

S.123: Standardized Procedures for DEC Permits
Overview of Draft 1.3 of Potential Amendment
Office of Legislative Council Feb. 10, 2016 (Corrected)

I. **Major components**

- A. Standardized procedures for Dept. of Environmental Conservation (DEC) permits
- B. Administrative appeals before hearing officer
- C. Appeals from hearing officer on the record to Environmental Division
- D. Conforming amendments

II. **Standard procedures for DEC permits**

- A. *Covers all DEC permits except:*
 - 1. Unsafe dam orders
 - 2. Potable water supply and wastewater permits
 - 3. Hazardous waste facility certification
 - 4. Hazardous waste certificate of need
- B. *Process components*
 - 1. Notice through revamped environmental notice bulletin
 - a) E-mail
 - b) Website
 - 2. Notice to adjoining property owners (only some permits) – U.S. mail
 - 3. Notice of application
 - 4. Issuance of draft decision
 - 5. Public comment period, default 30-days
 - 6. Public meeting, default 14 days for request, notice of meeting
 - 7. Final decision with response to comments
- C. *Other provisions*
 - 1. Secretary to maintain administrative record, make publicly available
 - 2. Secretary has discretion to provide more process
 - 3. Secretary to require preapplication process for complex projects
- D. *Establishes five categories or types of procedures*
 - 1. **Type 1** – federal general and individual permits under Clean Air and Water Acts
 - a) All components
 - b) 30-days to request public meeting, notice of meeting
 - c) Must comply with any more stringent federal requirements
 - 2. **Type 2** – most individual permits under state programs administered by DEC
 - a) Examples: wetlands, public water system source permits
 - b) All components
 - 3. **Type 3** – general permits for state programs administered by DEC
 - a) Also includes some individual permits such as individual shoreland permits and aquatic nuisance control permits
 - b) No notice to adjoining property owners
 - c) All other components
 - 4. **Type 4** – notices of intent under general permits

- a) Also includes some other permits such as air contaminant sources less than 10 tons per year, construction or expansion of public water supply
- b) No notice to adjoining property owners
- c) 10-day comment period
- d) No provision for public meeting
- 5. **Type 5** – emergency permits
 - a) Also includes public water system operational permits, shoreland registrations
 - b) Only component is issuance of final decision
- E. *Amendments and renewals*
 - 1. Major amendments and renewals – same process as original
 - 2. Minor amendments – Type 4 procedures (10 day comment period)
 - 3. Administrative amendments exempt
 - 4. Must comply with any more stringent requirements for amendment under Clean Air and Water Acts

III. Administrative appeals

- A. *Covers appeals of DEC permitting decisions*
 - 1. Listed in bill, 10 V.S.A. § 7732
 - 2. The following remain as direct appeals to Environmental Division of Superior Court:
 - a) Potable water supply and wastewater
 - b) Heavy cutting
 - c) Importation of firewood
 - d) Takings permits
 - e) Decisions on reimbursement of Agency of Natural Resources (ANR) costs
- B. *DEC permits appealed to hearing officer*
 - 1. Same parties can appeal and participate in appeal as before the Environmental Division today
 - 2. Hearing officer
 - a) Selected by parties from list maintained by Secretary
 - b) Secretary adopts rules for qualifications to be hearing officer
 - 3. Limitations on right to appeal – appellant may appeal:
 - a) if made comment during comment period or there was a procedural defect that prevented comment; or
 - b) presents allegations that show applicant provided false or omitted material information
 - 4. Permit automatically stayed on appeal, except for emergency permits
- C. *Conduct of appeal*
 - 1. Contested case under Administrative Procedure Act
 - a) Right to present evidence and conduct cross-examination
 - b) Rules of evidence apply
 - c) Final decision with findings of fact and conclusions of law
 - 2. Administrative record from decision below part of record on appeal

- a) Parties may cross-examine on administrative record and must present witnesses for this examination
- b) Parties may introduce additional evidence
- 3. *Secretary directed to adopt procedural rules* that enable hearing officer to issue scheduling orders, provide discovery, and take site visits
- 4. *Standards for decision-making*
 - a) Hearing officer applies independent judgement to facts
 - b) Defers to Secretary's interpretation of laws and rules that the Secretary administers, unless there is a compelling indication of error
 - c) Burden of proof on appellant

IV. **Appeals to Environmental Division**

- A. Appeal from hearing officer to Environmental Division
- B. Environmental judge reviews hearing officer's decision on the record
 - 1. Affirms findings of fact unless clearly erroneous
 - 2. Affirms an exercise of discretion unless there is abuse of discretion
 - 3. On Secretary's interpretation of his or her enabling statutes and rules, decides if hearing officer correctly determined whether there is a compelling indication of error
- C. Repeals statute that authorizes appeals from ANR to the Public Service Board on renewable energy generation and telecommunications facilities

V. **Conforming Amendments**

These provisions revise existing statutes for the various DEC permit programs to require those programs to use the standardized procedures summarized above