

Overview: S.123: Standardized Procedures for DEC Permits
Office of Legislative Council May 2, 2016

I. Major components as passed by Senate

- A. Standardized procedures for Dept. of Environmental Conservation (DEC) permits, according to five categories established in the bill
- B. Requirement to participate in the permitting process in order to appeal to the Environmental Division, with exceptions
- C. Conforming amendments
- D. Appeal of jurisdictional opinions issued under 10 V.S.A. chapter 151 directly to the Environmental Division

II. House amendment

- A. Three instances of amendment
- B. First instance:
 - 1. Includes misc. changes to the standardized procedures such as:
 - a) Notice at the outset of the process of the requirement to participate in order to appeal
 - b) Clarifying that, for three of the five categories, DEC will hold a public meeting when requested
 - 2. Modifies the language on the requirement to participate in order to appeal; requires that comment be specific enough to allow meaningful response
- C. Second instance adds an extension of time until July 1, 2017 for DEC to issue rules on managing excavated development soils that contain contaminants
- D. Third instance addresses effective dates

III. 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
 - 5. *House amendment also excludes professional licenses issued by DEC (e.g., well drillers)*
- B. Process components
 - 1. Notice through revamped environmental notice bulletin
 - a) E-mail
 - b) Website
 - 2. Notice to adjoining property owners (only Types 1 and 2 procedures, described below) – 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 to request meeting; 14 days' notice of meeting; requirement for applicant and DEC to respond to questions at 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
 4. *House amendment adds language allowing requests to the Secretary to extend the deadlines established by this chapter*
- D. Establishes five categories or types of procedures
 1. **Type 1** – federal general and individual permits under Clean Air and Water Acts
 - a) Includes all the process components described in B above
 - b) 30-days to request public meeting, notice of meeting
 - c) Must comply with any more stringent federal requirements
 - d) *House amendment clarifies that, for Type 1, 2, and 3 permits, DEC must hold a public meeting when requested*
 2. **Type 2** – most individual permits under state programs administered by DEC
 - a) Examples: wetlands, public water system source permits
 - b) Includes all the process components described in B above
 - c) *House amendment moves individual shoreland permits out of the Type 3 procedures into the Type 2 procedures, requiring notification to adjoining owners on the terrestrial side of the shoreland*
 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) Includes all the other process components described in B above
 4. **Type 4** – notices of intent under general permits
 - a) Also includes some other permits such as construction or expansion of public water supply
 - b) No notice to adjoining property owners
 - c) 10-day comment period; *House amendment proposes to change to 14 days*
 - 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
 3. Administrative amendments exempt
 4. Must comply with any more stringent requirements for amendment under Clean Air and Water Acts
- F. Session law sections included that:
 1. Set time frames for rulemaking and revising environmental notice bulletin

2. Require a report back by ANR in 2020 on the implementation of the act

IV. **Appeal to the Environmental Division**

- A. Adds a requirement that, to appeal from ANR to the Environmental Division, a person must have submitted a written or oral comment to ANR
 1. May only appeal issues related to the comment
 2. *House amendment requires that comment must be specific enough to allow a meaningful response*
- B. Provides for exceptions to this limitation, including an exception for a procedural defect that prevented submitting a comment
- C. *House amendment requires ANR to transfer the administrative record to the Environmental Division*
- D. *House amendment makes these changes applicable to appeals from ANR to the Public Service Board on renewable energy and telecom 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

VI. **Act 250 Jurisdictional Opinions**

- A. Revises the process for appealing jurisdictional determinations under Act 250 so that the appeal goes directly to the Environmental Division rather than requiring the appellant first to seek reconsideration by the Natural Resources Board
- B. This repeals a change made in 2013 to require an appellant to seek such reconsideration; before 2013, the appeal was directly to the Division
- C. Jurisdictional opinions concern whether a project needs an Act 250 permit

VII. **Management of Development Soils (added by House)**

- A. Extends to July 1, 2017 an deadline for ANR adopted in Act 52 of last year to complete rulemaking on managing contaminated soils excavated for development
- B. Extends to July 1, 2017 an interim process created in Act 52 for disposal of certain contaminated soils excavated for development in designated downtowns until ANR adopts these rules

VIII. **Effective Dates**

- A. Most of the act takes effect on Jan. 1, 2018, allowing DEC time to implement
- B. The following take effect on passage:
 1. Session law sections establishing a time frame for rulemaking and revising the environmental notice bulletin
 2. The changed appeal route for Act 250 jurisdictional opinions
 3. The deadline changes on management of development soils