owner is informed of the identity of the persons entering the property and has consented to the entry of all members of the inspection party.
- 3) An employee may enter property at reasonable times with the written consent of a property owner, given as part of a permit application. The employee will make reasonable efforts to provide the owner with advanced notice of the visit, to reaffirm the owner's consent and to invite the owner's accompaniment during the inspection, if applicable.

Employee Access to Private Property

- 4) Where the inspection involves a residence, the employee will make reasonable efforts to contact and secure consent from both the owner and the resident(s). If both are not reasonably available to give consent, the employee may rely on the consent of either party.
- 5) In granting access for a specific purpose, the landowner has a reasonable expectation that the access will not be used for other purposes, and the employee shall honor that expectation. In the event the employee incidentally becomes aware of another violation(s), he or she may request the landowner to allow continued or further access to investigate the additional violation(s). If the landowner does not grant continued access for such additional purpose(s), the employee will leave and seek an access order or search warrant for the additional investigation, as applicable.
- 6) An employee shall not enter private property if access is denied. The employee may pursue an access order or search warrant as authorized by law and if approved by the Director of the Enforcement Division or assigned counsel.
- 7) In the event an owner withdraws consent during an inspection or after having granted consent as part of a permit application, the employee shall immediately terminate the inspection and leave the property. The employee may pursue an access order or search warrant as authorized by law and if approved by the Director of the Enforcement Division or assigned counsel.
- 8) The file record of any inspection or other activity conducted on private land should include a notation verifying the date landowner consent was obtained, by whom, and if possible, reasons cited for any denial of access.
- 9) This policy may be superseded by specifically authorized procedures applicable to Environmental Enforcement Officers.



William C. Brierley, Acting Commissioner
Department of Environmental Conservation

22 Feb 95
Date