

S.123: Standardized Procedures for DEC Permits
Section by Section Comparison, Bill as Passed by Senate with House Proposal of Amendment
Office of Legislative Council May 2, 2016

§	AS PASSED SENATE	HOUSE PROPOSAL
<i>Environmental Conservation; Standard Procedures</i>		
1	10 V.S.A. Chapter 170: Department of Environmental Conservation: Standard Procedures	<i>Same</i>
	Subchapter 1: General Provisions	<i>Same</i>
	10 V.S.A. § 7701. Purpose Establish standard procedures for public notice, public meetings, and decisions on applications for permits issued by the Department of Environmental Conservation (DEC), which is part of the Agency of Natural Resources (ANR).	<i>Same</i>
	10 V.S.A. § 7702: Definitions <ul style="list-style-type: none"> • “Administrative amendment,” “minor amendment, “major amendment” – these definitions affect how much process is required to change an existing permit • “Administrative record” – defined broadly to include all documents submitted to or used by DEC in its decision-making • “Document” – broadly defined to include any written or recorded information • “Permit” – broadly defined to include any approval issued by DEC • “Public meeting” – defined to include a meeting that is open to the public at which questions may be asked of the applicant and DEC and comments may be made • “Technical review” –affects whether an amendment is or is not a major 	Amends the definition of “permit” in this chapter to exclude professional licenses issues by DEC, such as well drillers and water supply operators
	10 V.S.A. § 7703. Rules; Additional Notice or Procedures Authorizes rules to implement the chapter and requires adopting rules that provide	Makes technical changes to the preapplication process for large and complex projects to ensure that notice of

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1, ctd	<p>for a preapplication process for projects classified as large and complex.</p> <p>Secretary given discretion to provide greater public process than is required by the act.</p>	<p>the process is posted in the environmental notice bulletin</p> <p>Adds a subsection allowing requests to the Secretary to extend the deadlines established by this chapter.</p>
	<p>10 V.S.A. § 7704. Administrative Record</p> <p>Requires Secretary to create and maintain an administrative record for each application, to make the record available to the public, and to base a draft or final decision on the record.</p>	<p><i>Same</i></p>
	<p><i>10 V.S.A. § 7705 added by House</i></p>	<p>10 V.S.A. § 7705. Time; How Computed</p> <p>Clarifies that time periods in this chapter use calendar days.</p>
	<p><u>Subchapter 2:</u> Standard Procedures</p>	<p><i>Same</i></p>
	<p>10 V.S.A. § 7711. Permit Procedures; Standard Provisions</p> <p>This section sets out elements that are used in one or more of the five process categories that follow.</p> <ul style="list-style-type: none"> • Electronic notice through environmental notice bulletin. • When notice is required to adjoining property owners, to be by mail. • Default periods for comment (30 days), requesting public meeting (14 days), notice of public meeting (14 days). • Posting of draft decision and supporting documents. • At public meeting, the applicant and DEC to respond to questions. • Response to comments to include a response to each comment received and to identify each change to the draft decision. 	<p>Modifies the electronic notice provision so that notice is given of the requirements regarding submission of comments in order to appeal.</p> <p>Clarifies that, at the public meeting, the applicant and DEC must respond to relevant questions.</p> <p>Requires that, when a draft decision is posted to the notice bulletin, DEC also posts information on how to inspect and</p>

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1, ctd	<ul style="list-style-type: none"> • Posting and issuance of final decision. 	copy all documents in the record.
	<p>10 V.S.A. § 7712: Type 1 Procedures</p> <ul style="list-style-type: none"> • Scope: General and individual permits under the federal Clean Air and Water Acts and Resource Conservation and Recovery Act • Elements: Notice of application to adjoining property owners and any other persons whom federal law requires; notice in the environmental notice bulletin; notice of draft decision through the bulletin and newspapers; issuance of fact sheet; public comment period; opportunity for public meeting; 30 days' notice of public meeting; and notice and issuance of final decision with response to comments. If federal law requires greater public participation, DEC must comply. 	Clarifies that, under Type 1 procedures, DEC holds a public meeting when requested and may do so without a request.
	<p>10 V.S.A. § 7713: Type 2 Procedures</p> <ul style="list-style-type: none"> • Scope: All individual permits not covered in the other types of procedures. • Elements: Notice of application to adjoining property owners and in the environmental notice bulletin; notice of draft decision through the bulletin; public comment period; opportunity for public meeting; notice of public meeting; and notice and issuance of final decision with response to comments. • For public water systems, notice also to property owners in zones 1 and 2 of the source protection area 	<p>Moves individual shoreland permits into Type 2 from Type 3 procedures so that adjoining landowners are notified. The notification would go to the adjoining landowners on the terrestrial boundary of the shoreland.</p> <p>Clarifies that, under Type 2 procedures, DEC holds a public meeting when requested and may do so without a request.</p>
	<p>10 V.S.A. § 7714. Type 3 Procedures</p> <ul style="list-style-type: none"> • Scope: All general permits not covered in Type 1 (federal), dam safety orders, individual shoreland permits, aquatic nuisance control permits, changes in treatment for public water supply, collection plans for mercury-containing lamps, plans for collection and recycling of electronic waste, and battery stewardship plans. 	Clarifies that, under Type 3 procedures, DEC holds a public meeting when requested and may do so without a request.

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1, ctd	<ul style="list-style-type: none"> • Elements: Notice of application in the environmental notice bulletin; notice of draft decision through the bulletin; opportunity for public meeting; public comment period; notice of public meeting; and notice and issuance of final decision with response to comments. 	
	<p>10 V.S.A. § 7715: Type 4 Procedures</p> <ul style="list-style-type: none"> • Scope: Notices of intent under general permits; air contaminant sources less than 10 tons per year; construction or expansion of public water supply; category 1 underground storage tanks; categorical solid waste certifications; and medium scale composting certifications. • Elements: Notice of application in the environmental notice bulletin; notice of draft decision through the bulletin; public comment period of 10 days; and notice and issuance of final decision with response to comments. 	<p>Revises comment period to 14 days</p> <p>On air contaminant sources:</p> <ul style="list-style-type: none"> • Removes the language that applies Type 4 procedures to air contaminant sources of less than 10 tons per year • Instead, applies Type 4 procedures to air contaminant sources for which permits are required under state law but not federal law
	<p>10 V.S.A. § 7716: Type 5 Procedures</p> <ul style="list-style-type: none"> • Scope: Temporary emergency permits (water resources); public water system operational permits; authorizations under stream alteration general permits for reporting without an application, for an emergency, and for activities to prevent risks to life or severe damage to property posed by next annual flood; emergency sludge and septage disposal approvals; and shoreland registrations.. • Element: Notice and issuance of final decision. 	<i>Same</i>
	<p>10 V.S.A. § 7717: Amendments; Renewals</p> <ul style="list-style-type: none"> • Major amendment by same process applicable to original permit. • Minor amendment under Type 4 procedures, except notice of application not required. • Administrative amendment not subject to the procedures of the chapter. 	<i>Same</i>

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1, ctd	<ul style="list-style-type: none"> Renew permits by same process applicable to original permit 	
	<p>10 V.S.A. § 7718: Exemptions</p> <p>Subchapter does not apply to unsafe dam orders, potable water supply and wastewater permits, hazardous waste facility certifications, and certificates of need for hazardous waste management facilities.</p>	<i>Same</i>
2	<p>Rules; Effect on Procedural Requirements (Session Law)</p> <p>Sec. 1 takes precedence over any requirements for notice and processing of applications contained in DEC rules, which must be amended to comply by July 1, 2019.</p>	<i>Same</i>
<i>Environmental Notice Bulletin</i>		
3	<p>3 V.S.A. § 2826. Environmental Notice Bulletin</p> <ul style="list-style-type: none"> Bulletin to consist of website and e-mail notification system established and maintained by Secretary of Natural Resources. Secretary to post information to website and generate e-mail notifications in accordance with 10 V.S.A. chapter 170. Secretary to provide members of public with ability to register through the bulletin. Secretary shall comply with requests to receive notifications through U.S. mail. 	<i>Same</i>
4	<p>Reports; Rulemaking; Bulletin; Revision (Session Law)</p> <ul style="list-style-type: none"> By Sep. 15, 2016, ANR to commence all rulemaking required by the act. By Feb. 15, 2017, ANR to submit written report to standing committees of jurisdiction on the progress in adopting the rules and the revision of the notice bulletin. By July 1, 2017, ANR to complete revision of the notice bulletin. 	To the report due in 2020, adds a requirement to provide information on how often parties move to dismiss appeals based on the requirements included in Sec. 5 and on the Court's decisions on the motions.

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	<ul style="list-style-type: none"> By Feb. 15, 2020, ANR to report to standing committees on the implementation of the act, its effect on permit processing and public participation in that process and, based on this track record, whether there is justification to amend the appeals process for DEC permitting decisions. 	
<i>Appeals from Agency of Natural Resources to Environmental Division</i>		
5	<p>10 V.S.A. § 8504(d). Requirement to participate before ANR to appeal.</p> <p>Would add a requirement that, in order to appeal from ANR to the Environmental Division, a person must have submitted a written or oral comment to ANR and may only appeal issues related to the comment.</p> <p>Provides exceptions where there was a procedural defect that prevented the submission of comments or a manifest injustice would result from disallowing the appeal.</p> <p>These requirements and exceptions are similar to what exists today for appeal from District Commissions (Act 250).</p>	<p>10 V.S.A. § 8504. Appeals to Environmental Division</p> <p>Adds to the Senate provision:</p> <ul style="list-style-type: none"> To be sufficient for purpose of appeal, the comment to ANR must identify each reasonably ascertainable issue with enough particularity to allow a meaningful response. The person challenging the sufficiency of the comment would have the burden to show it was not sufficient. A further exception that a person can raise an issue on appeal outside of the person’s comment if it was not reasonably ascertainable during the review of the application. A subsection under which ANR transfers its administrative record to the Environmental Division.
5a	<i>Sec. 5a added by House</i>	Makes the requirements of Sec. 5 applicable when ANR permits on renewable energy and telecommunications facilities are appealed to the Public Service Board.
5b	<i>Sec. 5b added by House</i>	<p>Purpose (Session Law)</p> <p>States purposes for Secs. 5 and 5a:</p> <ul style="list-style-type: none"> To require participation in DEC permitting process and early identification of concerns before appeal To require that an issue raised on appeal be identified or related to an issued identified in a comment to DEC while

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		“guarding against an overly technical approach”
5c	<i>Sec. 5c added by House</i>	<p>Federally Designated Programs (Session Law)</p> <p>If the Environmental Protection Agency notifies ANR that a provision of this act is inconsistent with the Clear Air or Water Acts, ANR to notify standing committees and may propose statutory revisions to address the inconsistency.</p>
<i>Conforming Amendments</i>		
6-32	These sections amend ANR permit programs to require them to use the standardized procedures described in Sec. 1.	<i>Same</i>
<i>Act 250 Jurisdictional Determinations</i>		
33-37	These sections revise the process for appealing jurisdictional determinations under 10 V.S.A. chapter 151 (Act 250) so that the appeal goes directly to the Environmental Division rather than requiring the appellant first to seek reconsideration by the Natural Resources Board. This repeals a change made in 2013 to require an appellant to seek such reconsideration. Before 2013, the appeal was directly to the Division.	<i>Same</i>
37a	<i>Sec.37a added by House</i>	<p>10 V.S.A. § 6604c(d). Management of development soils</p> <p>Extends, from July 1, 2016 to July 1, 2017, an existing deadline for ANR to complete rulemaking on the management of certain contaminated soils excavated for development; rules are to protect health and the environment and promote Vermont’s traditional settlement patterns in compact village or city centers.</p>
37b	<i>Sec.37b added by House</i>	Management of Excavated Development Soils; Extension or Repeal Date

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		Extends, from July 1, 2016 to July 1, 2017, an interim process created in Act 52 of last year for disposal of certain contaminated soils excavated for development in designated downtowns until ANR adopts the rules addressed by Sec. 37a.
<i>Effective Dates</i>		
38	The act takes effect on Jan. 1, 2018, except that Secs. 4 and 38 take effect on passage.	Adds that Secs. 33 through 37b take effect on passage.