

S.123: Standardized Procedures for DEC Permits
Section by Section Description
Office of Legislative Council Jan. 6, 2016

§	DESCRIPTION
	<i>Environmental Conservation; Standard Procedures; Option for Administrative Appeal</i>
1	<p>10 V.S.A. Chapter 170: Department of Environmental Conservation: Standard Procedures; Administrative Appeals</p>
	<p><u>Subchapter 1:</u> General Provisions</p>
	<p>10 V.S.A. § 7701. Purpose</p> <p>Establish standard procedures for public notice, public meetings, and decisions on applications for permits issued by the Department of Environmental Conservation (EC) and provide an option for appeal within the Agency of Natural Resources (ANR).</p>
	<p>10 V.S.A. § 7702: Definitions</p> <ul style="list-style-type: none"> • “Administrative amendment,” “minor amendment,” “major amendment” – these definitions affect how much process is required to change an existing permit • “Administrative record” – affects what is reviewed in the administrative appeal • “Technical review” –affects whether an amendment is or is not a major
	<p>10 V.S.A. § 7703. Rules; Additional Notice or Procedures</p> <p>Authorizes rules to implement the chapter and requires procedural rules to implement the administrative appeals process in subchapter 3.</p> <p>Includes discretion to require notice to persons in addition to those specified in the chapter and to apply Type 2 procedures to permits otherwise issued under Types 4 and 5.</p>
	<p><u>Subchapter 2:</u> Standard Procedures</p>
	<p>10 V.S.A. § 7704. Permit Procedures; Standard Provisions</p> <p>This section sets out elements that are used in one or more of the five process categories that follow.</p> <ul style="list-style-type: none"> • Electronic notice through environmental notice bulletin. • When notice is required to adjoining property owners, to be by mail. • Default periods for comment (30 days), requesting public meeting (14 days), notice of public meeting (14 days). • Posting of draft decision and supporting documents. • Response to comments. • Posting and issuance of final decision.

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1, ctd .	<p>10 V.S.A. § 7705: Type 1 Procedures</p> <ul style="list-style-type: none"> • Scope: General and individual permits under the federal Clean Air and Water Acts and Resource Conservation and Recovery Act • Elements: Notice of application to adjoining property owners and any other persons whom federal law requires; notice in the environmental notice bulletin; notice of draft decision through the bulletin and newspapers; issuance of fact sheet; public comment period; opportunity for public meeting; 30 days' notice of public meeting; and notice and issuance of final decision with response to comments.
	<p>10 V.S.A. § 7706: Type 2 Procedures</p> <ul style="list-style-type: none"> • Scope: All individual permits not covered in the other types of procedures. • Elements: Notice of application to adjoining property owners and in the environmental notice bulletin; notice of draft decision through the bulletin; public comment period; opportunity for public meeting; notice of public meeting; and notice and issuance of final decision with response to comments. • For public water systems, notice also to property owners in zones 1 and 2 of the source protection area
	<p>10 V.S.A. § 7707. Type 3 Procedures</p> <ul style="list-style-type: none"> • Scope: All general permits not covered in Type 1 (federal), dam safety orders, individual shoreland permits, aquatic nuisance control permits, changes in treatment for public water supply, collection plans for mercury-containing lamps, plans for collection and recycling of electronic waste, and battery stewardship plans. • Elements: Notice of application in the environmental notice bulletin; notice of draft decision through the bulletin; opportunity for public meeting; public comment period; notice of public meeting; and notice and issuance of final decision with response to comments.
	<p>10 V.S.A. § 7708: Type 4 Procedures</p> <ul style="list-style-type: none"> • Scope: Notices of intent under general permits; air contaminant sources less than 10 tons per year; construction or expansion of public water supply; category 1 underground storage tanks; categorical solid waste certifications; and medium scale composting certifications. • Elements: Notice of application in the environmental notice bulletin; notice of draft decision through the bulletin; public comment period of 10 days; and notice and issuance of final decision with response to comments.
	<p>10 V.S.A. § 7709: Type 5 Procedures</p> <ul style="list-style-type: none"> • Scope: Temporary emergency permits (water resources); public water system operational permits; authorizations under stream alteration general permits for

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	<p>reporting without an application, for an emergency, and for activities to prevent risks to life or severe damage to property posed by next annual flood; emergency sludge and septage disposal approvals; and shoreland registrations..</p> <ul style="list-style-type: none"> • Element: Notice and issuance of final decision.
1, ctd	<p>10 V.S.A. § 7710: Amendments; Renewals</p> <ul style="list-style-type: none"> • Major amendment by same process applicable to original permit. • Minor amendment under Type 4 procedures, except notice of application not required. • Administrative amendment not subject to the procedures of the chapter. • Renew permits by same process applicable to original permit. <p>10 V.S.A. § 7711: Exemptions</p> <p>Subchapter does not apply to unsafe dam orders, potable water supply and wastewater permits, and certificates of need for hazardous waste management facilities.</p> <p><u>Subchapter 3:</u> Administrative Appeals</p> <p>10 V.S.A. § 7721. Definitions</p> <p>“Person aggrieved” affects who may seek an administrative appeal.</p> <p>10 V.S.A. § 7722: Appeal within the Agency; Hearing Officer; Grant of Petition; Stays</p> <ul style="list-style-type: none"> • Option for administrative appeal with ANR, filed within 15 days. • Hearing officer appointed; ex parte prohibition. • Hearing officer determines whether to grant petition for administrative appeal, which must meet specified criteria. • Acceptance of administrative appeal does not automatically stay decision unless it involves a stream alteration permit or shoreland encroachment permit. • Acceptance of administrative appeal halts period for appeal to Environmental Division. <p>10 V.S.A. § 7723: Notice; Review; Decision</p> <ul style="list-style-type: none"> • Hearing officer conducts appeal based on administrative record with opportunity to submit written memoranda and present oral argument. • Hearing officer affirms decision unless officer determines administrative record does not support decision or decision is contrary to law. Applies independent judgment to make this determination. • Hearing officer may hear additional evidence under limited circumstances, using court-like procedures. • Final decision is in the form of findings of fact and conclusions of law.

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2	<p>Rules; Effect on Procedural Requirements (Session Law)</p> <p>Sec. 1 supersedes any requirements for notice and processing of applications contained in DEC rules.</p>
<i>Environmental Notice Bulletin</i>	
3	<p>3 V.S.A. § 2826. Environmental Notice Bulletin</p> <ul style="list-style-type: none"> • Bulletin to consist of website and e-mail notification system established and maintained by Secretary of Natural Resources. • Secretary to post information to website and generate e-mail notifications in accordance with 10 V.S.A. chapter 170. • Secretary to provide members of public with ability to register through the bulletin. • Secretary shall comply with requests to receive notifications through U.S. mail.
4	<p>Bulletin; Revision (Session Law)</p> <p>Deadline for modifying environmental notice bulletin in accordance with Secs. 1 and 3 (Jan. 1, 2016 in bill as introduced in early 2015).</p>
<i>On the Record Appeals from Agency of Natural Resources to Environmental Division</i>	
5	<p>10 V.S.A. § 8503. Applicability</p> <p>Appeals from decisions of ANR hearing officer under 10 V.S.A. chapter 170 to be to the Environmental Division.</p>
6	<p>10 V.S.A. § 8504. Appeals to the Environmental Division</p> <ul style="list-style-type: none"> • Requirement to participate in ANR proceeding in order to appeal to the Division. • Appeals from ANR decisions that use the procedures under 10 V.S.A. chapter 170 to be on the record. Standards of review specified based on Supreme Court case law.
<i>Conforming Amendments</i>	
7-35	<p>These sections amend ANR permit programs to require them to use the standardized procedures described in Sec. 1.</p>
36	<p>Effective date (Jan. 1, 2016 in bill as introduced in early 2015).</p>