

# ANR PERMIT PROCESS IMPROVEMENT/S. 123

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Last revised: January 6, 2016  
**Bold / Underline represent  
proposed changes from bill as  
introduced**

## MODIFICATIONS TO PERMIT PROCESS

- **Require pre-application public participation for large or complex permit applications.**
- **Provide interested persons (other than the applicant) an opportunity to provide expert or detailed opinion to ANR technical staff prior to public comment period.**
- Require administrative records for all DEC acts or decisions.
- Require fact sheets for all individual permits.

## MODIFICATIONS TO NOTICE PROCESS

- Requires ANR to develop one web-based portal that is searchable for projects that are on notice.
- Searchable by project name; permit type (e.g. stormwater); or geographic location.
- Would allow interested persons to create a "subscription service" and receive an e-mail notification when key project milestones take place.
- Key documents would be posted with notice in web portal.
- Takes existing 85 notice and comment processes and consolidates to 5 processes.
- Requires notice of application on most new notice processes to increase early notice and participation.
- Maximizes the use of electronic media for notice to the public.
- Creates two standardized notice periods – 30 days for major permits, 10 days for minor permits. Allows emergency permits to be issued without notice.
- Allows ANR to coordinate permit notice periods and hold combined public hearings where there is a benefit to the public in having a consolidated process.

## ADMINISTRATIVE HEARING WITHIN ANR

- **ANR would have an internal administrative hearing process with a qualified hearing officer agreed to by the parties.**
- Requirement to comment to appeal decision. Appeals limited to areas where the party commented.
- Hearing officer would make the final decision.
- Hearing officer protected from retaliation for decisions made.
- **Reconsiderations would be mandatory.**
- **All permits stayed pending the outcome of appeal, except emergency permits.**
- Tolls appeal period.
- **The hearing would allow discovery with the permission of the hearing officer, who could limit the scope and manner of discovery (e.g. length or number of depositions).**
- **The parties could submit direct and responsive prefiled testimony. The hearing officer may allow more than one round of prefiled testimony and live testimony.**
- For findings of fact and exercises of discretion, administrative record presumed correct unless petitioner shows error.

## APPEALS TO THE ENVIRONMENTAL COURT

- Requirement to comment and participate in an administrative hearing in order to appeal decision. Appeals limited to areas where the party commented.
- Review by the Environmental Court is "on the record."
- The ANR statements and findings are to be affirmed unless found to be clearly erroneous.
- ANR exercises of discretion are to be affirmed unless there is an abuse of discretion.
- ANR interpretations of enabling legislation and rules are to be affirmed unless there is a compelling indication of error.

## ANR PROPOSED CHANGES TO S.123 BASED ON STAKEHOLDER COMMENT.

### Proposed Modifications to the ANR permit process

For large or complex projects, require pre-application public involvement.

Allow interested persons (non-applicants) to have meetings with Agency technical experts regarding the application before the comment period.

Agency required to develop record for all acts and decisions made for all individual permits.

Administrative hearings proposed to be a mandatory prerequisite before appeal to environmental court.

Administrative hearings conducted by a qualified hearing officer agreed to by the parties.

Permit stayed pending the conclusion of administrative hearing. Automatic stay does not apply to Type V (emergency) permits.

Parties must show that they commented below to participate in hearing and have party status.

Administrative record entered as evidence; new information may be provided to the record but must relate to a comment made below.

Discovery by permission of the hearing officer who may limit written interrogatories and the number and length of depositions.

Evidence provided to hearing officer via prefiled testimony. No live testimony except when hearing officer determines necessary.

### Standard of Review

For findings of fact and exercises of discretion, administrative record presumed correct unless petitioner shows error.

For interpretations of statutes or rules administered by the Agency, upheld unless there is a showing of a compelling indication of error.

### Proposed Modifications to Administrative Hearing