

S.123: Standardized Procedures for DEC Permits
Section by Section Description, Proposed Strike-all Amendment
Office of Legislative Council Feb. 26, 2016

§	DESCRIPTION
	<i>Environmental Conservation; Standard Procedures</i>
1	<p>10 V.S.A. Chapter 170: Department of Environmental Conservation: Standard Procedures</p>
	<p>Subchapter 1: General Provisions</p>
	<p>10 V.S.A. § 7701. Purpose</p> <p>Establish standard procedures for public notice, public meetings, and decisions on applications for permits issued by the Department of Environmental Conservation (DEC), which is part of the Agency of Natural Resources (ANR).</p>
	<p>10 V.S.A. § 7702: Definitions</p> <ul style="list-style-type: none"> • “Administrative amendment,” “minor amendment, “major amendment” – these definitions affect how much process is required to change an existing permit • “Administrative record” – defined broadly to include all documents submitted to or used by DEC in its decision-making • “Document” – broadly defined to include any written or recorded information • “Public meeting” – defined to include a meeting that is open to the public at which questions may be asked of the applicant and DEC and comments may be made • “Technical review” –affects whether an amendment is or is not a major
	<p>10 V.S.A. § 7703. Rules; Additional Notice or Procedures</p> <p>Authorizes rules to implement the chapter and requires adopting rules that provide for a preapplication process for projects classified as large and complex.</p> <p>Secretary given discretion to provide greater public process than is required by the act.</p>
	<p>10 V.S.A. § 7704. Administrative Record</p> <p>Requires Secretary to create and maintain an administrative record for each application, to make the record available to the public, and to base a draft or final decision on the record.</p>
	<p>Subchapter 2: Standard Procedures</p>
	<p>10 V.S.A. § 7711. Permit Procedures; Standard Provisions</p> <p>This section sets out elements that are used in one or more of the five process categories that follow.</p>

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1, ctd	<ul style="list-style-type: none"> • Electronic notice through environmental notice bulletin. • When notice is required to adjoining property owners, to be by mail. • Default periods for comment (30 days), requesting public meeting (14 days), notice of public meeting (14 days). • Posting of draft decision and supporting documents. • At public meeting, the applicant and DEC to respond to questions. • Response to comments to include a response to each comment received and to identify each change to the draft decision. • Posting and issuance of final decision.
	<p>10 V.S.A. § 7712: Type 1 Procedures</p> <ul style="list-style-type: none"> • Scope: General and individual permits under the federal Clean Air and Water Acts and Resource Conservation and Recovery Act • Elements: Notice of application to adjoining property owners and any other persons whom federal law requires; notice in the environmental notice bulletin; notice of draft decision through the bulletin and newspapers; issuance of fact sheet; public comment period; opportunity for public meeting; 30 days' notice of public meeting; and notice and issuance of final decision with response to comments. If federal law requires greater public participation, DEC must comply.
	<p>10 V.S.A. § 7713: Type 2 Procedures</p> <ul style="list-style-type: none"> • Scope: All individual permits not covered in the other types of procedures. • Elements: Notice of application to adjoining property owners and in the environmental notice bulletin; notice of draft decision through the bulletin; public comment period; opportunity for public meeting; notice of public meeting; and notice and issuance of final decision with response to comments. • For public water systems, notice also to property owners in zones 1 and 2 of the source protection area
	<p>10 V.S.A. § 7714. Type 3 Procedures</p> <ul style="list-style-type: none"> • Scope: All general permits not covered in Type 1 (federal), dam safety orders, individual shoreland permits, aquatic nuisance control permits, changes in treatment for public water supply, collection plans for mercury-containing lamps, plans for collection and recycling of electronic waste, and battery stewardship plans. • Elements: Notice of application in the environmental notice bulletin; notice of draft decision through the bulletin; opportunity for public meeting; public comment period; notice of public meeting; and notice and issuance of final decision with response to comments.

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1, ctd	<p>10 V.S.A. § 7715: Type 4 Procedures</p> <ul style="list-style-type: none"> • Scope: Notices of intent under general permits; air contaminant sources less than 10 tons per year; construction or expansion of public water supply; category 1 underground storage tanks; categorical solid waste certifications; and medium scale composting certifications. • Elements: Notice of application in the environmental notice bulletin; notice of draft decision through the bulletin; public comment period of 10 days; and notice and issuance of final decision with response to comments. <p>10 V.S.A. § 7716: Type 5 Procedures</p> <ul style="list-style-type: none"> • Scope: Temporary emergency permits (water resources); public water system operational permits; authorizations under stream alteration general permits for reporting without an application, for an emergency, and for activities to prevent risks to life or severe damage to property posed by next annual flood; emergency sludge and septage disposal approvals; and shoreland registrations.. • Element: Notice and issuance of final decision. <p>10 V.S.A. § 7717: Amendments; Renewals</p> <ul style="list-style-type: none"> • Major amendment by same process applicable to original permit. • Minor amendment under Type 4 procedures, except notice of application not required. • Administrative amendment not subject to the procedures of the chapter. • Renew permits by same process applicable to original permit. <p>10 V.S.A. § 7718: Exemptions</p> <p>Subchapter does not apply to unsafe dam orders, potable water supply and wastewater permits, hazardous waste facility certifications, and certificates of need for hazardous waste management facilities.</p>
2	<p>Rules; Effect on Procedural Requirements (Session Law)</p> <p>Sec. 1 takes precedence over any requirements for notice and processing of applications contained in DEC rules, which must be amended to comply by July 1, 2019.</p>
<i>Environmental Notice Bulletin</i>	
3	<p>3 V.S.A. § 2826. Environmental Notice Bulletin</p> <ul style="list-style-type: none"> • Bulletin to consist of website and e-mail notification system established and maintained by Secretary of Natural Resources. • Secretary to post information to website and generate e-mail notifications in accordance with 10 V.S.A. chapter 170.

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	<ul style="list-style-type: none"> • Secretary to provide members of public with ability to register through the bulletin. • Secretary shall comply with requests to receive notifications through U.S. mail.
4	<p>Reports; Rulemaking; Bulletin; Revision (Session Law)</p> <ul style="list-style-type: none"> • By Sep. 15, 2016, ANR to commence all rulemaking required by the act. • By Feb. 15, 2017, ANR to submit written report to standing committees of jurisdiction on the progress in adopting the rules and the revision of the notice bulletin. • By July 1, 2017, ANR to complete revision of the notice bulletin. • By Feb. 15, 2020, ANR to report to standing committees on the implementation of the act, its effect on permit processing and public participation in that process and, based on this track record, whether there is justification to amend the appeals process for DEC permitting decisions.
<i>Appeals from Agency of Natural Resources to Environmental Division</i>	
5	<p>10 V.S.A. § 8504(d). Requirement to participate before DEC to appeal.</p> <p>Would add a requirement that, in order to appeal from DEC to the Environmental Division, a person must have submitted a written or oral comment to DEC, with exceptions where there was a procedural defect that prevented this submission or a manifest injustice would result from disallowing the appeal. This requirement is similar to what exists today for appeal from District Commissions (Act 250).</p>
<i>Conforming Amendments</i>	
6-32	<p>These sections amend ANR permit programs to require them to use the standardized procedures described in Sec. 1.</p>
<i>Act 250 Jurisdictional Determinations</i>	
33-37	<p>These sections revise the process for appealing jurisdictional determinations under 10 V.S.A. chapter 151 (Act 250) so that the appeal goes directly to the Environmental Division rather than requiring the appellant first to seek reconsideration by the Natural Resources Board. This repeals a change made in 2013 to require an appellant to seek such reconsideration. Before 2013, the appeal was directly to the Division.</p>
<i>Effective Dates</i>	
38	<p>The act takes effect on Jan. 1, 2018, except that Secs. 4 and 38 take effect on passage.</p>