

641—15.6(135I) Enforcement.

15.6(1) The department may inspect swimming pools and spas regulated by these rules and enforce these rules. A city, county or district board of health may inspect swimming pools and spas regulated by these rules and enforce these rules in accordance with agreements executed with the department pursuant to the authority of Iowa Code chapters 28E and 135I.

15.6(2) The inspection agency shall take the following steps when enforcement of these rules is necessary.

a. Owner notification. As soon as possible after the violations are noted, the inspection agency shall provide written notification to the owner of the facility that:

- (1) Cites each section of the Iowa Code or Iowa Administrative Code violated.
- (2) Specifies the manner in which the owner or operator failed to comply.
- (3) Specifies the steps required for correcting the violation.
- (4) Requests a corrective action plan, including a time schedule for completion of the plan.
- (5) Sets a reasonable time limit, not to exceed 30 days from the receipt of the notice, within which the owner of the facility must respond.

b. Corrective action plan review. The inspection agency shall review the corrective action plan and approve it or require that it be modified.

c. Failure to comply. When the owner of a swimming pool or spa fails to comply with conditions of the written notice, the inspection agency may take enforcement action in accordance with Iowa Code chapters 137 and 135I, or in accordance with local ordinances.

d. Adverse actions and the appeal process. If the department determines that the provisions of Iowa Code chapter 135I and these rules have been or are being violated, the department may withhold or revoke the registration of a swimming pool or spa, or the department or the local board of health may order that a swimming pool or spa be closed until corrective action has been taken. If the swimming pool or spa is operated without being registered, or in violation of the order of the department, the department or local inspection agency may request that the county attorney or the attorney general make an application in the name of the state to the district court of the county in which the violations have occurred for an order to enjoin the violations. This remedy is in addition to any other legal remedy available to the department.

(1) A local inspection agency may request that the department withhold or revoke the registration of a swimming pool or spa, or issue an order to close a swimming pool or spa. The request shall be in writing and shall list the violations of Iowa Code chapter 135I and these rules that have occurred or are occurring when the request is made. The local inspection agency shall provide a full accounting of the actions taken by the local inspection agency to enforce Iowa Code chapter 135I and these rules.

(2) Notice of the decision to withhold or revoke the registration for a swimming pool or spa, or an order to close a swimming pool or spa shall be delivered by restricted certified mail, return receipt requested, or by personal service. The notice shall inform the owner of the right to appeal the decision and the appeal procedures. The local inspection agency and the county attorney in the county where the swimming pool or spa is located shall be notified in writing of the decision or order.

(3) An appeal of a decision to withhold or revoke a registration or of an order to close shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to the Iowa Department of Public Health, Division of Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the decision or order shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the decision or order upon satisfaction that the reason for the decision or order has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the decision or order. If no appeal is submitted within 30 days, the decision or order shall become the department's final agency action.

(4) Upon receipt of an appeal that meets contested case status, the appeal shall be transmitted to the department of inspections and appeals within 5 working days of receipt pursuant to the rules adopted by that department regarding the transmission of contested cases. The information upon which the revocation or withholding is based shall be provided to the department of inspections and appeals.

(5) The hearing shall be conducted in accordance with 481—Chapter 10.

(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings 10 days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subparagraph 15.6(2) "d"(7).

(7) Any appeal to the director of the department for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within 10 days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reason for appeal.

(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

1. All pleadings, motions and rules.
2. All evidence received or considered and all other submissions by recording or transcript.
3. A statement of all matters officially noticed.
4. All questions and offers of proof, objections, and rulings thereon.
5. All proposed findings and exceptions.
6. The proposed findings and order of the administrative law judge.

(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested.

(10) It is not necessary for the owner to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department that has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the Iowa Department of Public Health, Division of Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.