

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 123 entitled “An act relating to standardized procedures for
4 permits and approvals issued by the Department of Environmental
5 Conservation” respectfully reports that it has considered the same and
6 recommends that the House propose to the Senate that the bill be amended as
7 follows:

8 First: By striking out Secs. 1 through 5 in their entirety and inserting in lieu
9 thereof Secs. 1 through 5c to read:

10 * * * Environmental Conservation; Standard Procedures * * *

11 Sec. 1. 10 V.S.A. chapter 170 is added to read:

12 CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL

13 CONSERVATION; STANDARD PROCEDURES;

14 Subchapter 1. General Provisions

15 § 7701. PURPOSE

16 The purpose of this chapter is to establish standard procedures for public
17 notice, public meetings, and decisions relating to applications for permits
18 issued by the Department of Environmental Conservation.

19 § 7702. DEFINITIONS

20 As used in this chapter:

1 (1) “Adjoining property owner” means a person who owns land in fee
2 simple, if that land:

3 (A) shares a property boundary with a tract of land where proposed
4 or actual activity regulated by the Department is located; or

5 (B) is adjacent to a tract of land where such activity is located and the
6 two properties are separated only by a river, stream, or public highway.

7 (2) “Administrative amendment” means an amendment to an individual
8 permit, general permit, or notice of intent under a general permit that corrects
9 typographical errors, changes the name or mailing address of a permittee, or
10 makes other similar changes to a permit that do not require technical review of
11 the permitted activity or the imposition of new conditions or requirements.

12 (3) “Administrative record” means the application and any supporting
13 data furnished by the applicant; all information submitted by the applicant
14 during the course of reviewing the application; the draft permit or notice of
15 intent to deny the application; the fact sheet and all documents cited in the fact
16 sheet, if applicable; all comments received during the public comment period;
17 the recording or transcript of any public meeting or meetings held; any written
18 material submitted at a public meeting; the response to comments; the final
19 permit; any document used as a basis for the final decision; and any other
20 documents contained in the permit file.

1 (4) “Administratively complete application” means an application for a
2 permit for which all initially required documentation has been submitted, and
3 any required permit fee, and the information submitted initially addresses all
4 application requirements but has not yet been subjected to a complete technical
5 review.

6 (5) “Agency” means the Agency of Natural Resources.

7 (6) “Clean Air Act” means the federal statutes on air pollution
8 prevention and control, 42 U.S.C. § 7401 et seq.

9 (7) “Clean Water Act” means the Federal Water Pollution Control Act,
10 33 U.S.C. § 1251 et seq.

11 (8) “Commissioner” means the Commissioner of Environmental
12 Conservation or the Commissioner’s designee.

13 (9) “Department” means the Department of Environmental
14 Conservation.

15 (10) “Document” means any written or recorded information, regardless
16 of physical form or characteristics, which the Department produces or acquires
17 in the course of reviewing an application for a permit.

18 (11) “Environmental notice bulletin” or “bulletin” means the website
19 and e-mail notification system required by 3 V.S.A. § 2826.

1 (12) “Fact sheet” means a document that briefly sets forth the principal
2 facts and the significant factual, legal, methodological, and policy questions
3 considered in preparing a draft decision.

4 (13) “General permit” means a permit that applies to a class or category
5 of discharges, emissions, disposal, facilities, or activities within a common
6 geographic area, including the entire State or a region of the State.

7 (14) “Individual permit” means a permit that authorizes a specific
8 discharge, emission, disposal, facility, or activity that contains terms and
9 conditions that are specific to the discharge, emission, disposal, facility, or
10 activity.

11 (15) “Major amendment” means an amendment to an individual permit
12 or notice of intent under a general permit that necessitates technical review.

13 (16) “Minor amendment” means an amendment to an individual permit
14 or notice of intent under a general permit that requires a change in a condition
15 or requirement, does not necessitate technical review, and is not an
16 administrative amendment.

17 (17) “Notice of intent under a general permit” means an authorization
18 issued by the Secretary to undertake an action authorized by a general permit.

19 (18) “Permit” includes any permit, certification, license, registration,
20 determination, or similar form of permission required from the Department
21 by law. However, the term excludes a professional license issued pursuant to

1 chapter 48, subchapter 3 (licensing of well drillers) of this title and sections
2 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous
3 waste transporters), and 6607a (waste transportation) of this title.

4 (19) “Person” shall have the same meaning as under section 8502 of this
5 title.

6 (20) “Person to whom notice is federally required” means a person to
7 whom notice of an application or draft decision must be given under federal
8 regulations adopted pursuant to the Clean Air Act or Clean Water Act.

9 (21) “Public meeting” means a meeting that is open to the public and
10 recorded or transcribed, at which the Department shall provide basic
11 information about the draft permit decision, an opportunity for questions to the
12 applicant and the Department, and an opportunity for members of the public to
13 submit oral and written comments.

14 (22) “Secretary” means the Secretary of Natural Resources or designee.

15 (23) “Technical review” means the application of scientific,
16 engineering, or other professional expertise to the facts to determine whether
17 activity for which a permit is requested meets the standards for issuing the
18 permit under statute and rule.

1 § 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

2 (a) Rules.

3 (1) Implementing rules. The Secretary may adopt rules to implement
4 this chapter.

5 (2) Complex projects; preapplication process. The Secretary shall adopt
6 rules to determine when a project requiring a permit is large and complex.
7 These rules shall provide that an applicant proposing such a project, prior to
8 filing an application for a permit, shall initiate a project scoping process
9 pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open
10 to the public. The rules shall ensure that:

11 (A) Written notice of an informational meeting under this section is
12 sent to the owner of the land where the project is located if the applicant is not
13 the owner; the municipality in which the project is located; the municipal and
14 regional planning commissions for any municipality in which the project is
15 located; if the project site is located on a boundary, any Vermont municipality
16 adjacent to that boundary and the municipal and regional planning
17 commissions for that municipality; and each adjoining property owner. At the
18 time this written notice is sent, the Secretary also shall post the notice to the
19 environmental notice bulletin.

20 (B) The notice to adjoining property owners informs them of how
21 they can continue to receive notices and information through the

1 environmental notice bulletin concerning the project as it is reviewed by the
2 Secretary.

3 (C) The applicant furnishes by affidavit to the Secretary the names of
4 those furnished notice and certifies compliance with the notice requirements of
5 this subsection.

6 (D) The applicant and the Secretary or designee shall attend the
7 meeting. The applicant shall respond to questions from other attendees.

8 (b) Additional notice.

9 (1) The Secretary may require, by rule or in an individual case,
10 measures in addition to those directed by this chapter using any method
11 reasonably calculated to give direct notice to persons potentially affected by a
12 decision on the application.

13 (2) In an individual case, the Secretary may determine to apply the
14 procedures of section 7713 (Type 2) of this chapter to the issuance of a permit
15 otherwise subject to the procedures of section 7715 (Type 4) or section 7716
16 (Type 5) of this chapter.

17 (c) Extension of deadlines. A person may request that the Secretary extend
18 any deadline for comment or requesting a public informational meeting
19 established by this chapter. The person shall submit the request before the
20 deadline and include a brief explanation of why the extension is justified. If

1 the request is granted, the Secretary shall provide notice of the new deadline
2 through the environmental notice bulletin.

3 § 7704. ADMINISTRATIVE RECORD

4 (a) The Secretary shall create an administrative record for each application
5 for a permit and shall make the administrative record available to the public.

6 (b) The Secretary shall base a draft or final decision on each application for
7 a permit on the administrative record.

8 (c) With respect to permits issued under the Clean Air Act and Clean Water
9 Act, the Secretary shall comply with any requirements under those acts
10 concerning the maintenance and availability of the administrative record.

11 § 7705. TIME; HOW COMPUTED

12 In this chapter:

13 (1) When time is to be reckoned from a day, date, or an act done, the
14 day, date, or day when the act is done shall not be included in the computation.

15 (2) Computation of a time period shall use calendar days.

16 Subchapter 2. Standard Procedures

17 § 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

18 (a) Notice through the environmental notice bulletin. When this chapter
19 requires notice through the environmental notice bulletin:

20 (1) The bulletin shall generate and send an e-mail to notify:

21 (A) each person requiring notice under section 7712 of this chapter;

1 (B) the applicant;

2 (C) each person on an interested persons list;

3 (D) each municipality in which the activity to be permitted is located,
4 except for notice of a draft or final general permit; and

5 (E) each other person to whom this chapter directs that a particular
6 notice be provided through the bulletin.

7 (2) At a minimum, each notice generated by the bulletin shall contain:

8 (A) the name and contact information for the person at the Agency
9 processing the permit;

10 (B) the name and address of the permit applicant, if applicable;

11 (C) the name and address of the facility or activity to be permitted,
12 if applicable;

13 (D) a brief description of the activity for which the permit would
14 be issued;

15 (E) the length of the period for submitting written comments and the
16 process for submitting those comments, if applicable, and notice of the
17 requirements regarding submission of comments during that period or at a
18 public meeting in order to appeal under chapter 220 of this title;

19 (F) the process for requesting a public meeting, if applicable;

1 (G) when a public meeting has been scheduled, the time, date, and
2 location of the meeting and a brief description of the nature and purpose of
3 the meeting;

4 (H) when issued, the draft permit or notice of intent to deny a permit,
5 and the period and process for submitting written comments on that draft
6 permit or notice;

7 (I) when issued, the final decision issuing or denying a permit, and
8 the process for appealing the decision; and

9 (J) any other information that this chapter directs be included in a
10 particular notice to be generated by the bulletin.

11 (3) The environmental notice bulletin shall provide notice by mail as
12 required by 3 V.S.A. § 2826.

13 (b) Notice to adjoining property owners. When this chapter requires notice
14 of an application to adjoining property owners, the applicant shall provide
15 notice of the application by U.S. mail to all adjoining property owners, on a
16 form developed by the Secretary, at the time the application is submitted to the
17 Secretary. The form shall state how the property owners can continue to
18 receive notices and information concerning the project as it is reviewed by the
19 Secretary. The applicant shall provide a signed certification to the Secretary
20 that all adjoining property owners have been notified of the application.
21 However, if the applicant has provided written notice to adjoining property

1 owners as part of the preapplication engagement process for complex projects
2 under rules adopted in accordance with subsection 7703(a) of this title, then
3 instead of the written notice required of the applicant by this subsection, the
4 Department shall provide notice of the application through the environmental
5 notice bulletin to those adjoining property owners who have requested notice.

6 (c) Comment period length. When this chapter requires the Secretary to
7 provide a public comment period, the length of the period shall be at least
8 30 days, unless this chapter applies a different period for submitting comments
9 on the particular type of permit.

10 (d) Period to request a public meeting. When this chapter allows a person
11 to request a public meeting on a draft decision, the person shall submit the
12 request within 14 days of the date on which notice of the draft decision is
13 posted to the environmental notice bulletin, unless this chapter specifies a
14 different period for requesting a hearing on the particular type of permit.

15 (e) Public meeting; notice; additional comment period. When the Secretary
16 holds a public meeting under this chapter:

17 (1) The Secretary shall:

18 (A) provide at least 14 days' prior notice of the public meeting
19 through the environmental notice bulletin, unless this chapter specifies a
20 different notice period for a public meeting on the particular type of permit;

1 (B) include in the notice, in addition to the information required by
2 subsection (a) of this section, the date the Secretary gave notice of an
3 administrative complete application, if applicable; and

4 (C) hold the period for written comments open for at least seven days
5 after the meeting.

6 (2) The applicant or applicant’s representative and the Secretary or
7 designee shall attend the meeting. The applicant shall cause to be present
8 those professionals retained in the preparation of the application. At the
9 meeting, the applicant and the Secretary each shall answer questions relevant
10 to the application or draft decision to the best of their ability.

11 (f) Draft decisions. When this chapter requires the Secretary to post a draft
12 decision or draft general permit to the environmental notice bulletin, the
13 Secretary shall post to the bulletin the draft decision or draft general permit and
14 all documents on which the Secretary relied in issuing the draft. This post
15 shall include instructions on how to inspect and how to request a copy of each
16 other document that is part of the administrative record of the draft decision or
17 permit.

18 (g) Response to comments. When this chapter requires the Secretary to
19 provide a response to comments, the Secretary shall provide a response to each
20 comment received during the comment period and the basis for the response.
21 The Secretary also shall specify each provision of the draft decision that has

1 been changed in the final decision and the reasons for each change. The
2 Secretary shall post the response to comments to the environmental notice
3 bulletin and send it to all commenters.

4 (h) Final decisions; content; notice.

5 (1) The Secretary's final decision on an application for a permit or on
6 the issuance of a general permit shall include a concise statement of the facts
7 and analysis supporting the decision that is sufficient to apprise the reader of
8 the decision's factual and legal basis. The final decision also shall provide
9 notice that it may be appealed and state the period for filing an appeal and how
10 and where to file an appeal.

11 (2) When this chapter requires that the Secretary to post a final decision
12 to the environmental notice bulletin, the Secretary also shall send a copy of the
13 final decision to all commenters.

14 § 7712. TYPE 1 PROCEDURES

15 (a) Purpose; scope.

16 (1) The purpose of this section is to establish the public notice and
17 comment requirements that the Department must follow when adopting general
18 permits and considering applications for individual permits under the Clean
19 Air Act and Clean Water Act.

20 (2) This section governs each application for a permit to be issued by the
21 Secretary pursuant to the requirements of the Clean Air Act and Clean Water

1 Act and to each general permit to be issued under one of those acts. However,
2 the subsection does not apply to a notice of intent under a general permit. The
3 procedures under this section shall be known as Type 1 Procedures.

4 (b) Notice of application.

5 (1) The applicant shall provide notice to adjoining property owners.

6 (2) At least 15 days prior to posting a draft decision, the Secretary shall
7 provide notice of an administratively complete application through the
8 environmental notice bulletin. The environmental notice bulletin shall send
9 notice of such an application to each person to whom notice is federally
10 required.

11 (3) This subsection (b) shall not apply to a general permit issued under
12 this section.

13 (c) Notice of draft decision or draft general permit. The Secretary shall
14 provide notice of a draft decision or draft general permit through the
15 environmental notice bulletin and shall post the draft decision or permit to the
16 bulletin. In addition to the requirements of section 7711 of this chapter:

17 (1) The Secretary shall post a fact sheet to the bulletin.

18 (2) The environmental notice bulletin shall send notice of the draft to
19 each person to whom notice is federally required.

20 (3) The Secretary shall provide newspaper notice of the draft decision as
21 required by this subdivision (3).

1 (A) If the draft decision pertains to an application for an individual
2 permit, the Secretary shall provide notice in a daily or weekly newspaper in the
3 area of the proposed project if the project is classified as major pursuant to the
4 Clean Water Act or chapter 47 of this title or if required by federal statute or
5 regulation.

6 (B) If the draft decision is a draft general permit, the Secretary shall
7 provide notice in daily or weekly newspapers in each region of the State to
8 which the draft general permit will apply.

9 (C) In addition to the requirements of this chapter and 3 V.S.A.
10 § 2826, the notice from the environmental notice bulletin and the newspaper
11 notice shall include all information required pursuant to applicable federal
12 statute and regulation.

13 (d) Comment period. The Secretary shall provide a public comment
14 period.

15 (e) Public meeting. On or before the end of the comment period, any
16 person may request a public meeting on the draft decision or draft general
17 permit issued under this section. The Secretary shall hold a public meeting
18 whenever any person files a written request for such a meeting. The Secretary
19 otherwise may hold a public meeting at his or her discretion. The Secretary
20 shall provide at least 30 days' notice of the public meeting through the
21 environmental notice bulletin. If the notice of the public meeting is not issued

1 at the same time as the draft decision or draft general permit, the Secretary also
2 shall provide notice of the public meeting in the same manner as required for
3 the draft decision or permit under subsection (c) of this section.

4 (f) Notice of final decision or final general permit. The Secretary shall
5 provide notice of the final decision or final general permit through the
6 environmental notice bulletin and shall post the final decision or permit to the
7 bulletin. When the Secretary issues the final decision or final general permit,
8 the Secretary shall provide a response to comments.

9 (g) Compliance with Clean Air and Water Acts. With respect to a issuance
10 of a permit under the Clean Air Act or Clean Water Act, if a requirement under
11 those acts directs the Secretary to provide the public with greater notice,
12 opportunity to participate, or access to information than the corresponding
13 requirement of this chapter, the Secretary shall comply with the federal
14 requirement.

15 § 7713. TYPE 2 PROCEDURES

16 (a) Purpose; scope.

17 (1) The purpose of this section is to establish the public notice and
18 comment requirements that the Department must follow when considering
19 applications for individual permits, except for individual permits specifically
20 listed in other sections of this subchapter, and when considering other permits
21 listed in this section.

1 (2) The procedures under this section shall be known as Type 2
2 Procedures. This section governs an application for each of the following:

3 (A) an individual permit issued pursuant to the Secretary’s authority
4 under this title and 29 V.S.A. chapter 11, except for permits governed by
5 sections 7712 and 7714–7716 of this chapter;

6 (B) a wetland determination under section 914 of this title;

7 (C) an individual shoreland permit under chapter 49A of this title;

8 (D) a public water system source permit under section 1675 of
9 this title;

10 (E) a provisional certification issued under section 6605d of this
11 title; and

12 (F) a corrective action plan under section 6648 of this title.

13 (b) Notice of application.

14 (1) The applicant shall provide notice of the application to adjoining
15 property owners.

16 (A) For public water system source protection areas, the applicant
17 also shall provide notice to all property owners located in:

18 (i) zones 1 and 2 of the source protection area for a public
19 community water system source; and

20 (ii) the source protection area for a public nontransient
21 noncommunity water system source.

1 (B) For an individual shoreland permit under chapter 49A:

2 (i) The notice to adjoining property owners shall be to the
3 adjoining property owners on the terrestrial boundary of the shoreland.

4 (ii) This chapter does not require notice to owners of property
5 across the lake as defined in that chapter.

6 (2) The Secretary shall provide notice of an administratively complete
7 application through the environmental notice bulletin.

8 (c) Notice of draft decision; comment period. The Secretary shall provide
9 notice of a draft decision through the environmental notice bulletin and shall
10 post the draft decision to the bulletin. The Secretary shall provide a public
11 comment period.

12 (d) Public meeting. The Secretary shall hold a public meeting whenever
13 any person files a written request for such a meeting. The Secretary otherwise
14 may hold a public meeting at his or her discretion.

15 (e) Notice of final decision. The Secretary shall provide notice of the final
16 decision through the environmental notice bulletin and shall post the final
17 decision to the bulletin. When the Secretary issues the final decision, the
18 Secretary shall provide a response to comments.

19 § 7714. TYPE 3 PROCEDURES

20 (a) Purpose; scope.

1 (1) The purpose of this section is to establish the public notice and
2 comment requirements that the Department must follow when adopting general
3 permits, except for general permits governed by section 7712 of this chapter,
4 and when considering other permits listed in this section.

5 (2) The procedures under this section shall be known as Type 3
6 Procedures. This section governs each of the following:

7 (A) Each general permit issued pursuant to the Secretary’s authority
8 under this title other than a general permit subject to section 7712 of this
9 chapter. However, this section does not apply to a notice of intent under a
10 general permit.

11 (B) Issuance of a dam safety order under chapter 43 of this title,
12 except for an unsafe dam order under section 1095 of this title.

13 (C) An application or request for approval of:

14 (i) an individual shoreland permit under chapter 49A of this title;

15 (ii) an aquatic nuisance control permit under chapter 50 of
16 this title;

17 (iii) a change in treatment for a public water supply under chapter
18 56 of this title;

19 (iv) a collection plan for mercury-containing lamps under section
20 7156 of this title;

1 (v) an individual plan for the collection and recycling of electronic
2 waste under section 7554 of this title; and

3 (vi) a primary battery stewardship plan under section 7586 of
4 this title.

5 (b) Notice of application. The Secretary shall provide notice of an
6 administratively complete application through the environmental notice
7 bulletin.

8 (c) Notice of draft decision; comment period. The Secretary shall provide
9 notice of the draft decision through the environmental notice bulletin and shall
10 post the draft decision to the bulletin. The Secretary shall provide a public
11 comment period.

12 (d) Public meeting. The Secretary shall hold a public meeting whenever
13 any person files a written request for such a meeting. The Secretary otherwise
14 may hold a public meeting at his or her discretion.

15 (e) Notice of final decision. The Secretary shall provide notice of the final
16 decision through the environmental notice bulletin and shall post the final
17 decision to the bulletin. The Secretary shall provide a response to comments.

18 § 7715. TYPE 4 PROCEDURES

19 (a) Purpose; scope.

20 (1) The purpose of this section is to establish the public notice and
21 comment requirements that the Department must follow when considering

1 applications for notice of intent under a general permit and other permits listed
2 in this section.

3 (2) The procedures under this section shall be known as Type 4

4 Procedures. This section applies to each of the following:

5 (A) a notice of intent under a general permit issued pursuant to the
6 Secretary's authority under this title; and

7 (B) an application for each of following permits:

8 (i) construction or operation of an air contaminant source or class
9 of sources not identified in the State's implementation plan approved under the
10 Clean Air Act;

11 (ii) construction or expansion of a public water supply under
12 chapter 56 of this title, except that a change in treatment for a public water
13 supply shall proceed in accordance with section 7714 of this chapter;

14 (iii) a category 1 underground storage tank under chapter 59 of
15 this title;

16 (iv) a categorical solid waste certification under chapter 159 of
17 this title; and

18 (v) a medium scale composting certification under chapter 159 of
19 this title.

1 (b) Notice of application. The Secretary shall provide notice of an
2 administratively complete application through the environmental notice
3 bulletin.

4 (c) Notice of draft decision; comment period. The Secretary shall provide
5 notice of the draft decision through the environmental notice bulletin and shall
6 post the draft decision to the bulletin. The Secretary shall provide a public
7 comment period of at least 14 days on the draft decision.

8 (d) Notice of final decision. The Secretary shall provide notice of the final
9 decision through the environmental notice bulletin and shall post the decision
10 to the bulletin. The Secretary shall provide a response to comments.

11 § 7716. TYPE 5 PROCEDURES

12 (a) Purpose; scope.

13 (1) The purpose of this section is to establish the public notice and
14 comment requirements that the Department must follow when issuing
15 emergency permits and other permits listed in this section.

16 (2) The procedures under this section shall be known as Type 5
17 Procedures. This section shall govern each of the following:

18 (A) issuance of temporary emergency permits under section 912 of
19 this title;

20 (B) applications for public water system operational permits under
21 chapter 56 of this title;

1 (C) issuance of authorizations, under a stream alteration general
2 permit issued under chapter 41 of this title, for reporting without an
3 application, for an emergency, and for activities to prevent risks to life or of
4 severe damage to improved property posed by the next annual flood;

5 (D) issuance of emergency permits issued under section 1268 of
6 this title;

7 (E) issuance of emergency sludge and septage disposal approvals
8 under section 6605 of this title; and

9 (F) shoreland registrations authorized under chapter 49A of this title.

10 (b) Notice of final decision. The Secretary shall provide notice of the final
11 decision through the environmental notice bulletin and shall post the decision
12 to the bulletin.

13 § 7717. AMENDMENTS; RENEWALS

14 (a) A major amendment shall be subject to the same procedures applicable
15 to the original permit decision under this chapter.

16 (b) A minor amendment shall be subject to the Type 4 Procedures, except
17 that the Secretary need not provide notice of the administratively complete
18 application.

19 (c) An administrative amendment shall not be subject to the procedural
20 requirements of this chapter.

1 (d) A person may renew a permit under the same procedures applicable to
2 the original permit decision under this chapter.

3 (e) With respect to amending a permit issued under the Clean Air Act or
4 Clean Water Act, if a requirement under those acts directs the Secretary to
5 provide the public with greater notice, opportunity to participate, or access to
6 information than the corresponding requirement of this chapter, the Secretary
7 shall comply with the federal requirement.

8 § 7718. EXEMPTIONS

9 This subchapter shall not govern an application or petition for:

10 (1) an unsafe dam order under section 1095 of this title;

11 (2) a potable water supply and wastewater permit under subsection
12 1973(j) of this title;

13 (3) a hazardous waste facility certification under section 6606 of this
14 title; and

15 (4) a certificate of need under section 6606a of this title.

16 **Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS**

17 Sec. 1 of this act shall take precedence over any inconsistent requirements
18 for notice and processing of applications contained in rules adopted by the
19 Department of Environmental Conservation other than rules pertaining to
20 applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before

1 July 1, 2019, the Secretary of Natural Resources shall commence and complete
2 amendments to conform these rules to Sec. 1.

3 * * * Environmental Notice Bulletin * * *

4 Sec. 3. 3 V.S.A. § 2826 is amended to read:

5 § 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

6 (a) The Secretary shall establish ~~procedures for the publication of an~~
7 environmental notice bulletin, in order to provide for the timely public
8 notification of permit applications, notices, comment periods, hearings, and
9 permitting decisions. ~~The Secretary shall begin publication of the bulletin by~~
10 ~~no later than July 1, 1995 on the Agency's website. At a minimum, the~~
11 ~~bulletin shall contain the following information:~~ The bulletin shall consist of a
12 website and an e-mail notification system. The Secretary shall ensure that the
13 website for the bulletin is readily accessible from the Agency's main web page.

14 (1) ~~notice of administratively complete permit applications submitted to~~
15 ~~the Department of Environmental Conservation;~~ When 10 V.S.A. chapter 170
16 requires the posting of information to the bulletin, the Secretary shall post the
17 information to the bulletin's website.

18 (2) ~~notice of the comment period on the application and draft permit, if~~
19 ~~any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170
20 requires notice to persons through the environmental notice bulletin, the

1 bulletin shall generate an e-mail notification to those persons containing the
2 information required by that chapter.

3 ~~(3) notice of the issuance of a draft permit, if required by law, for those~~
4 ~~applications that were noticed;~~ The Secretary shall provide members of the
5 public the ability to register, through the bulletin, for a list of interested persons
6 to receive e-mail notification of permit activity based on permit type,
7 municipality, proximity to a specified address, or a combination of these
8 characteristics.

9 ~~(4) information on how to request a public hearing or meeting;~~ If an
10 individual does not have an e-mail address, the individual may request to
11 receive notifications through U.S. mail. On receipt of such a request, the
12 Secretary shall mail to the individual the same information that the individual
13 would have otherwise received through an e-mail generated by the bulletin.

14 ~~(5) notice of the name of the staff person to contact for information~~
15 ~~regarding public hearings or meetings with respect to a particular application.~~

16 ~~(6) notice of the issuance or denial of a permit for those applications that~~
17 ~~were noticed.~~

18 (b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook
19 which lists all of the permits required for the programs administered by the
20 Department of Environmental Conservation. The handbook shall include
21 examples of activities that require certain permits, an explanation in lay terms

1 of each of the permitting programs involved, and the names, addresses, and
2 telephone numbers of the person or persons to contact for further information
3 for each of the permitting programs. The Secretary shall update the handbook
4 ~~shall be updated,~~ periodically.

5 Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

6 (a) On or before September 15, 2016, the Secretary shall commence all
7 rulemaking required by Sec. 1 of this act.

8 (b) On or before February 15, 2017, the Secretary shall report in writing to
9 the House and Senate Committees on Natural Resources and Energy and the
10 House Committee on Fish, Wildlife and Water Resources on the Secretary's
11 progress in adopting the rules required by Sec. 1 of this act and revising and
12 reestablishing the environmental notice bulletin in accordance with Secs. 1
13 and 3 of this act.

14 (c) On or before July 1, 2017, the Secretary shall revise and reestablish the
15 environmental notice bulletin to conform to the requirements of Secs. 1 and 3
16 of this act.

17 (d) On or before February 15, 2020, the Secretary of Natural Resources
18 shall submit a written report to the House and Senate Committees on Natural
19 Resources and Energy and the House Committee on Fish, Wildlife and Water
20 Resources that:

1 (1) summarizes the Secretary’s implementation of Secs. 1 through 3 of
2 this act and details the steps taken to implement those sections;

3 (2) provides the Secretary’s assessment of the effect of 10 V.S.A.
4 chapter 170 on the amount of time taken by the Department of Environmental
5 Conservation (DEC), during the preceding two calendar years, to review and
6 issue decisions on applications and permits subject to that chapter and the data
7 supporting that assessment;

8 (3) provides the Secretary’s assessment of the effect of 10 V.S.A.
9 chapter 170 on public participation, during the preceding two calendar years, in
10 the review of applications and permits subject to that chapter and the data
11 supporting that assessment;

12 (4) provides:

13 (A) the total and annual number of appeals, during 2018 and 2019, of
14 DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was
15 resolved;

16 (B) the total and annual number of times that a party moved to
17 dismiss an issue or an appeal based on the requirements of 10 V.S.A
18 § 8504(d)(2) and the Environmental Division’s ruling on those motions; and

19 (C) a comparison with the total and annual number of appeals, during
20 calendar years 2015 through 2017, from DEC programs that become subject to

1 the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of
2 those appeals was resolved;

3 (5) provides the Secretary’s overall evaluation of the success of Secs. 1
4 and 3 of this act in standardizing DEC permit procedures, increasing public
5 participation in DEC’s permit process, and resolving issues related to the
6 issuance of DEC permits without appeal;

7 (6) based on the track record of 10 V.S.A. chapter 170 to date of the
8 report, states the Secretary’s recommendation on whether there is justification
9 to amend the process for appealing those acts and decisions of the Secretary
10 subject to that chapter; and

11 (7) if the recommendation under subdivision (6) of this subsection is
12 affirmative, provides the Secretary’s recommended amendments to the process
13 for appealing those acts and decisions of the Secretary subject to 10 V.S.A.
14 chapter 170.

15 * * * Appeals from Agency of Natural Resources to the

16 Environmental Division * * *

17 Sec. 5. 10 V.S.A. § 8504 is amended to read:

18 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

19 * * *

20 (d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the
21 District Commission or the Secretary.

1 (1) ~~No~~ Participation before District Commission. An aggrieved person
2 ~~may~~ shall not appeal an act or decision that was made by a District
3 Commission unless the person was granted party status by the District
4 Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in
5 the proceedings before the District Commission, and retained party status at
6 the end of the District Commission proceedings. In addition, the person may
7 only appeal those issues under the criteria with respect to which the person was
8 granted party status.

9 ~~(2) Notwithstanding subdivision (d)(1) of this section, However,~~
10 notwithstanding these limitations, an aggrieved person may appeal an act or
11 decision of the District Commission if the Environmental judge
12 determines that:

13 (A) there was a procedural defect ~~which~~ that prevented the person
14 from obtaining party status or participating in the proceeding;

15 (B) the decision being appealed is the grant or denial of party
16 status; or

17 (C) some other condition exists which would result in manifest
18 injustice if the person's right to appeal was disallowed.

19 (2) Participation before the Secretary.

20 (A) An aggrieved person shall not appeal an act or decision of the
21 Secretary unless the person submitted to the Secretary a written comment

1 during the comment period or an oral comment at the public meeting
2 conducted by the Secretary. In addition, the person may only appeal issues
3 related to the person's comment to the Secretary.

4 (i) To be sufficient for the purpose of appeal, a comment to the
5 Secretary shall identify each reasonably ascertainable issue with enough
6 particularity so that a meaningful response can be provided.

7 (ii) The appellant shall identify each comment that the appellant
8 submitted to the Secretary that identifies or relates to an issue raised in his or
9 her appeal.

10 (iii) A person moving to dismiss an appeal or an issue raised by an
11 appeal pursuant to this subdivision (A) shall have the burden to prove that the
12 requirements of this subdivision (A) are not satisfied.

13 (B) Notwithstanding the limitations of subdivision (2)(A) of this
14 subsection, an aggrieved person may appeal an act or decision of the Secretary
15 if the Environmental judge determines that:

16 (i) there was a procedural defect that prevented the person from
17 commenting during the comment period or at the public meeting or otherwise
18 participating in the proceeding;

19 (ii) the Secretary did not conduct a comment period and did not
20 hold a public meeting;

1 (iii) the person demonstrates that an issue was not reasonably
2 ascertainable during the review of an application or other request that led to the
3 Secretary’s act or decision; or

4 (iv) some other condition exists which would result in manifest
5 injustice if the person’s right to appeal was disallowed.

6 * * *

7 (p) Administrative record. The Secretary shall certify the administrative
8 record as defined in chapter 170 of this title and shall transfer a certified copy
9 of that record to the Environmental Division when:

10 (1) there is an appeal of an act or decision of the Secretary that is based
11 on that record; or

12 (2) there is an appeal of a decision of a District Commission and the
13 applicant used a decision of the Secretary based on that record to create a
14 presumption under a criterion of subsection 6086(a) of this title that is at issue
15 in the appeal.

16 Sec. 5a. 10 V.S.A. § 8506 is amended to read:

17 § 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
18 FACILITY; APPEALS

19 * * *

20 (c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2)
21 (participation before the Secretary), and (f)(1)(A) (automatic stays of certain

1 permits), and subsections 8504(j) (appeals under a general permit) ~~and~~, (n)
2 (intervention), and (p) (administrative record) of this title shall apply to appeals
3 under this section except that, with respect to subsection (p), the Secretary
4 shall transfer a certified copy of the administrative record to the Board.

5 * * *

6 Sec. 5b. PURPOSE

7 The purposes of the amendments contained in Secs. 5 (appeals to the
8 Environmental Division) and 5a (renewable energy plant; telecommunications
9 facility; appeals) of this act are to:

10 (1) require participation in the permitting process of the Department of
11 Environmental Conservation (DEC) and identification of concerns about an
12 application early in that process so that DEC and the applicant have an
13 opportunity to address those concerns where possible before a permit becomes
14 final and subject to appeal; and

15 (2) require that an issue raised on appeal be identified or related to an
16 issue identified in a comment to the Secretary while guarding against creating
17 an overly technical approach to the preservation of issues for the purpose of
18 appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A.
19 § 8504(d)(2)(A).

1 Sec. 5c. FEDERALLY DELEGATED PROGRAMS

2 If the U.S. Environmental Protection Agency notifies the Secretary of
3 Natural Resources that a provision of this act is inconsistent with the Clean Air
4 Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal
5 regulations adopted under one of those acts, the Secretary shall report the
6 receipt of this notification to the House and Senate Committees on Natural and
7 Energy and the House Committee on Fish, Wildlife and Water Resources.
8 This report shall attach the notification and may include proposed statutory
9 revisions to address the inconsistency.

10 Second: After Sec. 37, by adding two new sections to be Secs. 37a and 37b
11 to read:

12 Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

13 (d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that
14 allow for the management of excavated soils requiring disposal that contain
15 PAHs, arsenic, or lead in a manner that ensures protection of human health and
16 the environment and promotes Vermont’s traditional settlement patterns in
17 compact village or city centers. At a minimum, the rules shall:

18 * * *

19 Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS;

20 EXTENSION OF REPEAL DATE

21 2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

1 Sec. 7. REPEAL

2 On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

3 Third: In Sec. 38 (effective dates), by adding subdivisions (3) and (4) to
4 read:

5 (3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall
6 take effect on passage and shall apply to appeals of jurisdictional opinions
7 issued on or after the effective date of those sections. Notwithstanding the
8 repeal of its authority to consider jurisdictional opinions, the Natural Resources
9 Board shall have authority to complete its consideration of any jurisdictional
10 opinion pending before it as of that effective date, and appeal of the Board's
11 decision shall be governed by the law as it existed immediately prior to that
12 date.

13 (4) Secs. 37a (rules; management of excavated soils) and 37b (extension
14 of repeal date) shall take effect on passage.

17 (Committee vote: _____)

18 _____

19 Representative _____

20 FOR THE COMMITTEE

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 123 entitled “An act relating to standardized procedures for
4 permits and approvals issued by the Department of Environmental
5 Conservation” respectfully reports that it has considered the same and
6 recommends that the House propose to the Senate that the bill be amended as
7 follows:

8 First: By striking out Secs. 1 through 5 in their entirety and inserting in lieu
9 thereof Secs. 1 through 5c to read:

10 * * * Environmental Conservation; Standard Procedures * * *

11 Sec. 1. 10 V.S.A. chapter 170 is added to read:

12 CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL

13 CONSERVATION; STANDARD PROCEDURES;

14 Subchapter 1. General Provisions

15 § 7701. PURPOSE

16 The purpose of this chapter is to establish standard procedures for public
17 notice, public meetings, and decisions relating to applications for permits
18 issued by the Department of Environmental Conservation.

19 § 7702. DEFINITIONS

20 As used in this chapter:

1 (1) “Adjoining property owner” means a person who owns land in fee
2 simple, if that land:

3 (A) shares a property boundary with a tract of land where proposed
4 or actual activity regulated by the Department is located; or

5 (B) is adjacent to a tract of land where such activity is located and the
6 two properties are separated only by a river, stream, or public highway.

7 (2) “Administrative amendment” means an amendment to an individual
8 permit, general permit, or notice of intent under a general permit that corrects
9 typographical errors, changes the name or mailing address of a permittee, or
10 makes other similar changes to a permit that do not require technical review of
11 the permitted activity or the imposition of new conditions or requirements.

12 (3) “Administrative record” means the application and any supporting
13 data furnished by the applicant; all information submitted by the applicant
14 during the course of reviewing the application; the draft permit or notice of
15 intent to deny the application; the fact sheet and all documents cited in the fact
16 sheet, if applicable; all comments received during the public comment period;
17 the recording or transcript of any public meeting or meetings held; any written
18 material submitted at a public meeting; the response to comments; the final
19 permit; any document used as a basis for the final decision; and any other
20 documents contained in the permit file.

1 (4) “Administratively complete application” means an application for a
2 permit for which all initially required documentation has been submitted, and
3 any required permit fee, and the information submitted initially addresses all
4 application requirements but has not yet been subjected to a complete technical
5 review.

6 (5) “Agency” means the Agency of Natural Resources.

7 (6) “Clean Air Act” means the federal statutes on air pollution
8 prevention and control, 42 U.S.C. § 7401 et seq.

9 (7) “Clean Water Act” means the Federal Water Pollution Control Act,
10 33 U.S.C. § 1251 et seq.

11 (8) “Commissioner” means the Commissioner of Environmental
12 Conservation or the Commissioner’s designee.

13 (9) “Department” means the Department of Environmental
14 Conservation.

15 (10) “Document” means any written or recorded information, regardless
16 of physical form or characteristics, which the Department produces or acquires
17 in the course of reviewing an application for a permit.

18 (11) “Environmental notice bulletin” or “bulletin” means the website
19 and e-mail notification system required by 3 V.S.A. § 2826.

1 (12) “Fact sheet” means a document that briefly sets forth the principal
2 facts and the significant factual, legal, methodological, and policy questions
3 considered in preparing a draft decision.

4 (13) “General permit” means a permit that applies to a class or category
5 of discharges, emissions, disposal, facilities, or activities within a common
6 geographic area, including the entire State or a region of the State.

7 (14) “Individual permit” means a permit that authorizes a specific
8 discharge, emission, disposal, facility, or activity that contains terms and
9 conditions that are specific to the discharge, emission, disposal, facility, or
10 activity.

11 (15) “Major amendment” means an amendment to an individual permit
12 or notice of intent under a general permit that necessitates technical review.

13 (16) “Minor amendment” means an amendment to an individual permit
14 or notice of intent under a general permit that requires a change in a condition
15 or requirement, does not necessitate technical review, and is not an
16 administrative amendment.

17 (17) “Notice of intent under a general permit” means an authorization
18 issued by the Secretary to undertake an action authorized by a general permit.

19 (18) “Permit” includes any permit, certification, license, registration,
20 determination, or similar form of permission required from the Department
21 by law. However, the term excludes a professional license issued pursuant to

1 chapter 48, subchapter 3 (licensing of well drillers) of this title and sections
2 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous
3 waste transporters), and 6607a (waste transportation) of this title.

4 (19) “Person” shall have the same meaning as under section 8502 of this
5 title.

6 (20) “Person to whom notice is federally required” means a person to
7 whom notice of an application or draft decision must be given under federal
8 regulations adopted pursuant to the Clean Air Act or Clean Water Act.

9 (21) “Public meeting” means a meeting that is open to the public and
10 recorded or transcribed, at which the Department shall provide basic
11 information about the draft permit decision, an opportunity for questions to the
12 applicant and the Department, and an opportunity for members of the public to
13 submit oral and written comments.

14 (22) “Secretary” means the Secretary of Natural Resources or designee.

15 (23) “Technical review” means the application of scientific,
16 engineering, or other professional expertise to the facts to determine whether
17 activity for which a permit is requested meets the standards for issuing the
18 permit under statute and rule.

1 § 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

2 (a) Rules.

3 (1) Implementing rules. The Secretary may adopt rules to implement
4 this chapter.

5 (2) Complex projects; preapplication process. The Secretary shall adopt
6 rules to determine when a project requiring a permit is large and complex.
7 These rules shall provide that an applicant proposing such a project, prior to
8 filing an application for a permit, shall initiate a project scoping process
9 pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open
10 to the public. The rules shall ensure that:

11 (A) Written notice of an informational meeting under this section is
12 sent to the owner of the land where the project is located if the applicant is not
13 the owner; the municipality in which the project is located; the municipal and
14 regional planning commissions for any municipality in which the project is
15 located; if the project site is located on a boundary, any Vermont municipality
16 adjacent to that boundary and the municipal and regional planning
17 commissions for that municipality; and each adjoining property owner. At the
18 time this written notice is sent, the Secretary also shall post the notice to the
19 environmental notice bulletin.

20 (B) The notice to adjoining property owners informs them of how
21 they can continue to receive notices and information through the

1 environmental notice bulletin concerning the project as it is reviewed by the
2 Secretary.

3 (C) The applicant furnishes by affidavit to the Secretary the names of
4 those furnished notice and certifies compliance with the notice requirements of
5 this subsection.

6 (D) The applicant and the Secretary or designee shall attend the
7 meeting. The applicant shall respond to questions from other attendees.

8 (b) Additional notice.

9 (1) The Secretary may require, by rule or in an individual case,
10 measures in addition to those directed by this chapter using any method
11 reasonably calculated to give direct notice to persons potentially affected by a
12 decision on the application.

13 (2) In an individual case, the Secretary may determine to apply the
14 procedures of section 7713 (Type 2) of this chapter to the issuance of a permit
15 otherwise subject to the procedures of section 7715 (Type 4) or section 7716
16 (Type 5) of this chapter.

17 (c) Extension of deadlines. A person may request that the Secretary extend
18 any deadline for comment or requesting a public informational meeting
19 established by this chapter. The person shall submit the request before the
20 deadline and include a brief explanation of why the extension is justified. If

1 the request is granted, the Secretary shall provide notice of the new deadline
2 through the environmental notice bulletin.

3 § 7704. ADMINISTRATIVE RECORD

4 (a) The Secretary shall create an administrative record for each application
5 for a permit and shall make the administrative record available to the public.

6 (b) The Secretary shall base a draft or final decision on each application for
7 a permit on the administrative record.

8 (c) With respect to permits issued under the Clean Air Act and Clean Water
9 Act, the Secretary shall comply with any requirements under those acts
10 concerning the maintenance and availability of the administrative record.

11 § 7705. TIME; HOW COMPUTED

12 In this chapter:

13 (1) When time is to be reckoned from a day, date, or an act done, the
14 day, date, or day when the act is done shall not be included in the computation.

15 (2) Computation of a time period shall use calendar days.

16 Subchapter 2. Standard Procedures

17 § 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

18 (a) Notice through the environmental notice bulletin. When this chapter
19 requires notice through the environmental notice bulletin:

20 (1) The bulletin shall generate and send an e-mail to notify:

21 (A) each person requiring notice under section 7712 of this chapter;

1 (B) the applicant;

2 (C) each person on an interested persons list;

3 (D) each municipality in which the activity to be permitted is located,
4 except for notice of a draft or final general permit; and

5 (E) each other person to whom this chapter directs that a particular
6 notice be provided through the bulletin.

7 (2) At a minimum, each notice generated by the bulletin shall contain:

8 (A) the name and contact information for the person at the Agency
9 processing the permit;

10 (B) the name and address of the permit applicant, if applicable;

11 (C) the name and address of the facility or activity to be permitted,
12 if applicable;

13 (D) a brief description of the activity for which the permit would
14 be issued;

15 (E) the length of the period for submitting written comments and the
16 process for submitting those comments, if applicable, and notice of the
17 requirements regarding submission of comments during that period or at a
18 public meeting in order to appeal under chapter 220 of this title;

19 (F) the process for requesting a public meeting, if applicable;

1 (G) when a public meeting has been scheduled, the time, date, and
2 location of the meeting and a brief description of the nature and purpose of
3 the meeting;

4 (H) when issued, the draft permit or notice of intent to deny a permit,
5 and the period and process for submitting written comments on that draft
6 permit or notice;

7 (I) when issued, the final decision issuing or denying a permit, and
8 the process for appealing the decision; and

9 (J) any other information that this chapter directs be included in a
10 particular notice to be generated by the bulletin.

11 (3) The environmental notice bulletin shall provide notice by mail as
12 required by 3 V.S.A. § 2826.

13 (b) Notice to adjoining property owners. When this chapter requires notice
14 of an application to adjoining property owners, the applicant shall provide
15 notice of the application by U.S. mail to all adjoining property owners, on a
16 form developed by the Secretary, at the time the application is submitted to the
17 Secretary. The form shall state how the property owners can continue to
18 receive notices and information concerning the project as it is reviewed by the
19 Secretary. The applicant shall provide a signed certification to the Secretary
20 that all adjoining property owners have been notified of the application.
21 However, if the applicant has provided written notice to adjoining property

1 owners as part of the preapplication engagement process for complex projects
2 under rules adopted in accordance with subsection 7703(a) of this title, then
3 instead of the written notice required of the applicant by this subsection, the
4 Department shall provide notice of the application through the environmental
5 notice bulletin to those adjoining property owners who have requested notice.

6 (c) Comment period length. When this chapter requires the Secretary to
7 provide a public comment period, the length of the period shall be at least
8 30 days, unless this chapter applies a different period for submitting comments
9 on the particular type of permit.

10 (d) Period to request a public meeting. When this chapter allows a person
11 to request a public meeting on a draft decision, the person shall submit the
12 request within 14 days of the date on which notice of the draft decision is
13 posted to the environmental notice bulletin, unless this chapter specifies a
14 different period for requesting a hearing on the particular type of permit.

15 (e) Public meeting; notice; additional comment period. When the Secretary
16 holds a public meeting under this chapter:

17 (1) The Secretary shall:

18 (A) provide at least 14 days' prior notice of the public meeting
19 through the environmental notice bulletin, unless this chapter specifies a
20 different notice period for a public meeting on the particular type of permit;

1 (B) include in the notice, in addition to the information required by
2 subsection (a) of this section, the date the Secretary gave notice of an
3 administrative complete application, if applicable; and

4 (C) hold the period for written comments open for at least seven days
5 after the meeting.

6 (2) The applicant or applicant’s representative and the Secretary or
7 designee shall attend the meeting. The applicant shall cause to be present
8 those professionals retained in the preparation of the application. At the
9 meeting, the applicant and the Secretary each shall answer questions relevant
10 to the application or draft decision to the best of their ability.

11 (f) Draft decisions. When this chapter requires the Secretary to post a draft
12 decision or draft general permit to the environmental notice bulletin, the
13 Secretary shall post to the bulletin the draft decision or draft general permit and
14 all documents on which the Secretary relied in issuing the draft. This post
15 shall include instructions on how to inspect and how to request a copy of each
16 other document that is part of the administrative record of the draft decision or
17 permit.

18 (g) Response to comments. When this chapter requires the Secretary to
19 provide a response to comments, the Secretary shall provide a response to each
20 comment received during the comment period and the basis for the response.
21 The Secretary also shall specify each provision of the draft decision that has

1 been changed in the final decision and the reasons for each change. The
2 Secretary shall post the response to comments to the environmental notice
3 bulletin and send it to all commenters.

4 (h) Final decisions; content; notice.

5 (1) The Secretary's final decision on an application for a permit or on
6 the issuance of a general permit shall include a concise statement of the facts
7 and analysis supporting the decision that is sufficient to apprise the reader of
8 the decision's factual and legal basis. The final decision also shall provide
9 notice that it may be appealed and state the period for filing an appeal and how
10 and where to file an appeal.

11 (2) When this chapter requires that the Secretary to post a final decision
12 to the environmental notice bulletin, the Secretary also shall send a copy of the
13 final decision to all commenters.

14 § 7712. TYPE 1 PROCEDURES

15 (a) Purpose; scope.

16 (1) The purpose of this section is to establish the public notice and
17 comment requirements that the Department must follow when adopting general
18 permits and considering applications for individual permits under the Clean
19 Air Act and Clean Water Act.

20 (2) This section governs each application for a permit to be issued by the
21 Secretary pursuant to the requirements of the Clean Air Act and Clean Water

1 Act and to each general permit to be issued under one of those acts. However,
2 the subsection does not apply to a notice of intent under a general permit. The
3 procedures under this section shall be known as Type 1 Procedures.

4 (b) Notice of application.

5 (1) The applicant shall provide notice to adjoining property owners.

6 (2) At least 15 days prior to posting a draft decision, the Secretary shall
7 provide notice of an administratively complete application through the
8 environmental notice bulletin. The environmental notice bulletin shall send
9 notice of such an application to each person to whom notice is federally
10 required.

11 (3) This subsection (b) shall not apply to a general permit issued under
12 this section.

13 (c) Notice of draft decision or draft general permit. The Secretary shall
14 provide notice of a draft decision or draft general permit through the
15 environmental notice bulletin and shall post the draft decision or permit to the
16 bulletin. In addition to the requirements of section 7711 of this chapter:

17 (1) The Secretary shall post a fact sheet to the bulletin.

18 (2) The environmental notice bulletin shall send notice of the draft to
19 each person to whom notice is federally required.

20 (3) The Secretary shall provide newspaper notice of the draft decision as
21 required by this subdivision (3).

1 (A) If the draft decision pertains to an application for an individual
2 permit, the Secretary shall provide notice in a daily or weekly newspaper in the
3 area of the proposed project if the project is classified as major pursuant to the
4 Clean Water Act or chapter 47 of this title or if required by federal statute or
5 regulation.

6 (B) If the draft decision is a draft general permit, the Secretary shall
7 provide notice in daily or weekly newspapers in each region of the State to
8 which the draft general permit will apply.

9 (C) In addition to the requirements of this chapter and 3 V.S.A.
10 § 2826, the notice from the environmental notice bulletin and the newspaper
11 notice shall include all information required pursuant to applicable federal
12 statute and regulation.

13 (d) Comment period. The Secretary shall provide a public comment
14 period.

15 (e) Public meeting. On or before the end of the comment period, any
16 person may request a public meeting on the draft decision or draft general
17 permit issued under this section. The Secretary shall hold a public meeting
18 whenever any person files a written request for such a meeting. The Secretary
19 otherwise may hold a public meeting at his or her discretion. The Secretary
20 shall provide at least 30 days' notice of the public meeting through the
21 environmental notice bulletin. If the notice of the public meeting is not issued

1 at the same time as the draft decision or draft general permit, the Secretary also
2 shall provide notice of the public meeting in the same manner as required for
3 the draft decision or permit under subsection (c) of this section.

4 (f) Notice of final decision or final general permit. The Secretary shall
5 provide notice of the final decision or final general permit through the
6 environmental notice bulletin and shall post the final decision or permit to the
7 bulletin. When the Secretary issues the final decision or final general permit,
8 the Secretary shall provide a response to comments.

9 (g) Compliance with Clean Air and Water Acts. With respect to a issuance
10 of a permit under the Clean Air Act or Clean Water Act, if a requirement under
11 those acts directs the Secretary to provide the public with greater notice,
12 opportunity to participate, or access to information than the corresponding
13 requirement of this chapter, the Secretary shall comply with the federal
14 requirement.

15 § 7713. TYPE 2 PROCEDURES

16 (a) Purpose; scope.

17 (1) The purpose of this section is to establish the public notice and
18 comment requirements that the Department must follow when considering
19 applications for individual permits, except for individual permits specifically
20 listed in other sections of this subchapter, and when considering other permits
21 listed in this section.

1 (2) The procedures under this section shall be known as Type 2
2 Procedures. This section governs an application for each of the following:

3 (A) an individual permit issued pursuant to the Secretary’s authority
4 under this title and 29 V.S.A. chapter 11, except for permits governed by
5 sections 7712 and 7714–7716 of this chapter;

6 (B) a wetland determination under section 914 of this title;

7 (C) an individual shoreland permit under chapter 49A of this title;

8 (D) a public water system source permit under section 1675 of
9 this title;

10 (E) a provisional certification issued under section 6605d of this
11 title; and

12 (F) a corrective action plan under section 6648 of this title.

13 (b) Notice of application.

14 (1) The applicant shall provide notice of the application to adjoining
15 property owners.

16 (A) For public water system source protection areas, the applicant
17 also shall provide notice to all property owners located in:

18 (i) zones 1 and 2 of the source protection area for a public
19 community water system source; and

20 (ii) the source protection area for a public nontransient
21 noncommunity water system source.

1 (B) For an individual shoreland permit under chapter 49A:

2 (i) The notice to adjoining property owners shall be to the
3 adjoining property owners on the terrestrial boundary of the shoreland.

4 (ii) This chapter does not require notice to owners of property
5 across the lake as defined in that chapter.

6 (2) The Secretary shall provide notice of an administratively complete
7 application through the environmental notice bulletin.

8 (c) Notice of draft decision; comment period. The Secretary shall provide
9 notice of a draft decision through the environmental notice bulletin and shall
10 post the draft decision to the bulletin. The Secretary shall provide a public
11 comment period.

12 (d) Public meeting. The Secretary shall hold a public meeting whenever
13 any person files a written request for such a meeting. The Secretary otherwise
14 may hold a public meeting at his or her discretion.

15 (e) Notice of final decision. The Secretary shall provide notice of the final
16 decision through the environmental notice bulletin and shall post the final
17 decision to the bulletin. When the Secretary issues the final decision, the
18 Secretary shall provide a response to comments.

19 § 7714. TYPE 3 PROCEDURES

20 (a) Purpose; scope.

1 (1) The purpose of this section is to establish the public notice and
2 comment requirements that the Department must follow when adopting general
3 permits, except for general permits governed by section 7712 of this chapter,
4 and when considering other permits listed in this section.

5 (2) The procedures under this section shall be known as Type 3
6 Procedures. This section governs each of the following:

7 (A) Each general permit issued pursuant to the Secretary’s authority
8 under this title other than a general permit subject to section 7712 of this
9 chapter. However, this section does not apply to a notice of intent under a
10 general permit.

11 (B) Issuance of a dam safety order under chapter 43 of this title,
12 except for an unsafe dam order under section 1095 of this title.

13 (C) An application or request for approval of:

14 (i) an individual shoreland permit under chapter 49A of this title;

15 (ii) an aquatic nuisance control permit under chapter 50 of
16 this title;

17 (iii) a change in treatment for a public water supply under chapter
18 56 of this title;

19 (iv) a collection plan for mercury-containing lamps under section
20 7156 of this title;

1 (v) an individual plan for the collection and recycling of electronic
2 waste under section 7554 of this title; and

3 (vi) a primary battery stewardship plan under section 7586 of
4 this title.

5 (b) Notice of application. The Secretary shall provide notice of an
6 administratively complete application through the environmental notice
7 bulletin.

8 (c) Notice of draft decision; comment period. The Secretary shall provide
9 notice of the draft decision through the environmental notice bulletin and shall
10 post the draft decision to the bulletin. The Secretary shall provide a public
11 comment period.

12 (d) Public meeting. The Secretary shall hold a public meeting whenever
13 any person files a written request for such a meeting. The Secretary otherwise
14 may hold a public meeting at his or her discretion.

15 (e) Notice of final decision. The Secretary shall provide notice of the final
16 decision through the environmental notice bulletin and shall post the final
17 decision to the bulletin. The Secretary shall provide a response to comments.

18 § 7715. TYPE 4 PROCEDURES

19 (a) Purpose; scope.

20 (1) The purpose of this section is to establish the public notice and
21 comment requirements that the Department must follow when considering

1 applications for notice of intent under a general permit and other permits listed
2 in this section.

3 (2) The procedures under this section shall be known as Type 4

4 Procedures. This section applies to each of the following:

5 (A) a notice of intent under a general permit issued pursuant to the
6 Secretary's authority under this title; and

7 (B) an application for each of following permits:

8 (i) construction or operation of an air contaminant source or class
9 of sources not identified in the State's implementation plan approved under the
10 Clean Air Act;

11 (ii) construction or expansion of a public water supply under
12 chapter 56 of this title, except that a change in treatment for a public water
13 supply shall proceed in accordance with section 7714 of this chapter;

14 (iii) a category 1 underground storage tank under chapter 59 of
15 this title;

16 (iv) a categorical solid waste certification under chapter 159 of
17 this title; and

18 (v) a medium scale composting certification under chapter 159 of
19 this title.

1 (b) Notice of application. The Secretary shall provide notice of an
2 administratively complete application through the environmental notice
3 bulletin.

4 (c) Notice of draft decision; comment period. The Secretary shall provide
5 notice of the draft decision through the environmental notice bulletin and shall
6 post the draft decision to the bulletin. The Secretary shall provide a public
7 comment period of at least 14 days on the draft decision.

8 (d) Notice of final decision. The Secretary shall provide notice of the final
9 decision through the environmental notice bulletin and shall post the decision
10 to the bulletin. The Secretary shall provide a response to comments.

11 § 7716. TYPE 5 PROCEDURES

12 (a) Purpose; scope.

13 (1) The purpose of this section is to establish the public notice and
14 comment requirements that the Department must follow when issuing
15 emergency permits and other permits listed in this section.

16 (2) The procedures under this section shall be known as Type 5
17 Procedures. This section shall govern each of the following:

18 (A) issuance of temporary emergency permits under section 912 of
19 this title;

20 (B) applications for public water system operational permits under
21 chapter 56 of this title;

1 (C) issuance of authorizations, under a stream alteration general
2 permit issued under chapter 41 of this title, for reporting without an
3 application, for an emergency, and for activities to prevent risks to life or of
4 severe damage to improved property posed by the next annual flood;

5 (D) issuance of emergency permits issued under section 1268 of
6 this title;

7 (E) issuance of emergency sludge and septage disposal approvals
8 under section 6605 of this title; and

9 (F) shoreland registrations authorized under chapter 49A of this title.

10 (b) Notice of final decision. The Secretary shall provide notice of the final
11 decision through the environmental notice bulletin and shall post the decision
12 to the bulletin.

13 § 7717. AMENDMENTS; RENEWALS

14 (a) A major amendment shall be subject to the same procedures applicable
15 to the original permit decision under this chapter.

16 (b) A minor amendment shall be subject to the Type 4 Procedures, except
17 that the Secretary need not provide notice of the administratively complete
18 application.

19 (c) An administrative amendment shall not be subject to the procedural
20 requirements of this chapter.

1 (d) A person may renew a permit under the same procedures applicable to
2 the original permit decision under this chapter.

3 (e) With respect to amending a permit issued under the Clean Air Act or
4 Clean Water Act, if a requirement under those acts directs the Secretary to
5 provide the public with greater notice, opportunity to participate, or access to
6 information than the corresponding requirement of this chapter, the Secretary
7 shall comply with the federal requirement.

8 § 7718. EXEMPTIONS

9 This subchapter shall not govern an application or petition for:

10 (1) an unsafe dam order under section 1095 of this title;

11 (2) a potable water supply and wastewater permit under subsection
12 1973(j) of this title;

13 (3) a hazardous waste facility certification under section 6606 of this
14 title; and

15 (4) a certificate of need under section 6606a of this title.

16 **Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS**

17 Sec. 1 of this act shall take precedence over any inconsistent requirements
18 for notice and processing of applications contained in rules adopted by the
19 Department of Environmental Conservation other than rules pertaining to
20 applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before

1 July 1, 2019, the Secretary of Natural Resources shall commence and complete
2 amendments to conform these rules to Sec. 1.

3 * * * Environmental Notice Bulletin * * *

4 Sec. 3. 3 V.S.A. § 2826 is amended to read:

5 § 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

6 (a) The Secretary shall establish ~~procedures for the publication of an~~
7 environmental notice bulletin, in order to provide for the timely public
8 notification of permit applications, notices, comment periods, hearings, and
9 permitting decisions. ~~The Secretary shall begin publication of the bulletin by~~
10 ~~no later than July 1, 1995 on the Agency's website. At a minimum, the~~
11 ~~bulletin shall contain the following information:~~ The bulletin shall consist of a
12 website and an e-mail notification system. The Secretary shall ensure that the
13 website for the bulletin is readily accessible from the Agency's main web page.

14 (1) ~~notice of administratively complete permit applications submitted to~~
15 ~~the Department of Environmental Conservation;~~ When 10 V.S.A. chapter 170
16 requires the posting of information to the bulletin, the Secretary shall post the
17 information to the bulletin's website.

18 (2) ~~notice of the comment period on the application and draft permit, if~~
19 ~~any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170
20 requires notice to persons through the environmental notice bulletin, the

1 bulletin shall generate an e-mail notification to those persons containing the
2 information required by that chapter.

3 ~~(3) notice of the issuance of a draft permit, if required by law, for those~~
4 ~~applications that were noticed;~~ The Secretary shall provide members of the
5 public the ability to register, through the bulletin, for a list of interested persons
6 to receive e-mail notification of permit activity based on permit type,
7 municipality, proximity to a specified address, or a combination of these
8 characteristics.

9 ~~(4) information on how to request a public hearing or meeting;~~ If an
10 individual does not have an e-mail address, the individual may request to
11 receive notifications through U.S. mail. On receipt of such a request, the
12 Secretary shall mail to the individual the same information that the individual
13 would have otherwise received through an e-mail generated by the bulletin.

14 ~~(5) notice of the name of the staff person to contact for information~~
15 ~~regarding public hearings or meetings with respect to a particular application.~~

16 ~~(6) notice of the issuance or denial of a permit for those applications that~~
17 ~~were noticed.~~

18 (b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook
19 which lists all of the permits required for the programs administered by the
20 Department of Environmental Conservation. The handbook shall include
21 examples of activities that require certain permits, an explanation in lay terms

1 of each of the permitting programs involved, and the names, addresses, and
2 telephone numbers of the person or persons to contact for further information
3 for each of the permitting programs. The Secretary shall update the handbook
4 ~~shall be updated,~~ periodically.

5 Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

6 (a) On or before September 15, 2016, the Secretary shall commence all
7 rulemaking required by Sec. 1 of this act.

8 (b) On or before February 15, 2017, the Secretary shall report in writing to
9 the House and Senate Committees on Natural Resources and Energy and the
10 House Committee on Fish, Wildlife and Water Resources on the Secretary's
11 progress in adopting the rules required by Sec. 1 of this act and revising and
12 reestablishing the environmental notice bulletin in accordance with Secs. 1
13 and 3 of this act.

14 (c) On or before July 1, 2017, the Secretary shall revise and reestablish the
15 environmental notice bulletin to conform to the requirements of Secs. 1 and 3
16 of this act.

17 (d) On or before February 15, 2020, the Secretary of Natural Resources
18 shall submit a written report to the House and Senate Committees on Natural
19 Resources and Energy and the House Committee on Fish, Wildlife and Water
20 Resources that:

1 (1) summarizes the Secretary’s implementation of Secs. 1 through 3 of
2 this act and details the steps taken to implement those sections;

3 (2) provides the Secretary’s assessment of the effect of 10 V.S.A.
4 chapter 170 on the amount of time taken by the Department of Environmental
5 Conservation (DEC), during the preceding two calendar years, to review and
6 issue decisions on applications and permits subject to that chapter and the data
7 supporting that assessment;

8 (3) provides the Secretary’s assessment of the effect of 10 V.S.A.
9 chapter 170 on public participation, during the preceding two calendar years, in
10 the review of applications and permits subject to that chapter and the data
11 supporting that assessment;

12 (4) provides:

13 (A) the total and annual number of appeals, during 2018 and 2019, of
14 DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was
15 resolved;

16 (B) the total and annual number of times that a party moved to
17 dismiss an issue or an appeal based on the requirements of 10 V.S.A
18 § 8504(d)(2) and the Environmental Division’s ruling on those motions; and

19 (C) a comparison with the total and annual number of appeals, during
20 calendar years 2015 through 2017, from DEC programs that become subject to

1 the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of
2 those appeals was resolved;

3 (5) provides the Secretary’s overall evaluation of the success of Secs. 1
4 and 3 of this act in standardizing DEC permit procedures, increasing public
5 participation in DEC’s permit process, and resolving issues related to the
6 issuance of DEC permits without appeal;

7 (6) based on the track record of 10 V.S.A. chapter 170 to date of the
8 report, states the Secretary’s recommendation on whether there is justification
9 to amend the process for appealing those acts and decisions of the Secretary
10 subject to that chapter; and

11 (7) if the recommendation under subdivision (6) of this subsection is
12 affirmative, provides the Secretary’s recommended amendments to the process
13 for appealing those acts and decisions of the Secretary subject to 10 V.S.A.
14 chapter 170.

15 * * * Appeals from Agency of Natural Resources to the

16 Environmental Division * * *

17 Sec. 5. 10 V.S.A. § 8504 is amended to read:

18 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

19 * * *

20 (d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the
21 District Commission or the Secretary.

1 (1) ~~No~~ Participation before District Commission. An aggrieved person
2 ~~may~~ shall not appeal an act or decision that was made by a District
3 Commission unless the person was granted party status by the District
4 Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in
5 the proceedings before the District Commission, and retained party status at
6 the end of the District Commission proceedings. In addition, the person may
7 only appeal those issues under the criteria with respect to which the person was
8 granted party status.

9 ~~(2) Notwithstanding subdivision (d)(1) of this section, However,~~
10 notwithstanding these limitations, an aggrieved person may appeal an act or
11 decision of the District Commission if the Environmental judge
12 determines that:

13 (A) there was a procedural defect ~~which~~ that prevented the person
14 from obtaining party status or participating in the proceeding;

15 (B) the decision being appealed is the grant or denial of party
16 status; or

17 (C) some other condition exists which would result in manifest
18 injustice if the person's right to appeal was disallowed.

19 (2) Participation before the Secretary.

20 (A) An aggrieved person shall not appeal an act or decision of the
21 Secretary unless the person submitted to the Secretary a written comment

1 during the comment period or an oral comment at the public meeting
2 conducted by the Secretary. In addition, the person may only appeal issues
3 related to the person's comment to the Secretary.

4 (i) To be sufficient for the purpose of appeal, a comment to the
5 Secretary shall identify each reasonably ascertainable issue with enough
6 particularity so that a meaningful response can be provided.

7 (ii) The appellant shall identify each comment that the appellant
8 submitted to the Secretary that identifies or relates to an issue raised in his or
9 her appeal.

10 (iii) A person moving to dismiss an appeal or an issue raised by an
11 appeal pursuant to this subdivision (A) shall have the burden to prove that the
12 requirements of this subdivision (A) are not satisfied.

13 (B) Notwithstanding the limitations of subdivision (2)(A) of this
14 subsection, an aggrieved person may appeal an act or decision of the Secretary
15 if the Environmental judge determines that:

16 (i) there was a procedural defect that prevented the person from
17 commenting during the comment period or at the public meeting or otherwise
18 participating in the proceeding;

19 (ii) the Secretary did not conduct a comment period and did not
20 hold a public meeting;

1 (iii) the person demonstrates that an issue was not reasonably
2 ascertainable during the review of an application or other request that led to the
3 Secretary’s act or decision; or

4 (iv) some other condition exists which would result in manifest
5 injustice if the person’s right to appeal was disallowed.

6 * * *

7 (p) Administrative record. The Secretary shall certify the administrative
8 record as defined in chapter 170 of this title and shall transfer a certified copy
9 of that record to the Environmental Division when:

10 (1) there is an appeal of an act or decision of the Secretary that is based
11 on that record; or

12 (2) there is an appeal of a decision of a District Commission and the
13 applicant used a decision of the Secretary based on that record to create a
14 presumption under a criterion of subsection 6086(a) of this title that is at issue
15 in the appeal.

16 Sec. 5a. 10 V.S.A. § 8506 is amended to read:

17 § 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
18 FACILITY; APPEALS

19 * * *

20 (c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2)
21 (participation before the Secretary), and (f)(1)(A) (automatic stays of certain

1 permits), and subsections 8504(j) (appeals under a general permit) ~~and~~, (n)
2 (intervention), and (p) (administrative record) of this title shall apply to appeals
3 under this section except that, with respect to subsection (p), the Secretary
4 shall transfer a certified copy of the administrative record to the Board.

5 * * *

6 Sec. 5b. PURPOSE

7 The purposes of the amendments contained in Secs. 5 (appeals to the
8 Environmental Division) and 5a (renewable energy plant; telecommunications
9 facility; appeals) of this act are to:

10 (1) require participation in the permitting process of the Department of
11 Environmental Conservation (DEC) and identification of concerns about an
12 application early in that process so that DEC and the applicant have an
13 opportunity to address those concerns where possible before a permit becomes
14 final and subject to appeal; and

15 (2) require that an issue raised on appeal be identified or related to an
16 issue identified in a comment to the Secretary while guarding against creating
17 an overly technical approach to the preservation of issues for the purpose of
18 appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A.
19 § 8504(d)(2)(A).

1 Sec. 5c. FEDERALLY DELEGATED PROGRAMS

2 If the U.S. Environmental Protection Agency notifies the Secretary of
3 Natural Resources that a provision of this act is inconsistent with the Clean Air
4 Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal
5 regulations adopted under one of those acts, the Secretary shall report the
6 receipt of this notification to the House and Senate Committees on Natural and
7 Energy and the House Committee on Fish, Wildlife and Water Resources.
8 This report shall attach the notification and may include proposed statutory
9 revisions to address the inconsistency.

10 Second: After Sec. 37, by adding two new sections to be Secs. 37a and 37b
11 to read:

12 Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

13 (d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that
14 allow for the management of excavated soils requiring disposal that contain
15 PAHs, arsenic, or lead in a manner that ensures protection of human health and
16 the environment and promotes Vermont's traditional settlement patterns in
17 compact village or city centers. At a minimum, the rules shall:

18 * * *

19 Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS;

20 EXTENSION OF REPEAL DATE

21 2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

1 Sec. 7. REPEAL

2 On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

3 Third: In Sec. 38 (effective dates), by adding subdivisions (3) and (4) to
4 read:

5 (3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall
6 take effect on passage and shall apply to appeals of jurisdictional opinions
7 issued on or after the effective date of those sections. Notwithstanding the
8 repeal of its authority to consider jurisdictional opinions, the Natural Resources
9 Board shall have authority to complete its consideration of any jurisdictional
10 opinion pending before it as of that effective date, and appeal of the Board's
11 decision shall be governed by the law as it existed immediately prior to that
12 date.

13 (4) Secs. 37a (rules; management of excavated soils) and 37b (extension
14 of repeal date) shall take effect on passage.

15

16

17 (Committee vote: _____)

18

19

Representative _____

20

FOR THE COMMITTEE

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 123 entitled “An act relating to standardized procedures for
4 permits and approvals issued by the Department of Environmental
5 Conservation” respectfully reports that it has considered the same and
6 recommends that the House propose to the Senate that the bill be amended as
7 follows:

8 First: By striking out Secs. 1 through 5 in their entirety and inserting in lieu
9 thereof Secs. 1 through 5c to read:

10 * * * Environmental Conservation; Standard Procedures * * *

11 Sec. 1. 10 V.S.A. chapter 170 is added to read:

12 CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL

13 CONSERVATION; STANDARD PROCEDURES;

14 Subchapter 1. General Provisions

15 § 7701. PURPOSE

16 The purpose of this chapter is to establish standard procedures for public
17 notice, public meetings, and decisions relating to applications for permits
18 issued by the Department of Environmental Conservation.

19 § 7702. DEFINITIONS

20 As used in this chapter:

1 (1) “Adjoining property owner” means a person who owns land in fee
2 simple, if that land:

3 (A) shares a property boundary with a tract of land where proposed
4 or actual activity regulated by the Department is located; or

5 (B) is adjacent to a tract of land where such activity is located and the
6 two properties are separated only by a river, stream, or public highway.

7 (2) “Administrative amendment” means an amendment to an individual
8 permit, general permit, or notice of intent under a general permit that corrects
9 typographical errors, changes the name or mailing address of a permittee, or
10 makes other similar changes to a permit that do not require technical review of
11 the permitted activity or the imposition of new conditions or requirements.

12 (3) “Administrative record” means the application and any supporting
13 data furnished by the applicant; all information submitted by the applicant
14 during the course of reviewing the application; the draft permit or notice of
15 intent to deny the application; the fact sheet and all documents cited in the fact
16 sheet, if applicable; all comments received during the public comment period;
17 the recording or transcript of any public meeting or meetings held; any written
18 material submitted at a public meeting; the response to comments; the final
19 permit; any document used as a basis for the final decision; and any other
20 documents contained in the permit file.

1 (4) “Administratively complete application” means an application for a
2 permit for which all initially required documentation has been submitted, and
3 any required permit fee, and the information submitted initially addresses all
4 application requirements but has not yet been subjected to a complete technical
5 review.

6 (5) “Agency” means the Agency of Natural Resources.

7 (6) “Clean Air Act” means the federal statutes on air pollution
8 prevention and control, 42 U.S.C. § 7401 et seq.

9 (7) “Clean Water Act” means the Federal Water Pollution Control Act,
10 33 U.S.C. § 1251 et seq.

11 (8) “Commissioner” means the Commissioner of Environmental
12 Conservation or the Commissioner’s designee.

13 (9) “Department” means the Department of Environmental
14 Conservation.

15 (10) “Document” means any written or recorded information, regardless
16 of physical form or characteristics, which the Department produces or acquires
17 in the course of reviewing an application for a permit.

18 (11) “Environmental notice bulletin” or “bulletin” means the website
19 and e-mail notification system required by 3 V.S.A. § 2826.

1 (12) “Fact sheet” means a document that briefly sets forth the principal
2 facts and the significant factual, legal, methodological, and policy questions
3 considered in preparing a draft decision.

4 (13) “General permit” means a permit that applies to a class or category
5 of discharges, emissions, disposal, facilities, or activities within a common
6 geographic area, including the entire State or a region of the State.

7 (14) “Individual permit” means a permit that authorizes a specific
8 discharge, emission, disposal, facility, or activity that contains terms and
9 conditions that are specific to the discharge, emission, disposal, facility, or
10 activity.

11 (15) “Major amendment” means an amendment to an individual permit
12 or notice of intent under a general permit that necessitates technical review.

13 (16) “Minor amendment” means an amendment to an individual permit
14 or notice of intent under a general permit that requires a change in a condition
15 or requirement, does not necessitate technical review, and is not an
16 administrative amendment.

17 (17) “Notice of intent under a general permit” means an authorization
18 issued by the Secretary to undertake an action authorized by a general permit.

19 (18) “Permit” includes any permit, certification, license, registration,
20 determination, or similar form of permission required from the Department
21 by law. However, the term excludes a professional license issued pursuant to

1 chapter 48, subchapter 3 (licensing of well drillers) of this title and sections
2 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous
3 waste transporters), and 6607a (waste transportation) of this title.

4 (19) “Person” shall have the same meaning as under section 8502 of this
5 title.

6 (20) “Person to whom notice is federally required” means a person to
7 whom notice of an application or draft decision must be given under federal
8 regulations adopted pursuant to the Clean Air Act or Clean Water Act.

9 (21) “Public meeting” means a meeting that is open to the public and
10 recorded or transcribed, at which the Department shall provide basic
11 information about the draft permit decision, an opportunity for questions to the
12 applicant and the Department, and an opportunity for members of the public to
13 submit oral and written comments.

14 (22) “Secretary” means the Secretary of Natural Resources or designee.

15 (23) “Technical review” means the application of scientific,
16 engineering, or other professional expertise to the facts to determine whether
17 activity for which a permit is requested meets the standards for issuing the
18 permit under statute and rule.

1 § 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

2 (a) Rules.

3 (1) Implementing rules. The Secretary may adopt rules to implement
4 this chapter.

5 (2) Complex projects; preapplication process. The Secretary shall adopt
6 rules to determine when a project requiring a permit is large and complex.
7 These rules shall provide that an applicant proposing such a project, prior to
8 filing an application for a permit, shall initiate a project scoping process
9 pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open
10 to the public. The rules shall ensure that:

11 (A) Written notice of an informational meeting under this section is
12 sent to the owner of the land where the project is located if the applicant is not
13 the owner; the municipality in which the project is located; the municipal and
14 regional planning commissions for any municipality in which the project is
15 located; if the project site is located on a boundary, any Vermont municipality
16 adjacent to that boundary and the municipal and regional planning
17 commissions for that municipality; and each adjoining property owner. At the
18 time this written notice is sent, the Secretary also shall post the notice to the
19 environmental notice bulletin.

20 (B) The notice to adjoining property owners informs them of how
21 they can continue to receive notices and information through the

1 environmental notice bulletin concerning the project as it is reviewed by the
2 Secretary.

3 (C) The applicant furnishes by affidavit to the Secretary the names of
4 those furnished notice and certifies compliance with the notice requirements of
5 this subsection.

6 (D) The applicant and the Secretary or designee shall attend the
7 meeting. The applicant shall respond to questions from other attendees.

8 (b) Additional notice.

9 (1) The Secretary may require, by rule or in an individual case,
10 measures in addition to those directed by this chapter using any method
11 reasonably calculated to give direct notice to persons potentially affected by a
12 decision on the application.

13 (2) In an individual case, the Secretary may determine to apply the
14 procedures of section 7713 (Type 2) of this chapter to the issuance of a permit
15 otherwise subject to the procedures of section 7715 (Type 4) or section 7716
16 (Type 5) of this chapter.

17 (c) Extension of deadlines. A person may request that the Secretary extend
18 any deadline for comment or requesting a public informational meeting
19 established by this chapter. The person shall submit the request before the
20 deadline and include a brief explanation of why the extension is justified. If

1 the request is granted, the Secretary shall provide notice of the new deadline
2 through the environmental notice bulletin.

3 § 7704. ADMINISTRATIVE RECORD

4 (a) The Secretary shall create an administrative record for each application
5 for a permit and shall make the administrative record available to the public.

6 (b) The Secretary shall base a draft or final decision on each application for
7 a permit on the administrative record.

8 (c) With respect to permits issued under the Clean Air Act and Clean Water
9 Act, the Secretary shall comply with any requirements under those acts
10 concerning the maintenance and availability of the administrative record.

11 § 7705. TIME; HOW COMPUTED

12 In this chapter:

13 (1) When time is to be reckoned from a day, date, or an act done, the
14 day, date, or day when the act is done shall not be included in the computation.

15 (2) Computation of a time period shall use calendar days.

16 Subchapter 2. Standard Procedures

17 § 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

18 (a) Notice through the environmental notice bulletin. When this chapter
19 requires notice through the environmental notice bulletin:

20 (1) The bulletin shall generate and send an e-mail to notify:

21 (A) each person requiring notice under section 7712 of this chapter;

1 (B) the applicant;

2 (C) each person on an interested persons list;

3 (D) each municipality in which the activity to be permitted is located,
4 except for notice of a draft or final general permit; and

5 (E) each other person to whom this chapter directs that a particular
6 notice be provided through the bulletin.

7 (2) At a minimum, each notice generated by the bulletin shall contain:

8 (A) the name and contact information for the person at the Agency
9 processing the permit;

10 (B) the name and address of the permit applicant, if applicable;

11 (C) the name and address of the facility or activity to be permitted,
12 if applicable;

13 (D) a brief description of the activity for which the permit would
14 be issued;

15 (E) the length of the period for submitting written comments and the
16 process for submitting those comments, if applicable, and notice of the
17 requirements regarding submission of comments during that period or at a
18 public meeting in order to appeal under chapter 220 of this title;

19 (F) the process for requesting a public meeting, if applicable;

1 (G) when a public meeting has been scheduled, the time, date, and
2 location of the meeting and a brief description of the nature and purpose of
3 the meeting;

4 (H) when issued, the draft permit or notice of intent to deny a permit,
5 and the period and process for submitting written comments on that draft
6 permit or notice;

7 (I) when issued, the final decision issuing or denying a permit, and
8 the process for appealing the decision; and

9 (J) any other information that this chapter directs be included in a
10 particular notice to be generated by the bulletin.

11 (3) The environmental notice bulletin shall provide notice by mail as
12 required by 3 V.S.A. § 2826.

13 (b) Notice to adjoining property owners. When this chapter requires notice
14 of an application to adjoining property owners, the applicant shall provide
15 notice of the application by U.S. mail to all adjoining property owners, on a
16 form developed by the Secretary, at the time the application is submitted to the
17 Secretary. The form shall state how the property owners can continue to
18 receive notices and information concerning the project as it is reviewed by the
19 Secretary. The applicant shall provide a signed certification to the Secretary
20 that all adjoining property owners have been notified of the application.
21 However, if the applicant has provided written notice to adjoining property

1 owners as part of the preapplication engagement process for complex projects
2 under rules adopted in accordance with subsection 7703(a) of this title, then
3 instead of the written notice required of the applicant by this subsection, the
4 Department shall provide notice of the application through the environmental
5 notice bulletin to those adjoining property owners who have requested notice.

6 (c) Comment period length. When this chapter requires the Secretary to
7 provide a public comment period, the length of the period shall be at least
8 30 days, unless this chapter applies a different period for submitting comments
9 on the particular type of permit.

10 (d) Period to request a public meeting. When this chapter allows a person
11 to request a public meeting on a draft decision, the person shall submit the
12 request within 14 days of the date on which notice of the draft decision is
13 posted to the environmental notice bulletin, unless this chapter specifies a
14 different period for requesting a hearing on the particular type of permit.

15 (e) Public meeting; notice; additional comment period. When the Secretary
16 holds a public meeting under this chapter:

17 (1) The Secretary shall:

18 (A) provide at least 14 days' prior notice of the public meeting
19 through the environmental notice bulletin, unless this chapter specifies a
20 different notice period for a public meeting on the particular type of permit;

1 (B) include in the notice, in addition to the information required by
2 subsection (a) of this section, the date the Secretary gave notice of an
3 administrative complete application, if applicable; and

4 (C) hold the period for written comments open for at least seven days
5 after the meeting.

6 (2) The applicant or applicant’s representative and the Secretary or
7 designee shall attend the meeting. The applicant shall cause to be present
8 those professionals retained in the preparation of the application. At the
9 meeting, the applicant and the Secretary each shall answer questions relevant
10 to the application or draft decision to the best of their ability.

11 (f) Draft decisions. When this chapter requires the Secretary to post a draft
12 decision or draft general permit to the environmental notice bulletin, the
13 Secretary shall post to the bulletin the draft decision or draft general permit and
14 all documents on which the Secretary relied in issuing the draft. This post
15 shall include instructions on how to inspect and how to request a copy of each
16 other document that is part of the administrative record of the draft decision or
17 permit.

18 (g) Response to comments. When this chapter requires the Secretary to
19 provide a response to comments, the Secretary shall provide a response to each
20 comment received during the comment period and the basis for the response.
21 The Secretary also shall specify each provision of the draft decision that has

1 been changed in the final decision and the reasons for each change. The
2 Secretary shall post the response to comments to the environmental notice
3 bulletin and send it to all commenters.

4 (h) Final decisions; content; notice.

5 (1) The Secretary's final decision on an application for a permit or on
6 the issuance of a general permit shall include a concise statement of the facts
7 and analysis supporting the decision that is sufficient to apprise the reader of
8 the decision's factual and legal basis. The final decision also shall provide
9 notice that it may be appealed and state the period for filing an appeal and how
10 and where to file an appeal.

11 (2) When this chapter requires that the Secretary to post a final decision
12 to the environmental notice bulletin, the Secretary also shall send a copy of the
13 final decision to all commenters.

14 § 7712. TYPE 1 PROCEDURES

15 (a) Purpose; scope.

16 (1) The purpose of this section is to establish the public notice and
17 comment requirements that the Department must follow when adopting general
18 permits and considering applications for individual permits under the Clean
19 Air Act and Clean Water Act.

20 (2) This section governs each application for a permit to be issued by the
21 Secretary pursuant to the requirements of the Clean Air Act and Clean Water

1 Act and to each general permit to be issued under one of those acts. However,
2 the subsection does not apply to a notice of intent under a general permit. The
3 procedures under this section shall be known as Type 1 Procedures.

4 (b) Notice of application.

5 (1) The applicant shall provide notice to adjoining property owners.

6 (2) At least 15 days prior to posting a draft decision, the Secretary shall
7 provide notice of an administratively complete application through the
8 environmental notice bulletin. The environmental notice bulletin shall send
9 notice of such an application to each person to whom notice is federally
10 required.

11 (3) This subsection (b) shall not apply to a general permit issued under
12 this section.

13 (c) Notice of draft decision or draft general permit. The Secretary shall
14 provide notice of a draft decision or draft general permit through the
15 environmental notice bulletin and shall post the draft decision or permit to the
16 bulletin. In addition to the requirements of section 7711 of this chapter:

17 (1) The Secretary shall post a fact sheet to the bulletin.

18 (2) The environmental notice bulletin shall send notice of the draft to
19 each person to whom notice is federally required.

20 (3) The Secretary shall provide newspaper notice of the draft decision as
21 required by this subdivision (3).

1 (A) If the draft decision pertains to an application for an individual
2 permit, the Secretary shall provide notice in a daily or weekly newspaper in the
3 area of the proposed project if the project is classified as major pursuant to the
4 Clean Water Act or chapter 47 of this title or if required by federal statute or
5 regulation.

6 (B) If the draft decision is a draft general permit, the Secretary shall
7 provide notice in daily or weekly newspapers in each region of the State to
8 which the draft general permit will apply.

9 (C) In addition to the requirements of this chapter and 3 V.S.A.
10 § 2826, the notice from the environmental notice bulletin and the newspaper
11 notice shall include all information required pursuant to applicable federal
12 statute and regulation.

13 (d) Comment period. The Secretary shall provide a public comment
14 period.

15 (e) Public meeting. On or before the end of the comment period, any
16 person may request a public meeting on the draft decision or draft general
17 permit issued under this section. The Secretary shall hold a public meeting
18 whenever any person files a written request for such a meeting. The Secretary
19 otherwise may hold a public meeting at his or her discretion. The Secretary
20 shall provide at least 30 days' notice of the public meeting through the
21 environmental notice bulletin. If the notice of the public meeting is not issued

1 at the same time as the draft decision or draft general permit, the Secretary also
2 shall provide notice of the public meeting in the same manner as required for
3 the draft decision or permit under subsection (c) of this section.

4 (f) Notice of final decision or final general permit. The Secretary shall
5 provide notice of the final decision or final general permit through the
6 environmental notice bulletin and shall post the final decision or permit to the
7 bulletin. When the Secretary issues the final decision or final general permit,
8 the Secretary shall provide a response to comments.

9 (g) Compliance with Clean Air and Water Acts. With respect to a issuance
10 of a permit under the Clean Air Act or Clean Water Act, if a requirement under
11 those acts directs the Secretary to provide the public with greater notice,
12 opportunity to participate, or access to information than the corresponding
13 requirement of this chapter, the Secretary shall comply with the federal
14 requirement.

15 § 7713. TYPE 2 PROCEDURES

16 (a) Purpose; scope.

17 (1) The purpose of this section is to establish the public notice and
18 comment requirements that the Department must follow when considering
19 applications for individual permits, except for individual permits specifically
20 listed in other sections of this subchapter, and when considering other permits
21 listed in this section.

1 (2) The procedures under this section shall be known as Type 2
2 Procedures. This section governs an application for each of the following:

3 (A) an individual permit issued pursuant to the Secretary’s authority
4 under this title and 29 V.S.A. chapter 11, except for permits governed by
5 sections 7712 and 7714–7716 of this chapter;

6 (B) a wetland determination under section 914 of this title;

7 (C) an individual shoreland permit under chapter 49A of this title;

8 (D) a public water system source permit under section 1675 of
9 this title;

10 (E) a provisional certification issued under section 6605d of this
11 title; and

12 (F) a corrective action plan under section 6648 of this title.

13 (b) Notice of application.

14 (1) The applicant shall provide notice of the application to adjoining
15 property owners.

16 (A) For public water system source protection areas, the applicant
17 also shall provide notice to all property owners located in:

18 (i) zones 1 and 2 of the source protection area for a public
19 community water system source; and

20 (ii) the source protection area for a public nontransient
21 noncommunity water system source.

1 (B) For an individual shoreland permit under chapter 49A:

2 (i) The notice to adjoining property owners shall be to the
3 adjoining property owners on the terrestrial boundary of the shoreland.

4 (ii) This chapter does not require notice to owners of property
5 across the lake as defined in that chapter.

6 (2) The Secretary shall provide notice of an administratively complete
7 application through the environmental notice bulletin.

8 (c) Notice of draft decision; comment period. The Secretary shall provide
9 notice of a draft decision through the environmental notice bulletin and shall
10 post the draft decision to the bulletin. The Secretary shall provide a public
11 comment period.

12 (d) Public meeting. The Secretary shall hold a public meeting whenever
13 any person files a written request for such a meeting. The Secretary otherwise
14 may hold a public meeting at his or her discretion.

15 (e) Notice of final decision. The Secretary shall provide notice of the final
16 decision through the environmental notice bulletin and shall post the final
17 decision to the bulletin. When the Secretary issues the final decision, the
18 Secretary shall provide a response to comments.

19 § 7714. TYPE 3 PROCEDURES

20 (a) Purpose; scope.

1 (1) The purpose of this section is to establish the public notice and
2 comment requirements that the Department must follow when adopting general
3 permits, except for general permits governed by section 7712 of this chapter,
4 and when considering other permits listed in this section.

5 (2) The procedures under this section shall be known as Type 3
6 Procedures. This section governs each of the following:

7 (A) Each general permit issued pursuant to the Secretary’s authority
8 under this title other than a general permit subject to section 7712 of this
9 chapter. However, this section does not apply to a notice of intent under a
10 general permit.

11 (B) Issuance of a dam safety order under chapter 43 of this title,
12 except for an unsafe dam order under section 1095 of this title.

13 (C) An application or request for approval of:

14 (i) an individual shoreland permit under chapter 49A of this title;

15 (ii) an aquatic nuisance control permit under chapter 50 of
16 this title;

17 (iii) a change in treatment for a public water supply under chapter
18 56 of this title;

19 (iv) a collection plan for mercury-containing lamps under section
20 7156 of this title;

1 (v) an individual plan for the collection and recycling of electronic
2 waste under section 7554 of this title; and

3 (vi) a primary battery stewardship plan under section 7586 of
4 this title.

5 (b) Notice of application. The Secretary shall provide notice of an
6 administratively complete application through the environmental notice
7 bulletin.

8 (c) Notice of draft decision; comment period. The Secretary shall provide
9 notice of the draft decision through the environmental notice bulletin and shall
10 post the draft decision to the bulletin. The Secretary shall provide a public
11 comment period.

12 (d) Public meeting. The Secretary shall hold a public meeting whenever
13 any person files a written request for such a meeting. The Secretary otherwise
14 may hold a public meeting at his or her discretion.

15 (e) Notice of final decision. The Secretary shall provide notice of the final
16 decision through the environmental notice bulletin and shall post the final
17 decision to the bulletin. The Secretary shall provide a response to comments.

18 § 7715. TYPE 4 PROCEDURES

19 (a) Purpose; scope.

20 (1) The purpose of this section is to establish the public notice and
21 comment requirements that the Department must follow when considering

1 applications for notice of intent under a general permit and other permits listed
2 in this section.

3 (2) The procedures under this section shall be known as Type 4

4 Procedures. This section applies to each of the following:

5 (A) a notice of intent under a general permit issued pursuant to the
6 Secretary's authority under this title; and

7 (B) an application for each of following permits:

8 (i) construction or operation of an air contaminant source or class
9 of sources not identified in the State's implementation plan approved under the
10 Clean Air Act;

11 (ii) construction or expansion of a public water supply under
12 chapter 56 of this title, except that a change in treatment for a public water
13 supply shall proceed in accordance with section 7714 of this chapter;

14 (iii) a category 1 underground storage tank under chapter 59 of
15 this title;

16 (iv) a categorical solid waste certification under chapter 159 of
17 this title; and

18 (v) a medium scale composting certification under chapter 159 of
19 this title.

1 (b) Notice of application. The Secretary shall provide notice of an
2 administratively complete application through the environmental notice
3 bulletin.

4 (c) Notice of draft decision; comment period. The Secretary shall provide
5 notice of the draft decision through the environmental notice bulletin and shall
6 post the draft decision to the bulletin. The Secretary shall provide a public
7 comment period of at least 14 days on the draft decision.

8 (d) Notice of final decision. The Secretary shall provide notice of the final
9 decision through the environmental notice bulletin and shall post the decision
10 to the bulletin. The Secretary shall provide a response to comments.

11 § 7716. TYPE 5 PROCEDURES

12 (a) Purpose; scope.

13 (1) The purpose of this section is to establish the public notice and
14 comment requirements that the Department must follow when issuing
15 emergency permits and other permits listed in this section.

16 (2) The procedures under this section shall be known as Type 5
17 Procedures. This section shall govern each of the following:

18 (A) issuance of temporary emergency permits under section 912 of
19 this title;

20 (B) applications for public water system operational permits under
21 chapter 56 of this title;

1 (C) issuance of authorizations, under a stream alteration general
2 permit issued under chapter 41 of this title, for reporting without an
3 application, for an emergency, and for activities to prevent risks to life or of
4 severe damage to improved property posed by the next annual flood;

5 (D) issuance of emergency permits issued under section 1268 of
6 this title;

7 (E) issuance of emergency sludge and septage disposal approvals
8 under section 6605 of this title; and

9 (F) shoreland registrations authorized under chapter 49A of this title.

10 (b) Notice of final decision. The Secretary shall provide notice of the final
11 decision through the environmental notice bulletin and shall post the decision
12 to the bulletin.

13 § 7717. AMENDMENTS; RENEWALS

14 (a) A major amendment shall be subject to the same procedures applicable
15 to the original permit decision under this chapter.

16 (b) A minor amendment shall be subject to the Type 4 Procedures, except
17 that the Secretary need not provide notice of the administratively complete
18 application.

19 (c) An administrative amendment shall not be subject to the procedural
20 requirements of this chapter.

1 (d) A person may renew a permit under the same procedures applicable to
2 the original permit decision under this chapter.

3 (e) With respect to amending a permit issued under the Clean Air Act or
4 Clean Water Act, if a requirement under those acts directs the Secretary to
5 provide the public with greater notice, opportunity to participate, or access to
6 information than the corresponding requirement of this chapter, the Secretary
7 shall comply with the federal requirement.

8 § 7718. EXEMPTIONS

9 This subchapter shall not govern an application or petition for:

10 (1) an unsafe dam order under section 1095 of this title;

11 (2) a potable water supply and wastewater permit under subsection
12 1973(j) of this title;

13 (3) a hazardous waste facility certification under section 6606 of this
14 title; and

15 (4) a certificate of need under section 6606a of this title.

16 **Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS**

17 Sec. 1 of this act shall take precedence over any inconsistent requirements
18 for notice and processing of applications contained in rules adopted by the
19 Department of Environmental Conservation other than rules pertaining to
20 applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before

1 July 1, 2019, the Secretary of Natural Resources shall commence and complete
2 amendments to conform these rules to Sec. 1.

3 * * * Environmental Notice Bulletin * * *

4 Sec. 3. 3 V.S.A. § 2826 is amended to read:

5 § 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

6 (a) The Secretary shall establish ~~procedures for the publication of an~~
7 environmental notice bulletin, in order to provide for the timely public
8 notification of permit applications, notices, comment periods, hearings, and
9 permitting decisions. ~~The Secretary shall begin publication of the bulletin by~~
10 ~~no later than July 1, 1995 on the Agency's website. At a minimum, the~~
11 ~~bulletin shall contain the following information:~~ The bulletin shall consist of a
12 website and an e-mail notification system. The Secretary shall ensure that the
13 website for the bulletin is readily accessible from the Agency's main web page.

14 (1) ~~notice of administratively complete permit applications submitted to~~
15 ~~the Department of Environmental Conservation;~~ When 10 V.S.A. chapter 170
16 requires the posting of information to the bulletin, the Secretary shall post the
17 information to the bulletin's website.

18 (2) ~~notice of the comment period on the application and draft permit, if~~
19 ~~any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170
20 requires notice to persons through the environmental notice bulletin, the

1 bulletin shall generate an e-mail notification to those persons containing the
2 information required by that chapter.

3 ~~(3) notice of the issuance of a draft permit, if required by law, for those~~
4 ~~applications that were noticed;~~ The Secretary shall provide members of the
5 public the ability to register, through the bulletin, for a list of interested persons
6 to receive e-mail notification of permit activity based on permit type,
7 municipality, proximity to a specified address, or a combination of these
8 characteristics.

9 ~~(4) information on how to request a public hearing or meeting;~~ If an
10 individual does not have an e-mail address, the individual may request to
11 receive notifications through U.S. mail. On receipt of such a request, the
12 Secretary shall mail to the individual the same information that the individual
13 would have otherwise received through an e-mail generated by the bulletin.

14 ~~(5) notice of the name of the staff person to contact for information~~
15 ~~regarding public hearings or meetings with respect to a particular application.~~

16 ~~(6) notice of the issuance or denial of a permit for those applications that~~
17 ~~were noticed.~~

18 (b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook
19 which lists all of the permits required for the programs administered by the
20 Department of Environmental Conservation. The handbook shall include
21 examples of activities that require certain permits, an explanation in lay terms

1 of each of the permitting programs involved, and the names, addresses, and
2 telephone numbers of the person or persons to contact for further information
3 for each of the permitting programs. The Secretary shall update the handbook
4 ~~shall be updated~~, periodically.

5 Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

6 (a) On or before September 15, 2016, the Secretary shall commence all
7 rulemaking required by Sec. 1 of this act.

8 (b) On or before February 15, 2017, the Secretary shall report in writing to
9 the House and Senate Committees on Natural Resources and Energy and the
10 House Committee on Fish, Wildlife and Water Resources on the Secretary's
11 progress in adopting the rules required by Sec. 1 of this act and revising and
12 reestablishing the environmental notice bulletin in accordance with Secs. 1
13 and 3 of this act.

14 (c) On or before July 1, 2017, the Secretary shall revise and reestablish the
15 environmental notice bulletin to conform to the requirements of Secs. 1 and 3
16 of this act.

17 (d) On or before February 15, 2020, the Secretary of Natural Resources
18 shall submit a written report to the House and Senate Committees on Natural
19 Resources and Energy and the House Committee on Fish, Wildlife and Water
20 Resources that:

1 (1) summarizes the Secretary’s implementation of Secs. 1 through 3 of
2 this act and details the steps taken to implement those sections;

3 (2) provides the Secretary’s assessment of the effect of 10 V.S.A.
4 chapter 170 on the amount of time taken by the Department of Environmental
5 Conservation (DEC), during the preceding two calendar years, to review and
6 issue decisions on applications and permits subject to that chapter and the data
7 supporting that assessment;

8 (3) provides the Secretary’s assessment of the effect of 10 V.S.A.
9 chapter 170 on public participation, during the preceding two calendar years, in
10 the review of applications and permits subject to that chapter and the data
11 supporting that assessment;

12 (4) provides:

13 (A) the total and annual number of appeals, during 2018 and 2019, of
14 DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was
15 resolved;

16 (B) the total and annual number of times that a party moved to
17 dismiss an issue or an appeal based on the requirements of 10 V.S.A
18 § 8504(d)(2) and the Environmental Division’s ruling on those motions; and

19 (C) a comparison with the total and annual number of appeals, during
20 calendar years 2015 through 2017, from DEC programs that become subject to

1 the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of
2 those appeals was resolved;

3 (5) provides the Secretary’s overall evaluation of the success of Secs. 1
4 and 3 of this act in standardizing DEC permit procedures, increasing public
5 participation in DEC’s permit process, and resolving issues related to the
6 issuance of DEC permits without appeal;

7 (6) based on the track record of 10 V.S.A. chapter 170 to date of the
8 report, states the Secretary’s recommendation on whether there is justification
9 to amend the process for appealing those acts and decisions of the Secretary
10 subject to that chapter; and

11 (7) if the recommendation under subdivision (6) of this subsection is
12 affirmative, provides the Secretary’s recommended amendments to the process
13 for appealing those acts and decisions of the Secretary subject to 10 V.S.A.
14 chapter 170.

15 * * * Appeals from Agency of Natural Resources to the

16 Environmental Division * * *

17 Sec. 5. 10 V.S.A. § 8504 is amended to read:

18 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

19 * * *

20 (d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the
21 District Commission or the Secretary.

1 (1) ~~No~~ Participation before District Commission. An aggrieved person
2 ~~may~~ shall not appeal an act or decision that was made by a District
3 Commission unless the person was granted party status by the District
4 Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in
5 the proceedings before the District Commission, and retained party status at
6 the end of the District Commission proceedings. In addition, the person may
7 only appeal those issues under the criteria with respect to which the person was
8 granted party status.

9 ~~(2) Notwithstanding subdivision (d)(1) of this section, However,~~
10 notwithstanding these limitations, an aggrieved person may appeal an act or
11 decision of the District Commission if the Environmental judge
12 determines that:

13 (A) there was a procedural defect ~~which~~ that prevented the person
14 from obtaining party status or participating in the proceeding;

15 (B) the decision being appealed is the grant or denial of party
16 status; or

17 (C) some other condition exists which would result in manifest
18 injustice if the person's right to appeal was disallowed.

19 (2) Participation before the Secretary.

20 (A) An aggrieved person shall not appeal an act or decision of the
21 Secretary unless the person submitted to the Secretary a written comment

1 during the comment period or an oral comment at the public meeting
2 conducted by the Secretary. In addition, the person may only appeal issues
3 related to the person's comment to the Secretary.

4 (i) To be sufficient for the purpose of appeal, a comment to the
5 Secretary shall identify each reasonably ascertainable issue with enough
6 particularity so that a meaningful response can be provided.

7 (ii) The appellant shall identify each comment that the appellant
8 submitted to the Secretary that identifies or relates to an issue raised in his or
9 her appeal.

10 (iii) A person moving to dismiss an appeal or an issue raised by an
11 appeal pursuant to this subdivision (A) shall have the burden to prove that the
12 requirements of this subdivision (A) are not satisfied.

13 (B) Notwithstanding the limitations of subdivision (2)(A) of this
14 subsection, an aggrieved person may appeal an act or decision of the Secretary
15 if the Environmental judge determines that:

16 (i) there was a procedural defect that prevented the person from
17 commenting during the comment period or at the public meeting or otherwise
18 participating in the proceeding;

19 (ii) the Secretary did not conduct a comment period and did not
20 hold a public meeting;

1 (iii) the person demonstrates that an issue was not reasonably
2 ascertainable during the review of an application or other request that led to the
3 Secretary’s act or decision; or

4 (iv) some other condition exists which would result in manifest
5 injustice if the person’s right to appeal was disallowed.

6 * * *

7 (p) Administrative record. The Secretary shall certify the administrative
8 record as defined in chapter 170 of this title and shall transfer a certified copy
9 of that record to the Environmental Division when:

10 (1) there is an appeal of an act or decision of the Secretary that is based
11 on that record; or

12 (2) there is an appeal of a decision of a District Commission and the
13 applicant used a decision of the Secretary based on that record to create a
14 presumption under a criterion of subsection 6086(a) of this title that is at issue
15 in the appeal.

16 Sec. 5a. 10 V.S.A. § 8506 is amended to read:

17 § 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
18 FACILITY; APPEALS

19 * * *

20 (c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2)
21 (participation before the Secretary), and (f)(1)(A) (automatic stays of certain

1 permits), and subsections 8504(j) (appeals under a general permit) ~~and~~, (n)
2 (intervention), and (p) (administrative record) of this title shall apply to appeals
3 under this section except that, with respect to subsection (p), the Secretary
4 shall transfer a certified copy of the administrative record to the Board.

5 * * *

6 Sec. 5b. PURPOSE

7 The purposes of the amendments contained in Secs. 5 (appeals to the
8 Environmental Division) and 5a (renewable energy plant; telecommunications
9 facility; appeals) of this act are to:

10 (1) require participation in the permitting process of the Department of
11 Environmental Conservation (DEC) and identification of concerns about an
12 application early in that process so that DEC and the applicant have an
13 opportunity to address those concerns where possible before a permit becomes
14 final and subject to appeal; and

15 (2) require that an issue raised on appeal be identified or related to an
16 issue identified in a comment to the Secretary while guarding against creating
17 an overly technical approach to the preservation of issues for the purpose of
18 appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A.
19 § 8504(d)(2)(A).

1 Sec. 5c. FEDERALLY DELEGATED PROGRAMS

2 If the U.S. Environmental Protection Agency notifies the Secretary of
3 Natural Resources that a provision of this act is inconsistent with the Clean Air
4 Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal
5 regulations adopted under one of those acts, the Secretary shall report the
6 receipt of this notification to the House and Senate Committees on Natural and
7 Energy and the House Committee on Fish, Wildlife and Water Resources.
8 This report shall attach the notification and may include proposed statutory
9 revisions to address the inconsistency.

10 Second: After Sec. 37, by adding two new sections to be Secs. 37a and 37b
11 to read:

12 Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

13 (d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that
14 allow for the management of excavated soils requiring disposal that contain
15 PAHs, arsenic, or lead in a manner that ensures protection of human health and
16 the environment and promotes Vermont’s traditional settlement patterns in
17 compact village or city centers. At a minimum, the rules shall:

18 * * *

19 Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS;

20 EXTENSION OF REPEAL DATE

21 2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

1 Sec. 7. REPEAL

2 On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

3 Third: In Sec. 38 (effective dates), by adding subdivisions (3) and (4) to
4 read:

5 (3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall
6 take effect on passage and shall apply to appeals of jurisdictional opinions
7 issued on or after the effective date of those sections. Notwithstanding the
8 repeal of its authority to consider jurisdictional opinions, the Natural Resources
9 Board shall have authority to complete its consideration of any jurisdictional
10 opinion pending before it as of that effective date, and appeal of the Board's
11 decision shall be governed by the law as it existed immediately prior to that
12 date.

13 (4) Secs. 37a (rules; management of excavated soils) and 37b (extension
14 of repeal date) shall take effect on passage.

15
16
17 (Committee vote: _____)

18 _____
19 Representative _____
20 FOR THE COMMITTEE