

Wetlands Program Policy 88-3: Multiple Filings

Multiple Filings: Multiple Notice of Intent Filings for the Same or Similar Projects on the Same Property (DWW Policy 88-3)

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From time to time, the Department receives revised Notices of Intent involving the same or very similar project for which a request for a Superseding Order of Conditions or an Adjudicatory Hearing is pending. Many applicants prefer to revise their plans to satisfy the concerns raised by the Department, Conservation Commissions or an appellant, rather than incur the time and expense of the appeal process. Although the Department generally encourages the refiling and processing of revised projects at the local level, the Department wants to avoid review and issuance of two or more Orders of Conditions for the same or similar projects at the same site. Conservation Commissions, the Department, and applicants stand to benefit when applicants resolve their differences with the Department or the Conservation Commission by refiling. These benefits include reduction of the number of appeals pending before the Department and the assurance that Conservation Commissions retain primary responsibility for the project including site monitoring, enforcement, and issuing a Certificate of Compliance.

To these ends, the following procedures are effective:

1. Upon written notice (either by letter, new Notice of Intent, Order of Conditions or letter of appeal) that a refiling will be made or upon realization by the Department that a refiling has been made, all administrative action on the original appeal will be stayed while processing the new Notice of Intent.
2. In the case of Superseding Orders of Conditions, the applicant has 21 days from the date of issuance of the Order of Conditions to withdraw, in writing, one of the two Notices of Intents. In cases where the Department learns of the refiling after a second file number has been issued, the Regional Office shall immediately send a Notification Letter instructing the applicant that she/he has 21 days from when the Order of Conditions was issued or from when the Department learned of the refiling (whichever is later) to withdraw one of the two Notices of Intent. If the Department does not receive such notice in the required time, the Department will issue a follow-up letter which will dismiss the earlier-filed Notice of Intent.
3. In the case of adjudicatory hearings, the applicant has 21 days from the date of issuance of the Order of Conditions to withdraw, in writing, one of the two Notices of Intent. Failure to do so will result in the applicant being required to show cause why the earlier filed Notice of Intent should not be dismissed.