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DRAFT STRIKE-ALL AMENDMENT
BASED ON AGENCY OF NATURAL RESOURCES'
SUGGESTED CHANGES

Bold = changes from the bill as introduced
Highlight = flagged in light of Committee discussion on time periods 1/29/16

TO THE HONORABLE SENATE:

The Committee on Natural Resources and Energy to which was referred Senate Bill No. 123 entitled “An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation” respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Environmental Conservation; Standard Procedures; ~~Option for~~
Administrative Appeal * * *

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

CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL
CONSERVATION; STANDARD PROCEDURES;
ADMINISTRATIVE APPEALS

1 Subchapter 1. General Provisions

2 § 7701. PURPOSE

3 The purpose of this chapter is to establish standard procedures for public
4 notice, public meetings, and decisions relating to applications for permits
5 issued by the Department of Environmental Conservation, and to provide ~~an~~
6 ~~option~~ for administrative appeals of those decisions ~~within the Agency of~~
7 ~~Natural Resources.~~

8 § 7702. DEFINITIONS

9 As used in this chapter:

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

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

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

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

1 (3) “Administrative record” means the application and any supporting
2 data furnished by the applicant; all information submitted by the applicant
3 during the course of reviewing the application; the draft permit or notice of
4 intent to deny the application; the fact sheet and all documents cited in the fact
5 sheet, if applicable; all comments received during the public comment period;
6 the tape or transcript of any public meeting or meetings held; any written
7 material submitted at a public meeting; the response to comments; the final
8 permit; any document used as a basis for the final decision; and any other
9 documents contained in the permit file.

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

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

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

18 (7) “Clean Water Act” means the Federal Water Pollution Control Act,
19 33 U.S.C. § 1251 et seq.

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

1 (9) “Department” means the Department of Environmental
2 Conservation.

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

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

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

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

15 **(14) “Individual permit” means a permit that authorizes a specific**
16 **discharge, emission, disposal, facility, or activity that contains terms and**
17 **conditions that are specific to the discharge, emission, disposal, facility, or**
18 **activity.**

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

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

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

7 (18) “Permit” includes any permit, certification, license, registration,
8 determination, or similar form of permission required from the Department
9 by law.

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

12 (20) “Person to whom notice is federally required” means a person to
13 whom notice of an application or draft decision must be given under federal
14 regulations adopted pursuant to the Clean Air Act or Clean Water Act, or
15 **RCRA.**

16 (21) “Public meeting” means a meeting that is open to the public and
17 **tape** recorded or transcribed, at which the Department shall provide basic
18 information about the draft permit decision, an opportunity for questions to the
19 applicant and the Department, and an opportunity for members of the public to
20 submit oral and written comments.

1 ~~(21) “RCRA” means the Resource Conservation and Recovery Act,~~
2 ~~42 U.S.C. § 6901 et seq.~~

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

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

8 § 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

9 (a) Rules. The Secretary ~~may~~ **shall** adopt **the rules required by this**
10 subsection and may adopt additional rules to implement this chapter and.

11 **(1) Complex projects; preapplication process.** **The Secretary shall**
12 **adopt rules to determine when a project requiring a permit is large and**
13 **complex. These rules shall provide that an applicant proposing such a**
14 **project, prior to filing an application for a permit, shall initiate a project**
15 **scoping process pursuant to 3 V.S.A. § 2828 or shall hold an informational**
16 **meeting that is open to the public. The rules shall ensure that:**

17 **(A) **Written notice** of an informational meeting under this section**
18 **is sent to the owner of the land where the project is located if the applicant**
19 **is not the owner; the municipality in which the project is located; the**
20 **municipal and regional planning commissions for any municipality in**
21 **which the project is located; if the project site is located on a boundary,**

1 any Vermont municipality adjacent to that boundary and the municipal
2 and regional planning commissions for that municipality; and each
3 adjoining property owner.

4 (B) The notice to adjoining property owners informs them of how
5 they can continue to receive notices and information concerning the
6 project as it is reviewed by the Secretary.

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

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

12 (2) Administrative appeals. The Secretary shall adopt procedural
13 rules to implement subchapter 3 (administrative appeals) of this chapter.

14 These rules shall include:

15 (1) provisions for expeditious proceedings that give due
16 consideration to the needs of pro se litigants;

17 (2) the criteria that a person must satisfy in order to commence
18 service as a hearing officer and continuing education requirements that
19 the person must meet in order to continue to serve as such an officer;

20 (3) the manner in which parties proceed to select a hearing officer
21 and the amount of time allotted to the parties to make this selection;

1 **(4) provisions that allow such discovery as is necessary for a full and**
2 **fair determination of the hearing;**

3 **(5) provisions that enable the hearing officer to:**

4 **(A) hold prehearing conferences in person or by telephone or**
5 **video conference;**

6 **(B) require that testimony be submitted in writing prior to**
7 **hearing;**

8 **(C) issue scheduling orders; and**

9 **(D) take a site visit after affording notice and opportunity to**
10 **participate to all parties.**

11 **(c) Additional notice.**

12 **(1) The Secretary may require, by rule or in an individual case,**
13 **measures in addition to those directed by this chapter ~~to provide notice to~~**
14 **~~other persons potentially affected by the issuance of a permit using any~~**
15 **~~method reasonably calculated to give actual notice to persons potentially~~**
16 **~~affected by a decision on the application.~~**

17 **(2) In an individual case, the Secretary may determine to apply the**
18 **procedures of section 7713 (Type 2) of this chapter to the issuance of a permit**
19 **otherwise subject to the procedures of section 7715 (Type 4) or section 7716**
20 **(Type 5) of this chapter.**

1 § 7704. ADMINISTRATIVE RECORD

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

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

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

11 Subchapter 2. Standard Procedures

12 § 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

13 (a) Notice through the environmental notice bulletin. When this chapter
14 requires notice through the environmental notice bulletin:

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

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

17 (B) the applicant;

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

19 (D) each municipality in which the activity to be permitted is located,

20 except for notice of a draft or final general permit; and

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

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

4 (A) the name and contact information for the person at the Agency
5 processing the permit;

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

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

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

11 (E) the length of the period for submitting written comments and the
12 process for submitting those comments, if applicable, and notice of the
13 requirement to submit comments during that period in order to seek
14 administrative appeal under this chapter ~~or appeal under chapter 220 of~~
15 this title;

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

17 (G) when a public meeting has been scheduled, the time, date, and
18 location of the hearing and a brief description of the nature and purpose of
19 the hearing;

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

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

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

8 **(3) The environmental notice bulletin shall provide notice by mail as**
9 **required by 3 V.S.A. § 2826.**

10 (b) Notice to adjoining property owners. When this chapter requires notice
11 **of an application** to adjoining property owners, the applicant shall provide
12 notice of the application by U.S. mail to all adjoining property owners, on a
13 form developed by the Secretary, at the time the application is submitted to the
14 Secretary. **The form shall state how the property owners can continue to**
15 **receive notices and information concerning the project as it is reviewed by**
16 **the Secretary.** The applicant shall provide a signed certification to the
17 Secretary that all adjoining property owners have been notified of the
18 application. **However, if the applicant has provided written notice to**
19 **adjoining property owners as part of the preapplication engagement**
20 **process for complex projects under rules adopted in accordance with**
21 **subsection 7703(a) of this title, then instead of the written notice required**

1 **of the applicant by this subsection, the Department shall provide notice of**
2 **the application through the environmental notice bulletin to those**
3 **adjoining property owners who have requested notice.**

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

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

13 (e) Public meeting; notice; additional comment period. When the Secretary
14 holds a public meeting under this chapter, the Secretary shall:

15 (1) provide at least 14 days' prior notice of the public meeting through
16 the environmental notice bulletin, unless this chapter specifies a different
17 notice period for a hearing on the particular type of permit;

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

1 (3) hold the period for written comments open for at least **five** days after
2 the hearing.

3 (f) Draft decisions. When this chapter requires the Secretary to post a draft
4 decision or draft general permit to the environmental notice bulletin, the
5 Secretary shall post to the bulletin the draft decision or draft general permit and
6 all documents on which the Secretary relied in issuing the draft.

7 (g) Response to comments. When this chapter requires the Secretary to
8 provide a response to comments, the Secretary shall provide a response to ~~all~~
9 **each** comments received during the comment period and **the basis for the**
10 **response. The Secretary also shall specify each provision of the draft**
11 **decision that has been changed in the final decision and the reasons for**
12 **each change. The Secretary shall post the response to comments to the**
13 environmental notice bulletin and send it to all commenters.

14 (h) Final decisions; content; notice.

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

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

4 § 7712. TYPE 1 PROCEDURES

5 (a) Purpose; scope.

6 (1) The purpose of this section is to establish the public notice and
7 comment requirements that the Department must follow when adopting general
8 permits and considering applications for individual permits under the Clean
9 Air Act, and Clean Water Act, and RCRA.

10 (2) This section governs each application for a permit to be issued by the
11 Secretary pursuant to the requirements of the Clean Air Act, and Clean Water
12 Act, or RCRA and to each general permit to be issued under one of those acts.
13 However, the subsection does not apply to a notice of intent under a general
14 permit. The procedures under this section shall be known as Type 1
15 Procedures.

16 (b) Notice of application.

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

18 (2) At least 15 days prior to posting a draft decision, the Secretary shall
19 provide notice of an administratively complete application through the
20 environmental notice bulletin. The environmental notice bulletin shall send

1 notice of such an application to each person to whom notice is federally
2 required.

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

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

9 (1) The Secretary shall post a fact sheet to the bulletin a fact sheet
10 meeting the applicable requirements of federal regulations implementing
11 the Clean Water Act.

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

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

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

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

4 **(C) In addition to the requirements of this chapter and 3 V.S.A.**
5 **§ 2826, the notice from the environmental notice bulletin and the**
6 **newspaper notice shall include all information required pursuant to**
7 **applicable federal statute and regulation.**

8 (d) Comment period. The Secretary shall provide a public comment
9 period.

10 (e) Public meeting. On or before the end of the comment period, any
11 person may request a public meeting on the draft decision or draft general
12 permit issued under this section. The Secretary shall hold a public meeting at
13 his or her discretion or whenever any person files a written request for a
14 meeting. The Secretary shall provide at least 30 days' notice of the public
15 meeting through the environmental notice bulletin. **If the notice of the public**
16 **meeting is not issued at the same time as the draft decision or draft**
17 **general permit, the Secretary also shall provide notice of the public**
18 **meeting in the same manner as required for the draft decision or permit**
19 **under subdivision (c) of this section.**

20 (f) Notice of final decision or final general permit. The Secretary shall
21 provide notice of the final decision or final general permit through the

1 environmental notice bulletin and shall post the final decision or permit to the
2 bulletin. When the Secretary issues the final decision or final general permit,
3 the Secretary shall provide a response to comments.

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

10 **§ 7713. TYPE 2 PROCEDURES**

11 (a) Purpose; scope.

12 (1) The purpose of this section is to establish the public notice and
13 comment requirements that the Department must follow when considering
14 applications for individual permits, except for individual permits specifically
15 listed in other sections of this subchapter, and when considering other permits
16 listed in this section.

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

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

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

2 (C) a public water system source permit under section 1675 of
3 this title;

4 (D) a provisional certification issued under section 6605d of this
5 title; and

6 (E) a corrective action plan under section 6648 of this title.

7 (b) Notice of application.

8 (1) The applicant shall provide notice of the application to adjoining
9 property owners. In addition, for public water system source protection areas,
10 the applicant shall provide notice to all property owners located in:

11 (A) zones 1 and 2 of the source protection area for a public
12 community water system source; and

13 (B) the source protection area for a public nontransient
14 noncommunity water system source.

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

17 (c) Notice of draft decision; comment period. The Secretary shall provide
18 notice of a draft decision through the environmental notice bulletin and shall
19 post the draft decision to the bulletin. The Secretary shall provide a public
20 comment period.

1 (d) Public meeting. Any person may request a public meeting on a draft
2 decision issued under this section or the Secretary may hold a meeting at his or
3 her discretion.

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

8 § 7714. TYPE 3 PROCEDURES

9 (a) Purpose; scope.

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

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

16 (A) Each general permit issued pursuant to the Secretary's authority
17 under this title other than a general permit subject to section 7712 of this
18 chapter. However, this section does not apply to a notice of intent under a
19 general permit.

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

- 1 (C) An application or request for approval of:
- 2 (i) an individual shoreland permit under chapter 49A of this title;
- 3 (ii) an aquatic nuisance control permit under chapter 50 of
4 this title;
- 5 (iii) a change in treatment for a public water supply under chapter
6 56 of this title;
- 7 (iv) a collection plan for mercury-containing lamps under section
8 7156 of this title;
- 9 (v) an individual plan for the collection and recycling of electronic
10 waste under section 7554 of this title; and
- 11 (vi) a primary battery stewardship plan under section 7586 of
12 this title.
- 13 (b) Notice of application. The Secretary shall provide notice of an
14 administratively complete application through the environmental notice
15 bulletin.
- 16 (c) Notice of draft decision; comment period. The Secretary shall provide
17 notice of the draft decision through the environmental notice bulletin and shall
18 post the draft decision to the bulletin. The Secretary shall provide a public
19 comment period.

1 (d) Public meeting. Any person may request a public meeting on a draft
2 decision issued under this section or the Secretary may hold a meeting at his or
3 her discretion.

4 (e) Notice of final decision. The Secretary shall provide notice of the final
5 decision through the environmental notice bulletin and shall post the final
6 decision to the bulletin. The Secretary shall provide a response to comments.

7 § 7715. TYPE 4 PROCEDURES

8 (a) Purpose; scope.

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

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

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

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

18 (i) construction or operation of an air contaminant source less than
19 10 tons per year under chapter 23 of this title;

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

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

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

8 (v) a medium scale composting certification under chapter 159 of
9 this title.

10 (b) Notice of application. The Secretary shall provide notice of an
11 administratively complete application through the environmental notice
12 bulletin.

13 (c) Notice of draft decision; comment period. The Secretary shall provide
14 notice of the draft decision through the environmental notice bulletin and shall
15 post the draft decision to the bulletin. The Secretary shall provide a public
16 comment period of at least 10 days on the draft decision.

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

1 § 7716. TYPE 5 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 issuing
5 emergency permits and other permits listed in this section.

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

8 (A) issuance of temporary emergency permits under section 912 of
9 this title;

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

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

16 (D) issuance of emergency permits issued under section 1268 of
17 this title;

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

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

1 (b) Notice of final decision. The Secretary shall provide notice of the final
2 decision through the environmental notice bulletin and shall post the decision
3 to the bulletin.

4 § 7717. AMENDMENTS; RENEWALS

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

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

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

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

14 **(e) With respect to amending a permit issued under the Clean Air Act**
15 **or Clean Water Act, if a requirement under those acts directs the**
16 **Secretary to provide the public with greater notice, opportunity to**
17 **participate, or access to information than the corresponding requirement**
18 **of this chapter, the Secretary shall comply with the federal requirement.**

19 § 7718. EXEMPTIONS

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

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

1 (2) a potable water supply and wastewater permit under section 1973(j)

2 of this title; ~~and~~

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

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

6 Subchapter 3. Administrative Appeals

7 § 7731. DEFINITIONS

8 As used in this subchapter:

9 (1) “Hearing officer” means a hearing officer appointed in
10 accordance with section 7733 of this chapter.

11 (2) “Party” means:

12 (A) the Secretary or designee;

13 (B) the applicant;

14 (C) the landowner, if the applicant is not the landowner;

15 (D) the municipality in which the project site is located, and the

16 municipal and regional planning commissions for that municipality;

17 (E) if the project site is located on a boundary, any Vermont

18 municipality adjacent to that border and the municipal and regional

19 planning commissions for that municipality;

1 **(F) the solid waste management district in which the land is**
2 **located, if the project constitutes a facility pursuant to subdivision**
3 **6602(10) of this title;**

4 **(G) a person aggrieved by an act or decision of the Secretary; and**

5 **(H) a person who meets the standard for intervention established in**
6 **the Vermont Rules of Civil Procedure.**

7 **(2) “Person aggrieved” means a person who alleges an injury to a**
8 **particularized interest protected by the provisions of law listed in subsection**
9 **8503(a) of this title, other than chapter 64 (potable water supply and**
10 **wastewater) of this title section 7732 of this chapter, if the injury is**
11 **attributable to an act or decision by the Agency Secretary that the Agency a**
12 **hearing officer can redress.**

13 **§ 7732. APPLICABILITY**

14 **(a) This subchapter shall govern all appeals of an act or decision of the**
15 **Secretary under the following authorities and under the rules adopted**
16 **under those authorities:**

17 **(1) The following provisions of this title:**

18 **(A) chapter 23 (air pollution control);**

19 **(B) chapter 32 (flood hazard areas);**

20 **(C) chapter 37 (wetlands protection and water resources**
21 **management);**

- 1 **(D) chapter 41 (regulation of stream flow);**
- 2 **(E) chapter 43 (dams);**
- 3 **(F) chapter 47 (water pollution control);**
- 4 **(G) chapter 48 (groundwater protection);**
- 5 **(H) chapter 49A (lake shoreland protection standards);**
- 6 **(I) chapter 50 (aquatic nuisance control);**
- 7 **(J) chapter 53 (beverage containers; deposit-redemption system);**
- 8 **(K) chapter 55 (aid to municipalities for water supply, pollution**
- 9 **abatement, and sewer separation);**
- 10 **(L) chapter 56 (public water supply);**
- 11 **(M) chapter 59 (underground and aboveground liquid storage**
- 12 **tanks);**
- 13 **(N) chapter 159 (waste management);**
- 14 **(O) chapter 166 (collection and recycling of electronic waste);**
- 15 **(P) chapter 164A (collection and disposal of mercury-containing**
- 16 **lamps);**
- 17 **(Q) chapter 168 (product stewardship for primary batteries and**
- 18 **rechargeable batteries).**
- 19 **(2) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).**
- 20 **(3) 29 V.S.A. chapter 11 (management of lakes and ponds).**

1 **(b) This chapter shall not govern appeals of an act or decision of the**
2 **Secretary with respect to enforcement actions under chapters 201 and 211**
3 **of this title and rulemaking.**

4 **§ 7733. APPEAL WITHIN THE AGENCY; HEARING OFFICER; GRANT**
5 **OF PETITION; STAYS**

6 (a) ~~Option; scope~~ **Scope.** Within **15** days of the date of an act or decision
7 of the Agency made under the provisions of law listed under **subdivision**
8 **8503(a) section 7332** of this title ~~other than chapter 64 (potable water~~
9 ~~supply and wastewater)~~ **of this title**, the Secretary or any person aggrieved by
10 the act or decision may petition for administrative appeal of the act or decision
11 within the Agency.

12 (b) **Appointment of hearing officer. A hearing officer appointed to**
13 **conduct an administrative appeal shall be qualified under the rules**
14 **adopted by the Secretary pursuant to section 7703 of this chapter. The**
15 **Secretary shall maintain a list of hearing officers who are so qualified.**

16 (1) On receipt of a petition for an administrative appeal, ~~the Secretary~~
17 ~~shall appoint a hearing officer to determine whether to grant the petition~~
18 ~~and, if the petition is granted, the parties shall select a hearing officer to~~
19 ~~conduct the administrative appeal. The parties shall make this selection~~
20 **within the period contained in the rules adopted under section 7703 of this**

1 **chapter. If the parties do not reach agreement within this period, the**
2 **Secretary shall select the hearing officer.**

3 **(2) In connection with ~~such a petition~~ an administrative appeal under**
4 **this subchapter, the hearing officer shall not communicate, directly or**
5 **indirectly, in connection with any issue of fact or issue of law with any person**
6 **aggrieved, other party, or the Secretary, except upon notice and opportunity for**
7 **all parties to participate. The hearing officer may solicit the advice of one or**
8 **more personal assistants.**

9 **(3) A hearing officer appointed under this section shall be able to carry**
10 **out all duties assigned to the officer without being subject to any retaliatory**
11 **action.**

12 **(4) A person having personal or pecuniary interest or the**
13 **appearance of such an interest in the outcome of an appeal shall not serve**
14 **as a hearing officer on the appeal.**

15 **(c) Grant of petition. The hearing officer shall grant a petition to hear an**
16 **administrative appeal if the officer determines that one of the following**
17 **applies:**

18 **(1) The petitioner:**

19 **(A) made a comment during the comment period, if one was**
20 **provided, and the petition relates to the comment; or the petitioner shows that**

1 there was a procedural defect that prevented the petitioner from
2 commenting; and

3 ~~**(B) presents specific allegations based on the administrative**~~
4 ~~**record that, if taken as true, would show that the act or decision should be**~~
5 ~~**reversed under the standards of review in section 7723 of this title.**~~

6 (2) The petitioner presents specific allegations that, if taken as true,
7 would show that the applicant provided false information or omitted material
8 information that was or came into the applicant's possession prior to the close
9 of the comment period.

10 (d) Information in application. In the case of an appeal by the applicant,
11 the hearing officer shall consider information contained in the application to be
12 a comment made during the comment period.

13 (e) Stays. Acceptance of an appeal under this section shall automatically
14 stay the act or decision ~~if it involves a stream alteration permit or shoreline~~
15 ~~**encroachment permit unless it involves an act or decision subject to**~~
16 ~~**section 7716 (Type 5 procedures). Otherwise**~~ With respect to an act or
17 ~~**decision subject to Type 5 procedures,**~~ the act or decision shall remain in
18 effect unless the hearing officer grants a stay. The hearing officer may grant
19 such a stay on petition by a party or on the officer's own motion.

20 ~~**(f) Tolling; period to appeal to Environmental Division. The filing of a**~~
21 ~~**petition under this section shall toll the period for filing an appeal of the**~~

1 ~~**act or decision under chapter 220 of this title. This period shall begin to**~~
2 ~~**run again in full when the hearing officer declines to hear the petition**~~
3 ~~**under subsection (c) of this section or issues a final decision under section**~~
4 ~~**7723 of this chapter, whichever is earlier.**~~

5 § 7734. NOTICE; REVIEW; DECISION

6 (a) Notice. When the **Agency hearing officer** grants a petition for an
7 administrative appeal under this subchapter, the **Agency hearing officer** shall
8 notify the petitioner ~~of the grant the applicant if other than the petitioner,~~
9 **and each other party**, and shall provide notice of the appeal in the same
10 manner as for notice of a final decision under section **7711** of this chapter.

11 (b) Hearing officer; final decision. A hearing officer appointed under this
12 section shall have authority to issue a final decision.

13 (c) **Administrative Procedure Act. The provisions of 3 V.S.A. chapter**
14 **25 shall apply to an appeal under this subchapter.**

15 (d) **Administrative record. The administrative record of the act or**
16 **decision under appeal shall be part of the record on appeal. Each party**
17 **shall have the right to conduct cross-examination on information in the**
18 **administrative record and the obligation to make witnesses available for**
19 **such cross-examination. Each party shall have the right to introduce**
20 **evidence to supplement the administrative record.**

1 ~~(e) **Conduct and standard Burden of proof; standard of review. A**~~
2 ~~**hearing officer shall conduct an administrative appeal by reviewing the**~~
3 ~~**administrative record, except as provided by subsection (d) of this section.**~~
4 ~~**The hearing officer shall provide parties with an opportunity to submit**~~
5 ~~**written memoranda and present oral argument. The petitioner shall have**~~
6 ~~**the burden of proof to demonstrate that a factual determination or**~~
7 ~~**exercise of discretion of the Secretary was in error. The hearing officer**~~
8 ~~shall apply independent judgment in deciding the appeal, **except that the**~~
9 ~~**hearing officer shall uphold the Secretary’s interpretation of a statute or**~~
10 ~~**rule administered by the Secretary unless there is a compelling indication**~~
11 ~~**of error.. The hearing officer shall affirm the decision of the Agency**~~
12 ~~**unless the hearing officer determines that the administrative record does**~~
13 ~~**not support the decision or that the decision is contrary to law.**~~

14 ~~**(d) Additional information.**~~

15 ~~**(1) The hearing officer may consider additional information not**~~
16 ~~**included in the administrative record only under one of the following two**~~
17 ~~**circumstances.**~~

18 ~~**(A) A person aggrieved persuades the hearing officer, after**~~
19 ~~**reasonable opportunity for other parties to comment, that additional**~~
20 ~~**information will materially further the Agency’s understanding of the**~~
21 ~~**application or general permit. The hearing officer shall not allow**~~

1 ~~additional information under this subdivision (1) unless the person~~
2 ~~aggrieved:~~

3 ~~(i) commented on the permit during the comment period, if~~
4 ~~one was provided, or the person shows that there was a procedural defect~~
5 ~~that prevented the person from commenting;~~

6 ~~(ii) provides the additional information at the time the person~~
7 ~~files the petition for the appeal or requests to be a party to the appeal; the~~
8 ~~additional information provides expert opinion; and the additional~~
9 ~~information is related to the person's comment during the comment~~
10 ~~period, if one was provided; and~~

11 ~~(iii) certifies that the information was not available until after~~
12 ~~the close of that comment period.~~

13 ~~(B) A person aggrieved persuades the hearing officer, after~~
14 ~~reasonable opportunity for other parties to comment, that the applicant~~
15 ~~provided the Secretary with false information or omitted information that~~
16 ~~was in the possession of the applicant before or during the comment~~
17 ~~period, if provided to the Secretary, may have caused the Secretary to~~
18 ~~reach a different decision than the one reached by the Secretary.~~

19 ~~(2) If the hearing officer determines to consider additional~~
20 ~~information, the hearing officer shall conduct the proceeding as a~~
21 ~~contested case under 3 V.S.A. chapter 25.~~

1 ~~**(e) A final decision shall include findings of fact and conclusions of law,**~~
2 ~~**separately stated. Findings of fact shall be accompanied by a concise and**~~
3 ~~**explicit statement of the underlying facts supporting the findings. All**~~
4 ~~**parties to the appeal shall be notified by mail of a final decision under this**~~
5 ~~**section. A copy of the decision shall be delivered or mailed to each**~~
6 ~~**attorney of record and to each party not having an attorney of record.**~~
7 ~~**That mailing shall constitute actual knowledge to that person or party.**~~

8 **§ 7735. APPEAL TO ENVIRONMENTAL DIVISION**

9 **Appeal of an act or decision of a hearing officer under this subchapter**
10 **shall be to the Environmental Division of the Superior Court under**
11 **chapter 220 of this title.**

12 Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS

13 **Sec. 1 of this act shall supersede take precedence over any inconsistent**
14 **requirements for notice and processing of applications contained in rules**
15 **adopted by the Department of Environmental Conservation other than rules**
16 **pertaining to applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On**
17 **or before July 1, 2019, the Secretary of Natural Resources shall commence**
18 **and complete amendments to conform these rules to Sec. 1.**

1 * * * Environmental Notice Bulletin * * *

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

3 § 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

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

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

16 (2) ~~notice of the comment period on the application and draft permit, if~~
17 ~~any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170
18 requires notice to persons through the environmental notice bulletin, the
19 bulletin shall generate an e-mail notification to those persons containing the
20 information required by that chapter.

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

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

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

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

16 (b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook
17 which lists all of the permits required for the programs administered by the
18 Department of Environmental Conservation. The handbook shall include
19 examples of activities that require certain permits, an explanation in lay terms
20 of each of the permitting programs involved, and the names, addresses, and
21 telephone numbers of the person or persons to contact for further information

1 for each of the permitting programs. The Secretary shall update the handbook
2 ~~shall be updated~~, periodically.

3 Sec. 4. BULLETIN; REVISION

4 On or before July 1, 2017, the Secretary shall revise and reestablish the
5 environmental notice bulletin to conform to the requirements of Secs. 1 and 3
6 of this act.

7 * * * On the Record Appeals from Agency of Natural Resources to the
8 Environmental Division * * *

9 Sec. 5. 10 V.S.A. Chapter 220 is amended to read:

10 § 8501. PURPOSE

11 It is the purpose of this chapter to:

12 **(1) consolidate existing appeal routes for municipal zoning and**
13 **subdivision decisions and acts or decisions of the Secretary of Natural**
14 **Resources, hearing officers under chapter 170 of this title, district**
15 **environmental coordinators, and District Commissions, excluding**
16 **enforcement actions brought pursuant to chapters 201 and 211 of this title**
17 **and the adoption of rules under 3 V.S.A. chapter 25;**

18 **(2) standardize the appeal periods, the parties who may appeal these**
19 **acts or decisions, and the ability to stay any act or decision upon appeal,**
20 **taking into account the nature of the different programs affected;**

1 **(3) encourage people to get involved in the Act 250 permitting**
2 **process at the initial stages of review by a District Commission by**
3 **requiring participation as a prerequisite for an appeal of a District**
4 **Commission decision to the Environmental Division; and**

5 **(4) assure ensure that clear appeal routes exist for acts and decisions**
6 **of the Secretary of Natural Resources and of hearing officers under**
7 **chapter 170 of this title;**

8 ~~**(5) consolidate appeals of decisions related to renewable energy**~~
9 ~~**generation plants and telecommunications facilities with review under,**~~
10 ~~**respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of**~~
11 ~~**proceedings pertaining to telecommunications facilities occurring only**~~
12 ~~**while 30 V.S.A. § 248a remains in effect.**~~

13 **§ 8502. DEFINITIONS**

14 **As used in this chapter:**

15 **(1) “District Commission” means a District Environmental**
16 **Commission established under chapter 151 of this title.**

17 **(2) “District coordinator” means a district environmental**
18 **coordinator attached to a District Commission established under chapter**
19 **151 of this title.**

1 **(3) “Environmental Court” or “Environmental Division” means the**
2 **Environmental Division of the Superior Court established by 4 V.S.A.**
3 **§ 30.**

4 **(4) “Hearing officer” means a hearing officer appointed under**
5 **subchapter 3 of chapter 170 of this title.**

6 **(5) “Natural Resources Board” or “Board” means the Board**
7 **established under chapter 151 of this title.**

8 **~~(5)~~(6) “Party by right” means the following:**

9 **(A) the applicant;**

10 **(B) the landowner, if the applicant is not the landowner;**

11 **(C) the municipality in which the project site is located, and the**
12 **municipal and regional planning commissions for that municipality;**

13 **(D) if the project site is located on a boundary, any Vermont**
14 **municipality adjacent to that border and the municipal and regional**
15 **planning commissions for that municipality;**

16 **(E) the solid waste management district in which the land is**
17 **located, if the development or subdivision constitutes a facility pursuant to**
18 **subdivision 6602(10) of this title;**

19 **(F) any State agency affected by the proposed project.**

20 **~~(6)~~(7) “Person” means any individual; partnership; company;**

21 **corporation; association; joint venture; trust; municipality; the State of**

1 Vermont or any agency, department, or subdivision of the State, any
2 federal agency, or any other legal or commercial entity.

3 ~~(7)~~**(8)** “Person aggrieved” means a person who alleges an injury to a
4 particularized interest protected by the provisions of law listed in section
5 8503 of this title, attributable to an act or decision by a district
6 coordinator, District Commission, the Secretary, or the Environmental
7 Division that can be redressed by the Environmental Division or the
8 Supreme Court.

9 ~~(8)~~**(9)** “Secretary” means the Secretary of Natural Resources or the
10 Secretary’s duly authorized representative. As used in this chapter,
11 “Secretary” shall also mean the Commissioner of Environmental
12 Conservation, the Commissioner of Forests, Parks and Recreation, and
13 the Commissioner of Fish and Wildlife, with respect to those statutes that
14 refer to the authority of that commissioner or department.

15 § 8503. APPLICABILITY

16 (a)**(1)** This chapter shall govern all appeals of an act or decision of the
17 Secretary, ~~excluding enforcement actions under chapters 201 and 211 of this~~
18 ~~title and rulemaking, a hearing officer under subchapter 3 of chapter 170 of~~
19 ~~this title. the following authorities and under the rules adopted under~~
20 ~~those authorities:~~

21 ~~(1) The following provisions of this title:~~

- 1 ~~(A) chapter 23 (air pollution control);~~
- 2 ~~(B) chapter 50 (aquatic nuisance control);~~
- 3 ~~(C) chapter 41 (regulation of stream flow);~~
- 4 ~~(D) chapter 43 (dams);~~
- 5 ~~(E) chapter 47 (water pollution control);~~
- 6 ~~(F) chapter 48 (groundwater protection);~~
- 7 ~~(G) chapter 53 (beverage containers; deposit redemption~~
- 8 ~~system);~~
- 9 ~~(H) chapter 55 (aid to municipalities for water supply, pollution~~
- 10 ~~abatement, and sewer separation);~~
- 11 ~~(I) chapter 56 (public water supply);~~
- 12 ~~(J) chapter 59 (underground and aboveground liquid storage~~
- 13 ~~tanks);~~
- 14 ~~(K) chapter 64 (potable water supply and wastewater system~~
- 15 ~~permit);~~
- 16 ~~(L) section 2625 (regulation of heavy cutting);~~
- 17 ~~(M) chapter 123 (protection of endangered species);~~
- 18 ~~(N) chapter 159 (waste management);~~
- 19 ~~(O) chapter 37 (wetlands protection and water resources~~
- 20 ~~management);~~
- 21 ~~(P) chapter 166 (collection and recycling of electronic waste);~~

1 ~~(Q) chapter 164A (collection and disposal of mercury-containing~~
2 ~~lamps);~~

3 ~~(R) chapter 32 (flood hazard areas);~~

4 ~~(S) chapter 49A (lake shoreland protection standards);~~

5 ~~(T) chapter 83, subchapter 8 (importation of firewood);~~

6 ~~(U) chapter 168 (product stewardship for primary batteries and~~
7 ~~rechargeable batteries).~~

8 ~~(2) 29 V.S.A. chapter 11 (management of lakes and ponds).~~

9 ~~(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).~~

10 ~~(2) This chapter shall govern all appeals of an act or decision of the~~
11 ~~Secretary under the following authorities and the rules adopted under~~
12 ~~those authorities:~~

13 ~~(A) 3 V.S.A. § 2809 (reimbursement of Agency costs);~~

14 ~~(B) chapter 64 of this title (potable water supply and wastewater~~
15 ~~system permit);~~

16 ~~(C) section 2625 of this title (regulation of heavy cutting);~~

17 ~~(D) chapter 83, subchapter 8 of this title (importation of~~
18 ~~firewood);~~

19 ~~(E) chapter 123 of this title (protection of endangered species).~~

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

8 (2) An aggrieved person shall not appeal an act or decision that was
9 made by ~~the Secretary under the procedures of chapter 170 of this title or~~
10 ~~a final decision by an Agency a hearing officer under subchapter 3 of that~~
11 ~~chapter unless the person submitted a comment during the comment~~
12 ~~period, if one was provided; participated in the public meeting, if one was~~
13 ~~held; and, if the appeal is from the final decision of a hearing officer,~~
14 participated before that officer. In addition, the person may only appeal those
15 issues ~~related to the comment that was filed raised~~ by that person before the
16 ~~officer. In the case of an appeal by the applicant, the Division shall~~
17 ~~consider information contained in the application to be a comment made~~
18 ~~during the comment period.~~

19 (3) Notwithstanding ~~subdivision~~ subdivisions (d)(1) and (2) of this
20 section, an aggrieved person may appeal an act or decision of the District

1 ~~Commission or the Secretary or a final decision of an Agency a hearing officer~~
2 if the Environmental judge determines that:

3 (A) there was a procedural defect which prevented the person from
4 obtaining party status, submitting a comment during comment period, or
5 otherwise participating in the proceeding;

6 (B) the decision being appealed is the grant or denial of party
7 status; or

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

10 * * *

11 (h) ~~De novo hearing~~ Hearing; standard of review. The Environmental
12 Division, applying the substantive standards that were applicable before the
13 tribunal appealed from, shall hold a de novo hearing on those issues which
14 have been appealed, except in the case of:

15 (1) a decision being appealed on the record pursuant to 24 V.S.A.
16 chapter 117;

17 (2) a decision of ~~the Secretary using the procedures under chapter 170 of~~
18 ~~this title, a final decision of an Agency a hearing officer~~ **under subchapter 3**
19 **of that chapter**, and a decision of the Commissioner of Forests, Parks and
20 Recreation under section 2625 of this title ~~being appealed on the record~~, in
21 which case the court shall affirm the decision, unless it finds that the

1 ~~Commissioner did not have reasonable grounds on which to base the decision.~~

2 Division shall review the decision on the record, applying the following

3 standards of review:

4 (A) The Division shall affirm the decision’s statements or findings of
5 fact unless they are clearly erroneous.

6 (B) The Division shall affirm an exercise of discretion unless the
7 Secretary, hearing officer, or Commissioner abused that discretion.

8 (C) ~~The Division shall defer to the decision’s interpretation of the~~
9 Agency’s When reviewing a decision of the hearing officer concerning the
10 Agency’s enabling legislation and its rules Secretary’s interpretation of a
11 statute or rule administered by the Secretary, the Division shall decide if
12 the hearing officer correctly determined whether there is a compelling
13 indication of error in that interpretation.

14 * * *

15 **Sec. 6. REPEAL**

16 **10 V.S.A. § 8506 (renewable energy plant; telecommunications facility;**
17 **appeals) is repealed.**

1 ~~provide an opportunity for public comment or a public informational hearing,~~
2 ~~or both, before ruling on a proposed permit. In determining whether to provide~~
3 ~~for comment or a meeting, the secretary shall consider the degree of toxicity of~~
4 ~~the air contaminant and the emission rate, the proximity of the source to~~
5 ~~residences, population centers and other sensitive human receptors, and~~
6 ~~emission dispersion characteristics at or near the source. The secretary shall~~
7 ~~fully consider all written and oral submissions concerning proposed permits~~
8 ~~prior to taking final action on those proposed permits. When an application is~~
9 ~~filed under this section, the Secretary shall proceed in accordance with chapter~~
10 ~~170 of this title.~~

11 * * *

12 Sec. 8. 10 V.S.A. § 556a is amended to read:

13 § 556a. OPERATING PERMITS

14 * * *

15 (c) ~~For air contaminant sources that have allowable emissions of more than~~
16 ~~10 tons per year of all contaminants, excluding greenhouse gases, upon making~~
17 ~~a determination to issue a draft permit, the secretary shall issue a notice that~~
18 ~~includes a brief description of the source and the address where a complete~~
19 ~~permit application and a draft permit may be reviewed, shall provide a public~~
20 ~~comment period on all draft permits, and shall hold a public informational~~
21 ~~meeting, if requested. The public comment period on a draft permit for a~~

1 ~~source that has allowable emissions of more than 10 tons per year, excluding~~
2 ~~greenhouse gases, shall be 30 days if the source is subject to subchapter V~~
3 ~~(permits) of 42 U.S.C. chapter 85 (air pollution prevention and control) and~~
4 ~~shall otherwise be 10 days. For air contaminant sources that have allowable~~
5 ~~emissions of less than ten tons per year of all contaminants, the secretary may~~
6 ~~provide an opportunity for public comment or a public informational hearing,~~
7 ~~or both, before ruling on a proposed permit. In determining whether to provide~~
8 ~~for comment or a meeting, the secretary shall consider the degree of toxicity of~~
9 ~~the air contaminant and the emission rate, the proximity of the source to~~
10 ~~residences, population centers and other sensitive human receptors, and~~
11 ~~emission dispersion characteristics at or near the source. The secretary shall~~
12 ~~fully consider all written and oral submissions concerning proposed permits~~
13 ~~prior to taking final action on those proposed permits. When an application is~~
14 ~~filed under this section, the Secretary shall proceed in accordance with~~
15 ~~chapter 170 of this title.~~

16 * * *

17 (e) A person may renew a permit issued under this section ~~may be renewed~~
18 upon application to the ~~secretary~~ Secretary for a fixed period of time, not to
19 exceed five years.

20 (1) ~~A permit being renewed shall be subject to the same procedural~~
21 ~~requirements, including those for public participation, that apply to initial~~

1 ~~permit issuance, except that a permit being renewed shall not be subject to the~~
2 ~~public notice and comment requirements of this chapter if all of the following~~
3 ~~apply:~~

4 ~~(A) The secretary determines that no substantive changes have~~
5 ~~occurred at the air contaminant source that would affect emissions or require~~
6 ~~changes to the permit.~~

7 ~~(B) The secretary determines no new statutory or regulatory~~
8 ~~requirements need to be added to the permit.~~

9 ~~(C) The air contaminant source does not require a permit under~~
10 ~~subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and~~
11 ~~control).~~

12 ~~(2)~~ The secretary Secretary shall not issue a permit renewal unless the
13 applicant first demonstrates that the emissions from the subject source meet all
14 applicable emission control requirements or are subject to, and in compliance
15 with, an appropriate schedule of compliance.

16 * * *

17 (h)(4) ~~The secretary may issue~~ Secretary may adopt, as a rule under
18 3 V.S.A. chapter 25, a general operating permits permit covering numerous
19 similar sources. ~~A general permit shall be adopted as an administrative rule~~
20 ~~under the provisions of 3 V.S.A. chapter 25. Each rule creating a general~~

1 ~~permit shall include provisions that require public notice of the fact that~~
2 ~~specified emitters have applied for general permits.~~

3 ~~(2) Each rule creating a general permit shall provide a process by which~~
4 ~~interested persons can obtain detailed information about the nature and extent~~
5 ~~of the activity proposed to receive a general permit, and a process by which~~
6 ~~aggrieved persons can obtain an opportunity to be heard on a request that the~~
7 ~~general permit be issued only subject to specific conditions to limit or mitigate~~
8 ~~the effects of the emissions in question. Based on information presented at~~
9 ~~such a hearing, an applicant may be required to obtain a permit other than a~~
10 ~~general permit, or may obtain a general permit subject to specified conditions.~~

11 * * *

12 Sec. 9. 10 V.S.A. § 754 is amended to read:

13 § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM
14 MUNICIPAL REGULATION

15 * * *

16 (b) Required rulemaking content. The rules shall:

17 (1) set forth the requirements necessary to ensure uses exempt from
18 municipal regulation are regulated by the State in order to comply with the
19 regulatory obligations set forth under the National Flood Insurance Program.

20 (2) be designed to ensure that the State and municipalities meet
21 community eligibility requirements for the National Flood Insurance Program.

1 ~~to the wetland or buffer zone in question; publish notice on the Agency~~
2 ~~website; and provide an electronic notice to persons who have requested to be~~
3 ~~on a list of interested persons. Such notice shall include the date of the~~
4 ~~Secretary's proposed determination and shall provide no fewer than 30 days~~
5 ~~from the date of the Secretary's proposed determination within which to file~~
6 ~~written comments or to request that the Secretary hold a public meeting on the~~
7 ~~proposed determination. The provisions of chapter 170 of this title shall apply~~
8 ~~to issuance of determinations under this section.~~

9 (d) ~~The Secretary shall provide, in person, by mail, or by electronic notice,~~
10 ~~a written copy of a wetland determination issued under this section to the~~
11 ~~owner of each affected parcel of land and to the requesting petitioner.~~

12 [Repealed.]

13 * * *

14 Sec. 11. 10 V.S.A. § 1022 is amended to read:

15 § 1022. APPLICATION FOR ALTERATION

16 A person proposing to change, alter, or modify the course, current, or cross
17 section of a watercourse shall apply in writing to the ~~secretary~~ Secretary for a
18 permit to do so. The application shall describe the location and purpose of the
19 proposed change and shall be accompanied by the maps and plans and other
20 information the ~~secretary~~ Secretary shall direct. ~~A conformed copy shall be~~
21 ~~simultaneously filed with the town clerk of the town in which the proposed~~

1 ~~alteration is located, and mailed to each owner of property that abuts or is~~
2 ~~opposite the land where the alteration is to take place. The town clerk shall~~
3 ~~forthwith post the copy in the town office. When an application is filed under~~
4 ~~this section, the Secretary shall proceed in accordance with chapter 170 of this~~
5 ~~title and the requirements of this subchapter.~~

6 Sec. 12. 10 V.S.A. § 1023 is amended to read:

7 § 1023. INVESTIGATION, PERMIT

8 * * *

9 (b) The reasons for the action taken under this section shall be set forth in
10 writing to the applicant. ~~Notice of the action of the Secretary shall also be sent~~
11 ~~to the selectboard of the town in which the proposed change is located, and to~~
12 ~~each owner of property which abuts or is opposite the land where the alteration~~
13 ~~is to take place.~~

14 * * *

15 Sec. 13. 10 V.S.A. § 1083 is amended to read:

16 § 1083. APPLICATION

17 (a) Any person who proposes to undertake an action subject to regulation
18 pursuant to section 1082 of this title shall apply in writing to the ~~state~~ State
19 ~~agency having jurisdiction, and shall give notice thereof to the governing body~~
20 ~~of the municipality or municipalities in which the dam or any part of the dam is~~
21 ~~to be located.~~ The application shall set forth:

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Sec. 14. 10 V.S.A. § 1085 is amended to read:

§ 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the ~~state~~ State agency having jurisdiction shall give notice to the legislative body of each municipality in which the dam is allocated and to all persons interested.

(1) ~~For any project subject to its jurisdiction under this chapter, on the petition of 25 or more persons the department shall, or on its own motion it may, hold a public information meeting in a municipality in the vicinity of the proposed project to hear comments on whether the proposed project serves the public good and provides adequately for the public safety. Public notice shall be given by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper at least 10 days before the meeting. The Department shall proceed in accordance with chapter 170 of this title.~~ The Department shall proceed in accordance with chapter 170 of this title.

(2) For any project subject to its jurisdiction under this chapter, the public service board shall hold a hearing on the application. The purpose of the hearing shall be to determine whether the project serves the public good as defined in section 1086 of this title and provides adequately for the public safety. The hearing shall be held in a municipality in the vicinity of the

1 proposed project and may be consolidated with other hearings, including
2 hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be
3 given at least 10 days before the hearing to interested persons by posting in the
4 municipal offices of the towns in which the project will be completed and by
5 publishing in a local newspaper.

6 Sec. 15. 10 V.S.A. § 1100 is amended to read

7 § 1100. FEDERAL COOPERATION

8 * * *

9 (4) Where cultivated agricultural lands in excess of one hundred acres
10 are to be taken for the purposes of a flood control project, or the recreational
11 development of the ~~state~~ State or the economy of the river basin involved may
12 be affected thereby, ~~the department, of its own motion, may, and upon petition~~
13 ~~to it by interested parties, shall, appoint a time and place for hearing in the~~
14 ~~vicinity of the flood control project, hold a public information meeting after~~
15 ~~giving notice to interested parties as it directs~~ Department shall provide notice,
16 an opportunity to submit comments, and an opportunity to request a public
17 meeting in accordance with section 7713 (Type 2 Procedures) of this title.
18 ~~Upon hearing, the department~~ The Department shall determine the effect the
19 flood control project will have upon agricultural land uses or recreational
20 values in this ~~state~~ State, or upon the economy of the river basin involved, and
21 report its findings and recommendations to the proper federal agency or

1 authority having the flood control project in charge for its consideration and
2 recognition. The Department shall post its findings and recommendations as a
3 final decision in accordance with chapter 170 of this title.

4 Sec. 16. 10 V.S.A. § 1252 is amended to read:

5 § 1252. CLASSIFICATION OF WATERS; MIXING ZONES

6 * * *

7 (d) Prior to the initial authorization of a new waste management zone,
8 except those created pursuant to subsection (b) of this section, or prior to the
9 expansion of the size of an existing zone created under this section, in order to
10 accommodate an increased discharge, the Secretary shall:

11 (1) Prepare a draft permit which includes a description of the proposed
12 waste management zone ~~prior to publishing the notice required by subdivision~~
13 ~~(2) of this subsection~~ and proceed in accordance with subsections 7713(c), (d),
14 and (e) of this title.

15 ~~(2) Publish notice in both a local newspaper generally circulating in the~~
16 ~~area where the affected waters are located and a separate newspaper generally~~
17 ~~circulating throughout the State not less than 21 days prior to the public~~
18 ~~hearing required by this subsection. The notice shall describe the draft permit~~
19 ~~and proposed waste management zone and provide for the opportunity to file~~
20 ~~written comment for not less than seven days following the hearing.~~

1 (b) ~~Except for applications for permission to discharge under the terms of a~~
2 ~~previously issued general permit, the secretary shall provide for notice of each~~
3 ~~application to the public and any appropriate officials of another state and the~~
4 ~~federal government including the administrator of the United States~~
5 ~~Environmental Protection Agency, and shall provide an opportunity for written~~
6 ~~comments or a public hearing or both on the application before making a final~~
7 ~~ruling on the application. Prior to issuing a general permit, the secretary shall~~
8 ~~give notice as provided in this subsection and provide for written comments or~~
9 ~~a public hearing or both as provided in this subsection. For applications for~~
10 ~~permission to discharge under the terms of a previously issued general permit,~~
11 ~~the applicant shall provide notice, on a form provided by the secretary, to the~~
12 ~~municipal clerk of the municipality in which the discharge is located at the~~
13 ~~time the application is filed with the secretary, and the secretary shall provide~~
14 ~~an opportunity for written comment, regarding whether the application~~
15 ~~complies with the terms and conditions of the general permit, for ten days~~
16 ~~following receipt of the application. When an application is filed under this~~
17 ~~section, the Secretary shall proceed in accordance with chapter 170 of this title.~~
18 The ~~secretary~~ Secretary may require any applicant to submit any additional
19 information, ~~which~~ that the ~~secretary~~ Secretary considers necessary and may
20 refuse to grant a permit, or permission to discharge under the terms of a
21 general permit, until the information is furnished and evaluated.

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Sec. 18. 10 V.S.A. § 1265 is amended to read:

§ 1265. TEMPORARY POLLUTION PERMITS

* * *

(b) ~~The Secretary shall give notice of each application to the public and any appropriate officials of another state and the federal government including the administrator of the U.S. Environmental Protection Agency, and shall provide an opportunity for written comments or a public hearing, or, both on the application before ruling on the application.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require the applicant to submit any additional information ~~which he or she~~ that the Secretary considers necessary, and may refuse to grant a permit until the information is furnished and evaluated.

* * *

Sec. 19. 10 V.S.A. § 1268 is amended to read:

§ 1268. EMERGENCY PERMITS

When a discharge permit holder finds that pollution abatement facilities require repairs, replacement or other corrective action in order for them to continue to meet standards specified in the permit, ~~he or she~~ the holder may apply in the manner specified by the ~~secretary~~ Secretary for an emergency pollution permit for a term sufficient to effect repairs, replacements or other

1 corrective action. ~~The permit may be issued without prior public notice if the~~
2 ~~nature of the emergency will not provide sufficient time to give notice;~~
3 ~~provided that the secretary shall give public notice as soon as possible but in~~
4 ~~any event no later than five days after the effective date of the emergency~~
5 ~~pollution permit. The Secretary shall proceed in accordance with chapter 170~~
6 ~~of this title. No emergency pollution permit shall be issued unless the~~
7 ~~applicant certifies and the secretary Secretary finds that:~~

8 * * *

9 Sec. 20. 10 V.S.A. § 1418 is amended to read:

10 § 1418. GROUNDWATER WITHDRAWAL PERMIT

11 * * *

12 ~~(c)(1) At least 30 days before filing an application for a permit under this~~
13 ~~section, the applicant shall hold an informational hearing in the municipality in~~
14 ~~which the withdrawal is proposed in order to describe the proposed project and~~
15 ~~to hear comments regarding the proposed project. Public notice shall be given~~
16 ~~by posting in the municipal offices of the town in which the withdrawal is~~
17 ~~proposed and by publishing in a local newspaper at least 10 days before the~~
18 ~~meeting.~~

19 ~~(2) On or before the date of filing with the secretary of natural resources~~
20 ~~an application for a permit under this section, an applicant for a withdrawal~~
21 ~~under this section shall notify:~~

1 ~~(A) the clerk, legislative body, and any conservation commission in~~
2 ~~the municipality in which the proposed withdrawal is located;~~

3 ~~(B) adjoining municipalities;~~

4 ~~(C) the regional planning commission in the region where the~~
5 ~~proposed withdrawal is located;~~

6 ~~(D) all landowners and mobile home park residents within the zone~~
7 ~~of influence of a groundwater withdrawal or within one quarter mile~~
8 ~~downstream from a withdrawal from a spring. Notice to the officers of a~~
9 ~~condominium association shall be deemed sufficient under this subdivision for~~
10 ~~notice to residents of a condominium; and~~

11 ~~(E) any public water systems permitted by the agency of natural~~
12 ~~resources in the municipality where the proposed withdrawal is located.~~

13 ~~(3) The applicant shall publish notice of the application in a newspaper~~
14 ~~of general circulation in the area in which the withdrawal is proposed and shall~~
15 ~~post a copy of the notice in the municipal clerk's office in the municipality in~~
16 ~~which the withdrawal is located.~~

17 ~~(4) On its own motion or on receipt of a written request, the agency shall~~
18 ~~hold a public meeting in the municipality in which the withdrawal is proposed~~
19 ~~in order to describe the proposed project and to hear comments regarding the~~
20 ~~proposed project. Opportunity shall be given all participants at a public~~
21 ~~meeting to ask questions and comment on all issues involved. The agency~~

1 ~~shall prepare a responsiveness summary for each public meeting conducted.~~
2 ~~Public notice shall be given by posting in the municipal offices of the town in~~
3 ~~which the withdrawal is proposed and by publishing in a local newspaper at~~
4 ~~least 10 days before the meeting.~~

5 ~~(5) No defect in the form or substance of any notice requirements in~~
6 ~~subdivision (1), (2), (3), or (4) of this subsection shall invalidate an application~~
7 ~~for a permit under this section provided that reasonable efforts are made to~~
8 ~~provide adequate posting and notice. An application for a permit under this~~
9 ~~section shall be invalid when a defective posting or notice was materially~~
10 ~~misleading in content. If an action is ruled to be invalid by the environmental~~
11 ~~division, the applicant may reapply and provide new posting and notice. When~~
12 ~~an application is filed under this section, the Secretary shall proceed in~~
13 ~~accordance with chapter 170 of this title.~~

14 * * *

15 Sec. 21. 10 V.S.A. § 1443 is amended to read:

16 § 1443. INDIVIDUAL PERMIT REQUIREMENTS FOR IMPERVIOUS
17 SURFACE OR CLEARED AREA IN A PROTECTED
18 SHORELAND AREA

19 * * *

20 (c) Permit process.

1 ~~(1) A person applying for a permit shall do so on a form provided by the~~
2 ~~Secretary. The application shall be posted on the Agency's website.~~

3 ~~(2) A person applying for a permit shall provide notice, on a form~~
4 ~~provided by the Secretary, to the municipal clerk of the municipality in which~~
5 ~~the construction of impervious surface or creation of cleared area is located at~~
6 ~~the time the application is filed with the Secretary.~~

7 ~~(3) The Secretary shall provide an opportunity for written comment~~
8 ~~regarding whether an application complies with the requirements of this~~
9 ~~chapter or any rule adopted by the Secretary, for 30 days following receipt of~~
10 ~~the application. When an application is filed under this section, the Secretary~~
11 ~~shall proceed in accordance with chapter 170 of this title.~~

12 * * *

13 Sec. 22. 10 V.S.A. § 1455 is amended to read:

14 § 1455. AQUATIC NUISANCE CONTROL PERMIT

15 * * *

16 ~~(h) The Secretary shall adopt procedures under 3 V.S.A. chapter 25 which~~
17 ~~will provide an opportunity for public review and comment on permit~~
18 ~~applications. The procedures shall classify permit applications by degree of~~
19 ~~environmental risk involved and establish appropriate opportunities for public~~
20 ~~notice and comment for each class. When an application is filed under this~~
21 ~~section, the Secretary shall proceed in accordance with chapter 170 of this title.~~

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Sec. 23. 10 V.S.A. § 1456 is amended to read:

§ 1456. AQUATIC SPECIES RAPID RESPONSE GENERAL PERMITS

* * *

~~(c) The secretary shall provide notice of the application to the municipal clerk of the municipality or municipalities in which the proposed control activity will be conducted at the time the request for authorization is filed with the secretary. The secretary shall provide an opportunity for written comment regarding whether the request complies with the terms and conditions of the aquatic species rapid response general permit for 10 days following receipt of the request for authorization.~~ When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title.

* * *

Sec. 24. 10 V.S.A. § 1675 is amended to read:

§ 1675. PERMITS; CONDITIONS; DURATION; SUSPENSION OF
REVOCATION

* * *

~~(c) Notice and hearing.~~ Permit process; additional information.

~~(1) The Secretary shall give notice of each application for a new source for a community or nontransient, noncommunity water system to the public by publication in a newspaper of general circulation for the area containing the~~

1 ~~proposed system and by causing a notice to be posted in the clerk's office for~~
2 ~~the municipality containing the proposed system or source. The Secretary~~
3 ~~shall also give notice to appropriate State agencies. The applicant shall notify~~
4 ~~all adjoining landowners. The Secretary shall provide an opportunity for~~
5 ~~written comment or a public hearing, or both, on the application before ruling~~
6 ~~on the application. When an application is filed under this section, the~~
7 ~~Secretary shall proceed in accordance with chapter 170 of this title. The~~
8 Secretary may require the applicant to submit additional information which
9 that the Secretary considers necessary in order to support the findings required
10 in subsection (b) of this section, and may refuse to grant a permit until the
11 information is furnished and evaluated. The Secretary may also consult with
12 the Commissioner of Health, as necessary, in making decisions regarding
13 health issues raised by the application. The Commissioner's response, if any,
14 shall be part of the public record for the application.

15 ~~(2) The Secretary shall give notice to the public of each application by a~~
16 ~~public community system for the addition of a new type of disinfectant by~~
17 ~~publication in a newspaper of general circulation for the area containing the~~
18 ~~proposed system and by causing a notice to be posted in the clerk's office for~~
19 ~~the municipality in which the system is located. The Secretary shall also give~~
20 ~~notice to appropriate State agencies. The Secretary shall provide an~~
21 ~~opportunity for written comment and shall, upon request, provide for a public~~

1 ~~hearing on the application before ruling on the application. The Secretary may~~
2 ~~require the applicant to submit additional information which the Secretary~~
3 ~~considers necessary in order to support the findings required in subsection (b)~~
4 ~~of this section, and may refuse to grant a permit until the information is~~
5 ~~furnished and evaluated. The Secretary may also consult with the~~
6 ~~Commissioner of Health, as necessary, in making decisions regarding health~~
7 ~~issues raised by the application. The Commissioner's response, if any, shall be~~
8 ~~part of the public record for the application.~~

9 * * *

10 Sec. 25. 10 V.S.A. § 1679 is amended to read:

11 § 1679. PUBLIC WATER SOURCE PROTECTION AREAS

12 * * *

13 (d) ~~The Secretary shall give notice of each proposed public water source~~
14 ~~protection area to the public by publication in a newspaper of general~~
15 ~~circulation for the area containing the proposed protection area and by causing~~
16 ~~a notice to be posted in the clerk's office for the municipality containing the~~
17 ~~proposed area. The Secretary shall also give notice to adjoining landowners~~
18 ~~and all appropriate officials of municipalities and State agencies. The~~
19 ~~Secretary shall provide an opportunity for written comment or a public~~
20 ~~hearing, or both, on the proposed area before designating the area. If the area~~
21 ~~is to be classified under chapter 48 of this title, the classification procedures~~

1 ~~shall satisfy the provisions of this subsection.~~ When the Secretary proposes to
2 designate a public water source protection area under the rules adopted
3 pursuant to subsection (a) of this section, the Secretary shall proceed in
4 accordance with chapter 170 of this title.

5 * * *

6 Sec. 26. 10 V.S.A. § 6605 is amended to read:

7 § 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

8 * * *

9 (f) ~~On or before the date of filing any certification or permit application for~~
10 ~~a facility, the applicant shall send notice and a copy of the application to the~~
11 ~~municipality where the facility is proposed to be or is located, and any adjacent~~
12 ~~Vermont municipality if the land is located on a boundary. The applicant shall~~
13 ~~furnish to the certifying or permitting authority the names of those furnished~~
14 ~~notice of application. Notwithstanding the provisions of subsection (c) of this~~
15 ~~section, the Secretary shall not issue a certification for a new facility or a~~
16 ~~recertification for an existing facility unless the town, city, or village in which~~
17 ~~the facility is located has been notified.~~ When an application for a certification
18 is filed under this section, the Secretary shall proceed in accordance with
19 chapter 170 of this title.

20 (g)(1) Notwithstanding any ~~other~~ contrary provision of this section, the
21 Secretary may authorize the land disposal or management of sludge or septage

1 by an applicant at any certified site or facility with available capacity, provided
2 the Secretary finds:

3 * * *

4 (2) ~~The Secretary shall, following his or her issuance of approval of~~
5 ~~emergency sludge or septage disposal under this subsection, provide public~~
6 ~~notice of that action.~~ Issuance of an approval under this subsection shall
7 comply with section 7716 of this title.

8 * * *

9 Sec. 27. 10 V.S.A. § 6605c is amended to read:

10 § 6605c. SOLID WASTE CATEGORICAL CERTIFICATIONS

11 * * *

12 (d) ~~On or before the date of filing any certification application for a facility,~~
13 ~~the applicant shall send notice and a copy of the application to the municipality~~
14 ~~where the facility is proposed to be or is located and any adjacent Vermont~~
15 ~~municipality if the facility is located on a boundary. The applicant shall~~
16 ~~furnish the Secretary the names of those noticed of the application.~~ When an
17 application for a certification is filed under this section, the Secretary shall
18 proceed in accordance with chapter 170 of this title.

19 * * *

1 Sec. 28. 10 V.S.A. § 6605d is amended to read:

2 § 6605d. PROVISIONAL CERTIFICATION

3 * * *

4 (e) ~~The Secretary shall provide notice of the opportunity for public~~
5 ~~comment on an application for provisional certification, any proposed findings~~
6 ~~with respect to the application, and the time and place of a public informational~~
7 ~~meeting.~~

8 (1) ~~The notice shall be published at least 14 days prior to the meeting~~
9 ~~and the public comment period shall end no sooner than 14 days after the~~
10 ~~meeting.~~

11 (2) ~~In addition to the publication of notice in newspapers of general~~
12 ~~circulation in the area where the facility is located, the following persons shall~~
13 ~~be notified:~~

14 (A) ~~The legislative body and the planning commission of the~~
15 ~~municipality in which the facility is located and the legislative bodies and~~
16 ~~planning commissions of all municipalities that will be served by the facility.~~

17 (B) ~~All landowners whose property adjoins the facility.~~

18 (C) ~~Any other state agency or subdivision of the state that has issued~~
19 ~~or may be required to issue a permit for the facility.~~

20 (D) ~~The regional planning commission and any solid waste district~~
21 ~~serving the town, city or gore where the facility is located.~~

1 Sec. 31. 10 V.S.A. § 7554 is amended to read:

2 § 7554. MANUFACTURER OPT-OUT INDIVIDUAL PLAN

3 * * *

4 (d) ~~Public review and consultation. Prior to approval of a plan under this~~
5 ~~section, the Agency shall make the manufacturer's proposed plan available for~~
6 ~~public review and comment for at least 30 days. Before approving an~~
7 individual plan under this section, the Secretary shall proceed in accordance
8 with chapter 170 of this title.

9 * * *

10 Sec. 32. 10 V.S.A. § 7586 is amended to read:

11 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

12 (a) Approval of plan. Within 90 days after receipt of a proposed primary
13 battery stewardship plan, not including the time required for public comment
14 under ~~subsection (e) of this section~~ chapter 170 of this title, the Secretary shall
15 determine whether the plan complies with the requirements of section 7584 of
16 this title. If the Secretary determines that a plan complies with the
17 requirements of section 7584 of this title, the Secretary shall notify the
18 applicant of the plan approval in writing. If the Secretary rejects a primary
19 battery stewardship plan, the Secretary shall notify the applicant in writing of
20 the reasons for rejecting the plan. An applicant whose plan is rejected by the
21 Secretary shall submit a revised plan to the Secretary within 45 days of

1 receiving notice of rejection. A primary battery stewardship plan that is not
2 approved or rejected by the Secretary within 90 days, not including the time
3 required for public comment under ~~subsection (e) of this section~~ chapter 170 of
4 this title, of submission by a producer shall be deemed approved.

5 * * *

6 (c) ~~Public notice review.~~ ~~The Secretary shall post all proposed primary~~
7 ~~battery stewardship plans and all proposed amendments to a primary battery~~
8 ~~stewardship plan on the Agency's website for 30 days from the date the~~
9 ~~application for a plan or a plan amendment is deemed complete by the~~
10 ~~Secretary, subject to the confidentiality provisions of section 7592 of this title.~~
11 When the Secretary receives a request to approve or amend a primary battery
12 stewardship plan under this subchapter, the Secretary shall proceed in
13 accordance with chapter 170 of this title.

14 (d) ~~Public input.~~ ~~The Secretary shall establish a process under which a~~
15 ~~primary battery stewardship plan, prior to plan approval or amendment, is~~
16 ~~available for public review and comment.~~ [Repealed.]

17 * * *

18 Sec. 33. 29 V.S.A. § 405 is amended to read:

19 § 405. INVESTIGATION AND DETERMINATION OF PUBLIC GOOD

20 (a) ~~Written notice of each application shall be given by the department to~~
21 ~~abutting property owners, the selectmen of the town in which the proposed~~

1 approving or denying an application shall not be effective until 10 days after
2 the ~~department's~~ Department's notice of action.

3 * * * Effective Dates * * *

4 Sec. 34. EFFECTIVE DATES

5 This act shall take effect on **January 1, 2018**, except that Sec. 4 (bulletin;
6 revision) and this section shall take effect on passage and Secs. 1 (standard
7 procedures) and 3 (environmental notice bulletin) shall apply to the
8 implementation of Sec. 4.

9
10 (Committee vote: _____)

11 _____

12 Senator _____

13 FOR THE COMMITTEE