

A THO will often need to take a formal approach to address a local public health hazard. The statutes in [18 V.S.A. Chapter 3](#) provide authority for the THO to attempt to secure voluntary compliance to address a public health hazard or a violation of a Health Department rule or permit, and to take enforcement action when necessary.

## Encouraging Voluntary Compliance

According to [18 V.S.A. § 124](#), when appropriate, the THO shall make all feasible efforts to secure voluntary compliance. This means that the THO can do the following:

1. Encourage voluntary cooperation by people responsible for the potentially hazardous condition and affected groups to mitigate the condition and protect public health.
2. Encourage local government to handle violations within their jurisdiction.
3. Advise, consult, contact and cooperate with other local, state and federal agencies, private entities and other interested individuals and groups to address the situation.
4. Encourage voluntary compliance through warnings or meetings.

Waiting for voluntary compliance is not appropriate in all situations. In an emergency or a situation where public health is at risk or an imminent and substantial public health hazard exists, a health order or emergency health order may be necessary.

## Health Orders

If the THO has determined that there is a public health hazard and voluntary compliance cannot be achieved, they can request that the selectboard issue a health order to:

1. Prevent, remove or destroy any public health hazard.
2. Mitigate a significant public health risk.
3. Correct any violation of the laws in Title 18 of the Vermont statutes or a violation of any rules promulgated by the Health Department under those laws.
4. Correct any violation of a permit restriction or requirement.

Health orders are explained in [18 V.S.A. § 126](#). A health order must be issued by the selectboard, after providing appropriate notice and opportunity to be heard, but the THO performs the investigation and prepares the documents in support of a health order. The THO must follow this process:

### KEY POINTS

- Health officers must encourage voluntary compliance to address a public health hazard when appropriate.
- Health officers can work with the selectboard to issue a health order if necessary to address a public health hazard.
- Issuing health orders and emergency health orders requires following specific procedural steps required by state law.

1. **Prepare the supporting documents:** To seek a health order from the selectboard, the THO must prepare certain documents and make sure that these documents are formally served on the party who would be subject to the terms of the health order. These documents include a notice of intent to seek a health order, any supporting evidence available, and a statement of procedural rights.
  - a. **Notice of intent:** This is a written statement by the THO explaining why they believe that a health order is necessary and that they will be requesting that the Selectboard issue a health order.
  - b. **A draft of the health order:** A draft of the health order that the THO is requesting the Selectboard to issue must be a part of the notice of intent.
  - c. **Supporting evidence:** The THO must include their findings, i.e. everything the THO has been given, told, observed or sampled as part of the investigation. The THO should use the [Complaint and Inspection Form](#) as supporting evidence and include any additional evidence compiled through inspection notes or photographs.
  - d. **Statement of procedural rights:** This document explains to the party subject to the health order that they have the right to receive formal service of the documents, the right to ask the selectboard for a hearing before the health order is issued, and the opportunity at that hearing to rebut any allegations and demonstrate that the selectboard should not issue a health order. The statement of procedural rights must also state the selectboard's decision to issue a health order may be appealed to the Civil Division of the Superior Court in the county where the person resides or maintains a business within 30 days according to Vermont Rule of Civil Procedure 74.
2. **Serve the notice of intent to seek a health order:** The notice of intent to seek a health order, including the supporting evidence and statement of procedural rights, must be served to the person who would be subject to the health order, in person by the THO or according to Rule 4 of the Vermont Rules of Civil Procedure, meaning by a sheriff or deputy sheriff, constable or other person authorized by law. Service means delivering a copy of the documents to the individual personally, or to a person of suitable age and discretion residing in that individual's home.

If the THO serves the notice of intent to seek a health order in person, the THO should use the THO Service of Process form to document when, where and to whom they served the notice of intent to seek a health order.

If a sheriff or deputy sheriff, constable or other person authorized by law serves the notice of intent to seek a health order, they must make proof of the service either on the original process or a certificate of service attached for that purpose. The proof of service should be returned with that person's fees to the town or city attorney.

If, after due diligence, personal service cannot be made, the THO should contact their town attorney to seek assistance in pursuing alternative methods of service. When the person to be served resides outside of Vermont, a notice of intent must be served through certified mail.

3. **Attend the hearing:** The person receiving the notice of intent may request a hearing. Usually, the notice of intent will include the time and place of the next selectboard meeting when the THO will request a health order. If the person receiving the notice of intent wants a hearing at that time, they should contact the selectboard (through the town clerk) to be put on the meeting agenda.

At the hearing, the THO will present their findings and supporting evidence that shows why the selectboard should issue a health order. The subject to the order can rebut the THO's allegations and present evidence to show why the selectboard should not issue a health order. The selectboard makes the final decision on whether to issue a health order. If the selectboard issues a health order, it is effective immediately.

### Health Orders

1. The health order should begin with a description of the evidence the THO has collected and the reason the THO believes a health order is necessary.
2. The health order should cite 18 V.S.A. §§ 126 and 602a, the statutory authority for the health order. In addition, the health order may cite a specific Health Department regulation that the THO believes has been violated.
3. The health order must also contain the specific actions that the party will be required to take. Examples of actions that can be ordered are provided in 18 V.S.A. § 126:
  - Prohibition of transportation, sale, distribution or supplying of water, food or any other materials or services.
  - Repair, installation, construction, operation or implementation of purification equipment or methods.
  - Testing, sampling, monitoring, surveying or other analytical operations required to determine the nature, extent, duration or severity of the public health hazard or public health risk.
  - Impounding, destruction or removal of any public health hazard.
  - Quarantine or isolation of any area, persons, animals or materials.
  - Closing of and the prohibition of assemblage in any food or lodging establishment, church, school or any other place of assemblage.
  - Cessation of any acts, discharges or processes contributing to a public health hazard or public health risk.
  - Medical or veterinary treatment of any agent that is contributing to a public health hazard or a public health risk.
  - Giving of notice to potential users, including travelers, of the goods or services, of the nature, extent and possible health effects of the public health hazard or public health risk and precautions to be taken by such users.

- Any other affirmative acts or prohibitions necessary to mitigate a significant public health risk.

This list provides examples of the kinds of actions or prohibitions that may be required by a health order, but the actions or prohibitions are not limited to those listed here. However, 20 V.S.A. §11 prohibits a THO from using a health order or an emergency health order to force occupants to vacate their home.

The health order should include the specific actions or prohibitions necessary to mitigate the public health hazard and protect public health. The health order may also include deadlines or timelines for taking the specific actions or prohibitions.

### Emergency Health Orders

The authority for an emergency health order is described in [18 V.S.A. § 127](#). For an emergency health order, the format, supporting evidence, method of service, and statement of procedural rights are all the same as the regular health order. The following is a list of critical differences between a regular health order and an emergency health order:

1. The THO may issue an emergency health order only when the THO determines it is necessary to prevent, remove or destroy an imminent and substantial public health hazard or to mitigate an imminent and substantial public health risk. An emergency health order may not be used solely to correct a violation of a statute or rule; it must meet the imminent and substantial health hazard criteria.
2. The THO must prepare a written statement of why the emergency health order is needed. This written statement, together with a statement of procedural rights and the evidence, as described in the health order section above, must be served as soon as possible to the person to whom the order is directed.
3. The emergency health order is effective upon actual notice to the person subject to the order. The order must be served in person by the THO or in accordance with Rule 4 of the Vermont Rules of Civil Procedure as discussed for regular health orders.
4. An emergency health order is issued before a hearing is held, since the time it would take to schedule a hearing would increase the threat or risk to public health.
5. The person subject to an emergency health order shall have an opportunity, within five business days from when the order was issued, to have a hearing in front of the selectboard. If a hearing is requested, the person subject to the emergency health order may rebut the allegations upon which the emergency health order is based.
6. A person who is in full compliance with an emergency health order may request, and shall be granted, an extension of the hearing date.
7. After the hearing, the selectboard shall issue an order (same as a regular health order) that either affirms, modifies or terminates the emergency health order. If a hearing is not requested, the THO needs to request that the selectboard issue the affirming health order.

### Civil and Criminal Enforcement

If a health order or emergency health order has been violated, the local board of health may also bring an action in the superior court of their county to enforce the law or seek injunctive relief, as provided in [18 V.S.A. § 130](#). The local board of health should work with their town attorney to ensure this action is filed properly.

The court may order that a public health hazard be removed or destroyed, stop any planned activities that could contribute to the hazard, order remedial actions, or order other actions that could mitigate the public health risk. The court may also order the person who caused the government expenditures to reimburse the town or city for any funds spent as part of its investigation, mitigation or removal of public health risk public health hazard—including the costs of the enforcement action.

In addition, the court may assess civil penalties up to \$10,000.00 for each violation and, in the case of a continuing violation, each day's continuance may be deemed a separate violation. The court may also impose criminal penalties, as provided in [18 V.S.A. § 131](#).

### Contact:

Call or email the Environmental Health Division at 800-439-8550 or [AHS.VDHTHO@vermont.gov](mailto:AHS.VDHTHO@vermont.gov) with any questions about the THO's enforcement tools. Additional resources, including templates for and examples of the documents described here are available on the THO webpage: [healthvermont.gov/tho](http://healthvermont.gov/tho)