

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**

1 **to chapter 48, subchapter 3 (licensing of well drillers) of this title and**  
2 **sections 1674 (water supply operators), 1936 (UST inspector licenses), and**  
3 **6607 (hazardous waste transporters) 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**  
19 **the 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**  
18 **extend any deadline for comment or requesting a public informational**  
19 **meeting established by this chapter. The person shall submit the request**  
20 **before the deadline and include a brief explanation of why the extension is**

1 **justified. If the request is granted, the Secretary shall provide notice of**  
2 **the new deadline 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,**  
14 **the day, date, or day when the act is done shall not be included in the**  
15 **computation.**

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

17 Subchapter 2. Standard Procedures

18 **§ 7711. PERMIT PROCEDURES; STANDARD PROVISIONS**

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

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



- 1           (A) each person requiring notice under section 7712 of this chapter;  
2           (B) the applicant;  
3           (C) each person on an interested persons list;  
4           (D) each municipality in which the activity to be permitted is located,  
5 except for notice of a draft or final general permit; and  
6           (E) each other person to whom this chapter directs that a particular  
7 notice be provided through the bulletin.  
8           (2) At a minimum, each notice generated by the bulletin shall contain:  
9           (A) the name and contact information for the person at the Agency  
10 processing the permit;  
11           (B) the name and address of the permit applicant, if applicable;  
12           (C) the name and address of the facility or activity to be permitted,  
13 if applicable;  
14           (D) a brief description of the activity for which the permit would  
15 be issued;  
16           (E) the length of the period for submitting written comments and the  
17 process for submitting those comments, if applicable, **and notice of the**  
18 **requirements regarding submission** of comments during that period **or at a**  
19 **public meeting in order to appeal under chapter 220 of this title;**  
20           (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**  
16           **each other document that is part of the administrative record of the draft**  
17           **decision or 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**  
19          **Secretary otherwise may hold a public meeting at his or her discretion.**  
20          The Secretary shall provide at least 30 days' notice of the public meeting  
21          through the environmental notice bulletin. If the notice of the public meeting

1 is not issued at the same time as the draft decision or draft general permit, the  
2 Secretary also shall provide notice of the public meeting in the same manner as  
3 required for 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**  
8                   **title;**

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

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

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

14           (b) Notice of application.

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

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

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

1                    (ii) the source protection area for a public nontransient  
2 noncommunity water system source.

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

4                    **(i) The notice to adjoining property owners shall be to the**  
5 **adjoining property owners on the terrestrial boundary of the shoreland.**

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

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

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

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

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

1     § 7714. TYPE 3 PROCEDURES

2             (a) Purpose; scope.

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

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

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

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

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

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

17                             (ii) an aquatic nuisance control permit under chapter 50 of  
18                             this title;

19                             (iii) a change in treatment for a public water supply under chapter  
20                             56 of this title;

1                    (iv) a collection plan for mercury-containing lamps under section  
2                    7156 of this title;

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

5                    (vi) a primary battery stewardship plan under section 7586 of  
6                    this title.

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

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

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

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

1     § 7715. TYPE 4 PROCEDURES

2             (a) Purpose; scope.

3                 (1) The purpose of this section is to establish the public notice and  
4             comment requirements that the Department must follow when considering  
5             applications for notice of intent under a general permit and other permits listed  
6             in this section.

7                 (2) The procedures under this section shall be known as Type 4  
8             Procedures. This section applies to each of the following:

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

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

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

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

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

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

1                   (v) a medium scale composting certification under chapter 159 of  
2 this title.

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

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

10           (d) 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. The Secretary shall provide a response to comments.

13 § 7716. TYPE 5 PROCEDURES

14           (a) Purpose; scope.

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

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

20                           (A) issuance of temporary emergency permits under section 912 of  
21 this title;

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

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

7           (D) issuance of emergency permits issued under section 1268 of  
8 this title;

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

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

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

15           § 7717. AMENDMENTS; RENEWALS

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

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

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

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

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

10       § 7718. EXEMPTIONS

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

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

13            (2) a potable water supply and wastewater permit under subsection  
14        1973(j) of this title;

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

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

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

19        Sec. 1 of this act shall take precedence over any inconsistent requirements  
20        for notice and processing of applications contained in rules adopted by the  
21        Department of Environmental Conservation other than rules pertaining to



1 applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before  
2 July 1, 2019, the Secretary of Natural Resources shall commence and complete  
3 amendments to conform these rules to Sec. 1.

4 \* \* \* Environmental Notice Bulletin \* \* \*

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

6 § 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

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

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

19 (2) ~~notice of the comment period on the application and draft permit, if~~  
20 ~~any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170  
21 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;**  
19               **and**

20               (C) a comparison with the total and annual number of appeals, during  
21               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  
2 person ~~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**  
8 **appellant submitted to the Secretary that identifies or relates to an issue**  
9 **raised in his or her appeal.**

10 **(iii) A person moving to dismiss an appeal or an issue raised**  
11 **by an appeal pursuant to this subdivision (A) shall have the burden to**  
12 **prove that the 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**  
3                    **to the 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**  
8                    **administrative record as defined in chapter 170 of this title and shall**  
9                    **transfer a certified copy of that record to the Environmental Division**  
10                   **when:**

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

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

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

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

20                   \* \* \*



1 (c) The provisions of subdivisions 8504(c)(2) (notice of appeal), **(d)(2)**  
2 **(participation before the Secretary)**, and (f)(1)(A) (automatic stays of certain  
3 permits), and subsections 8504(j) (appeals under a general permit) **and**, (n)  
4 (intervention), **and (p) (administrative record)** of this title shall apply to  
5 appeals under this section **except that, with respect to subsection (p), the**  
6 **Secretary shall transfer a certified copy of the administrative record to the**  
7 **Board.**

8 \* \* \*

9 **Sec. 5b. PURPOSE**

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

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

18 **(2) require that an issue raised on appeal be identified or related to**  
19 **an issue identified in a comment to the Secretary while guarding against**  
20 **creating an overly technical approach to the preservation of issues for the**

1 **purpose of appeal when interpreting whether an appeal satisfies**  
2 **requirements of 10 V.S.A. § 8504(d)(2)(A).**

3 **Sec. 5c. FEDERALLY DELEGATED PROGRAMS**

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

12 Second: In Sec. 38 (effective dates), by adding a subdivision (3) to read:

13 **(3) Secs. 33 through 37 shall take effect on passage and shall apply**  
14 **to appeals of jurisdictional opinions issued on or after the effective date of**  
15 **those sections. Notwithstanding the repeal of its authority to consider**  
16 **jurisdictional opinions, the Natural Resources Board shall have authority**  
17 **to complete its consideration of any jurisdictional opinion pending before**  
18 **it as of that effective date, and appeal of the Board's decision shall be**  
19 **governed by the law as it existed immediately prior to that date.**

20

21

1 (Committee vote: \_\_\_\_\_)

2

\_\_\_\_\_

3

Representative \_\_\_\_\_

4

FOR THE COMMITTEE