

Administrative Procedures – Final Proposed Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

RECEIVED
MAY 29 2018

BY:

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits



(signature)

, on 5/29/2018

(date)

Printed Name and Title:

Julia S. Moore, P.E., Secretary

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

P-

3. ADOPTING AGENCY:

Natural Resources

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Matt Chapman

Agency: Natural Resources

Mailing Address: 1 National Life Drive, Davis 2,
Montpelier VT, 05602

Telephone: 802 249 - 4393 Fax: -

E-Mail: matt.chapman@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:
<http://dec.vermont.gov/permits/enb>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Kim Greenwood

Agency: Natural Resources

Mailing Address: 1 National Life Drive, Davis 2,
Montpelier VT, 05602

Telephone: 802 272 - 0423 Fax: -

E-Mail: kim.greenwood@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A 7703

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
13. **CONCISE SUMMARY (150 WORDS OR LESS):**
This rule proposes to implement Act 150 of 2016 which required standardized notice and comment procedures for Department of Environmental Conservation (DEC) permits. This rule also provides procedural guidelines for various administrative processes in Title 3 including petitions for rulemaking and contested case proceedings.
14. **EXPLANATION OF WHY THE RULE IS NECESSARY:**
This rule will provide additional procedural guidelines on how to participate in administrative processes before the DEC. This rule is also required by law.
15. **LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**
This rule will affect persons applying for a permit, persons commenting on a permit, and persons who hold a permit from the DEC.
16. **BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):**
This rule does not make substantive changes to environmental permitting programs and provides procedural consistency or clarity to administrative processes within

DEC. As such, there should be no economic impact and there may be some benefit from more consistent processes in DEC.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 3/2/2018

Time: 01:30 PM

Street Address: Catamount Conference Room, 1 National Life Drive, Davis 2, Montpelier VT

Zip Code: 05602

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

5/4/2018

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Act 150

Environmental Notice Bulletin

Environmental Permits

Environmental Law

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Uniform Environmental Administrative Procedure and
Standard Processes for Notice and Comment on
Environmental Permits

2. ADOPTING AGENCY:

Natural Resources

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

Run Spell Check

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: December 11, 2017, Pavilion Building, 5th floor conference room, 109 State Street, Montpelier, VT 05609

Members Present: Chair Brad Ferland, Dirk Anderson, Diane Bothfeld, John Kessler, and Steve Knudson; and Karen Songhurst, Ashley Berliner, and Jen Duggan via phone

Members Absent: Clare O'Shaughnessy

Minutes By: Melissa Mazza-Paquette

- 2:02 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the November 13, 2017 meeting.
 - Motion made to accept the minutes by John Kessler, seconded by Dirk Anderson, and passed unanimously.
- No additions/deletions to agenda.
 - Motion made to accept agenda as is by Dirk Anderson, seconded by John Kessler, and passed unanimously.
- No public comments made.
- Presentation of Proposed Rules on pages 2-5 to follow.
 1. Vermont Criminal Justice Training Council Rules & Regulations, Vermont Criminal Justice Training Council, page 2
 2. Services to Incapacitated Inebriates, Agency of Human Services, Department of Health, page 3
 3. Graduated Sanctions for Violations of Probation, Agency of Human Services, Department of Corrections, page 4
 4. Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits, Agency of Natural Resources, page 5
- Next scheduled meeting is January 8, 2018 at 2:00 p.m.
- Motion made to adjourn by Steve Knudson, seconded by Dirk Anderson, and passed unanimously.
- 2:55 p.m. meeting adjourned.

Proposed Rule: Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits, Agency of Natural Resources

Presented by: Matt Chapman and Kim Greenwood

Motion made to accept the rule by Diane Bothfeld, seconded by John Kessler, and passed unanimously except for Jen Duggan who abstained, with the following recommendations:

1. Proposed Rule Coversheet, page 3, #7 and later: Previously define 'ANR'
2. Proposed Rule Coversheet, page 4, #13: Change 2017 to 2018.
3. Proposed Rule Coversheet, page 4, #14: Spell out 'ENB' and include acronym after in parentheses. Add 'CAFO' and define.
4. Public Input Statement, page 1, #4: Define 'VBA' and 'VI.CT'. Add agricultural and other state agencies.
5. Subchapter 5. Standard Procedures for Permit Processing, page 18, §37-503: Add 'ENB' in parentheses.
6. Subchapter 5. Standard Procedures for Permit Processing, page 25, §37-505(c)(2) and (3) and page 26, §37-506(c)(3): Change '14 days' and '14 days' to 'a 14-day'.
7. Subchapter 5. Standard Procedures for Permit Processing, page 25, §37-505(d): Remove 'of the' in the 3rd line as it's duplicated.



Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

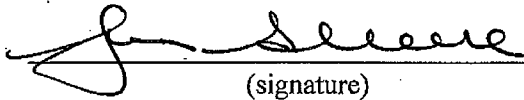
Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits

 _____, on 5/29/2018
(signature) (date)

Printed Name and Title:

Julia S. Moore, P.E., Secretary
Agency of Natural Resources

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits

2. ADOPTING AGENCY:

Natural Resources

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

The purpose of this rule is to implement a consolidated process for notice and comment on ANR permits and provide procedural clarity for administrative processes. It is not expected to have any additional costs to persons who participate in ANR permit processes and the increased consistency may result in a cost savings.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

None

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

This rule implements a statutory requirement. A failure to adopt the rule would mean that the statutory requirements would be effective but the additional procedural clarity offered by this rule would not be there.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

Creating a different set of procedures for small business would result in additional complexity to the environmental permitting process, increased costs, and would be inconsistent with statutory requirements.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

A. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):

None

B. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND/OR AGRICULTURAL LAND."):

None

C. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):

None

D. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'."):

None

E. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None

Run Spell Check

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Uniform Environmental Administrative Procedure and Standard Processes for Notice and Comment on Environmental Permits

2. ADOPTING AGENCY:

Natural Resources

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Public input on this rule began as a part of ANR's business improvement process (LEAN) in 2014. The ANR invited stakeholders from various business and advocacy sectors to provide input on how to improve the notice and comment process on ANR permits. That resulted in a legislative proposal and this corresponding implementing rule. The ANR held one public meeting and extended the public comment period with additional notice to interested parties.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

ANR conducted direct stakeholder outreach to the Vermont Bar Association Environmental Section, Vermont League of Cities and Towns, agricultural interests, chambers of commerce, environmental consultants, and other advocates that typically participate in ANR permit processes.

Run Spell Check

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**UNIFORM ENVIRONMENTAL
ADMINISTRATIVE PROCEDURE AND
STANDARD PROCESSES FOR NOTICE AND
COMMENT ON ENVIRONMENTAL PERMITS**

Final Proposed Rule

May 29, 2018

Table of Contents

SUBCHAPTER 1. GENERAL PROVISIONS	4
§ 37-101. AUTHORITY AND PURPOSE	4
§ 37-102. SEVERABILITY	4
SUBCHAPTER 2. DEFINITIONS	5
§ 37-201. DEFINITIONS	5
SUBCHAPTER 3. UNIFORM ENVIRONMENTAL ADMINISTRATIVE PROCEDURE	9
§ 37-301. PETITIONS FOR RULEMAKING OR ADOPTION OF PROCEDURES	9
§ 37-302. PROCEDURES AND GUIDANCE DOCUMENTS	10
§ 37-303. ADMINISTRATIVE CONTINUATION OF PERMITS	10
§ 37-304. VESTING OF RIGHTS IN A STATUTE OR RULE ADMINISTERED BY THE AGENCY OF NATURAL RESOURCES	10
SUBCHAPTER 4. CONTESTED CASE PROCEEDINGS	12
§ 37-401. APPLICABILITY	12
§ 37-402. HEARING OFFICER	12
§ 37-403. EX PARTE COMMUNICATIONS	12
§ 37-404. INITIATION OF PROCEEDING AND ENTRY OF APPEARANCE	13
§ 37-405. INITIAL CONFERENCE AND SCHEDULING ORDER	15
§ 37-406. DOCUMENTS AND SERVICE	16
§ 37-407. EVIDENCE AND PREFILED TESTIMONY	17
§ 37-408. HEARING	17
§ 37-409. PROCEEDING RECORD	18
§ 37-410. DECISIONS AND ORDERS	18
§ 37-411. EMERGENCY PROCEEDINGS	19
SUBCHAPTER 5. STANDARD PROCEDURES FOR PERMIT PROCESSING	20
§ 37-501. PURPOSE	20
§ 37-502. COMPUTATION OF TIME	20
§ 37-503. ENVIRONMENTAL NOTICE BULLETIN	20
§ 37-504. TYPE 1 PROCEDURES	22
§ 37-505. TYPE 2 PROCEDURES	25
§ 37-506. TYPE 3 PROCEDURES	27
§ 37-507. TYPE 4 PROCEDURES	29

§ 37-508.	TYPE 5 PROCEDURES	30
§ 37-509.	AMENDMENTS; RENEWALS.....	31
§ 37-510.	PRE-APPLICATION PUBLIC INFORMATIONAL MEETING	31
§ 37-511.	ADDITIONAL NOTICE.	32
§ 37-512.	EXTENSION OF DEADLINES.	33
§ 37-513.	ADMINISTRATIVE RECORD.....	33
APPENDIX A – ANR PERMITS AND PUBLIC NOTICE TYPE.....		34
APPENDIX B – LARGE AND COMPLEX PROJECTS		43

SUBCHAPTER 1. GENERAL PROVISIONS

§ 37-101. AUTHORITY AND PURPOSE

- (a) **Authority.** This rule is adopted by the Secretary of the Agency of Natural Resources pursuant to the authority granted by 3 V.S.A. § 847(e) and 10 V.S.A. §§ 7703 (standard procedures for environmental permitting).
- (b) **Purpose.** This rule is intended to:
 - (1) Provide uniform standards for the implementation of 3 V.S.A. Chapter 25 (the Vermont Administrative Procedures Act) within the Department of Environmental Conservation.
 - (2) Implement the requirements of 10 V.S.A. Chapter 170 (Standard Procedures for notice and comment on environmental permits) within the Department of Environmental Conservation.

§ 37-102. SEVERABILITY

The provisions of any section of this rule are severable. If a court of competent jurisdiction finds that any provision of this rule is invalid or any application of this rule to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SUBCHAPTER 2. DEFINITIONS

§ 37-201. DEFINITIONS

As used in this rule,

- (1) “Adjoining property owner” means a person who owns land in fee simple, if that land:
 - (A) shares a property boundary with a tract of land where proposed or actual activity regulated by the Department is located. With respect to activities proposed or taking place on a lake shoreline, “adjoining property owner” means tracts of land on the terrestrial boundary of the shoreland; or
 - (B) is adjacent to a tract of land where such activity is located and the two properties are separated only by a river, stream, or public highway.
- (2) “Administrative amendment” means an amendment to an individual permit, general permit, or notice of intent under a general permit that corrects typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or the imposition of new conditions or requirements.
- (3) “Administrative record” means the application and any supporting data and information furnished by the applicant; all information submitted by the applicant during the course of reviewing the application; the draft permit or notice of intent to deny the application; the fact sheet and all documents cited in the fact sheet, if applicable; all comments received during the public comment period; the recording or transcript of any public meeting or meetings held; any written material submitted at a public meeting; the response to comments; the final permit; any document used as a basis for the final decision; and any other documents contained in the permit file.
- (4) “Administratively complete application” means an application for a permit or notice of intent under a general permit for which all initially required documentation has been submitted, and any required permit fee, and the information submitted initially addresses all application requirements but has not yet been subjected to a complete technical review. For purposes of a general permit, it shall be considered administratively complete when the draft general permit has been placed on public notice.

- (5) “Agency” means the Agency of Natural Resources.
- (6) “Clean Air Act” means the federal statutes on air pollution prevention and control, 42 U.S.C. § 7401 et seq.
- (7) “Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.
- (8) “Commissioner” means the Commissioner of Environmental Conservation or the Commissioner’s designee.
- (9) “Contested case” means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by the Agency after an opportunity for hearing.
- (10) “Department” means the Department of Environmental Conservation.
- (11) “Document” means any written or recorded information, regardless of physical form or characteristics, which the Department produces or acquires in the course of reviewing an application for a permit.
- (12) “Environmental notice bulletin” or “bulletin” means the website and e-mail notification system required by 3 V.S.A. § 2826.
- (13) “Fact sheet” means a document that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions and information considered in preparing a draft decision.
- (14) “General permit” means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire State or a region of the State.
- (15) “Guidance document” means a written record that has not been adopted in accordance with 3 V.S.A. chapter 25 and that is issued by an agency to assist the public by providing an agency’s current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (25)(A) through (F) of this section.
- (16) “Individual permit” means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.
- (17) “Major amendment” means an amendment to an individual permit or notice of intent under a general permit that necessitates technical review.
- (18) “Minor amendment” means an amendment to an individual permit or notice of intent under a general permit that requires a change in a condition or requirement, does not necessitate

technical review, and is not an administrative amendment.

- (19) “Notice of intent under a general permit” means an authorization issued by the Secretary to undertake an action authorized by a general permit.
- (20) “Party” means each person or agency named or admitted as a party, or are an entitled as of right to be admitted as a party.
- (21) “Permit” includes any permit, certification, license, registration, determination, or similar form of permission required from the Department by law. However, the term excludes a professional license issued pursuant to 10 V.S.A. Chapter 48, subchapter 3 (licensing of well drillers) and 10 V.S.A. §§ 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous waste transporters), and 6607a (waste transportation).
- (22) “Person” means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State, any federal agency, or any other legal or commercial entity.
- (23) “Person to whom notice is federally required” means a person to whom notice of an application or draft decision must be given under federal regulations adopted pursuant to the Clean Air Act or Clean Water Act.
- (24) “Practice” means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, which is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing. “Practices” include guidance documents, policy documents, memoranda of agreement or understanding, standard operating procedures, and all other similar documents.
- (25) “Procedure” means a practice that has been adopted in writing at the election of the agency or as the result of a petition under 37-301. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:
 - (A) a rule adopted pursuant to 3 V.S.A. chapter 25;
 - (B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;
 - (C) a statement that concerns only:
 - (i) the internal management of an agency and does not affect private rights or procedures available to the public;
 - (ii) the internal management of facilities that are secured for the safety of the public and the

- individuals residing within them;
 - (iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;
 - (D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;
 - (E) an opinion of the Attorney General; or
 - (F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.
- (26) “Public meeting” means a meeting that is open to the public and recorded or transcribed, at which the Department shall provide basic information about the draft permit decision, an opportunity for questions to the applicant and the Department, and an opportunity for members of the public to submit oral and written comments.
- (27) “Secretary” means the Secretary of Natural Resources or designee.
- (28) “Technical review” means the application of scientific, engineering, or other professional expertise to the facts to determine whether activity for which a permit is requested meets the standards for issuing the permit under statute and rule.

SUBCHAPTER 3. UNIFORM ENVIRONMENTAL ADMINISTRATIVE PROCEDURE

§ 37-301. PETITIONS FOR RULEMAKING OR ADOPTION OF PROCEDURES

- (a) Generally. Any person may submit a petition requesting that the Commissioner adopt, amend, or repeal a rule or procedure. If the petition is to adopt a procedure as a rule and is accompanied by the signatures of 25 persons or made by the Legislative Committee on Administrative Rules, then the Commissioner shall initiate the rulemaking process.
- (b) Minimum requirements of a petition. At a minimum, any petition shall include:
- (1) A brief description of the reasons for adopting, amending, or repealing the rule or procedure;
 - (2) Any technical information that supports the petitioner's position with respect to the adoption, amendment, or repeal of the rule or procedure;
 - (3) A citation to the specific section or sections of Vermont statute or rule granting the Commissioner the authority to adopt, amend, or repeal the rule or procedure;
 - (4) Any supplemental information required by the statute or rule that is subject to the request;
 - (5) A description of the people, enterprises, and government entities that may be affected by the rule or procedure and an estimate of the costs and benefits to each of those entities;
 - (6) Contact information for the petitioner, including an e-mail address; and
 - (7) A written draft of the proposed rule or procedure. If the rule or procedure is existing, all language that the petitioner proposes to add shall be underlined and all language that the petitioner proposes to delete shall be struck through.
- (c) Department response. Within 30 days of receipt of a petition, the Commissioner shall:
- (1) Initiate rulemaking proceedings or adopt a procedure. Initiating rulemaking means pre-filing the administrative rule with the interagency committee on administrative rules; or
 - (2) Deny the petition and provide the basis of the denial in writing.

- (d) The Secretary shall post any petition for a rulemaking and its response on the Agency website.

§ 37-302. PROCEDURES AND GUIDANCE DOCUMENTS

On or before July 1, 2019, the Department shall maintain an electronic compilation of all procedures and guidance documents on the Department webpage. The compilation shall be organized by subject and contain the date the procedure or guidance document was adopted. Any procedure that does not appear in the electronic compilation shall no longer be effective. The Department shall not rely on a procedure or guidance document or cite it against any party to a proceeding, unless the procedure or guidance document is included in a compilation maintained and published in accordance with this section.

§ 37-303. ADMINISTRATIVE CONTINUATION OF PERMITS

- (a) Generally. When a permittee has submitted an administratively complete application for the renewal of a permit or for an activity of a continuing nature prior to the expiration of that permit, the existing permit shall not expire until the Secretary has made a final determination with respect to the application, and in case the application is denied or the terms of the new permit limited, until the last day for seeking review of the permit or a later date fixed by order of the reviewing court. For purposes of this section, a “activity of a continuing nature” means a permit that authorizes the continued operation of a permitted activity but does not include a permit to construct a new, or the expansion of an existing, activity.
- (b) As applied to general permits. When the Secretary has placed on public notice a draft general permit, the current general permit shall be considered administratively continued.

Note: Absent a compelling reason, long-term administrative continuations should be rare and are generally disfavored by the Agency.

§ 37-304. VESTING OF RIGHTS IN A STATUTE OR RULE ADMINISTERED BY THE AGENCY OF NATURAL RESOURCES

Vesting of rights. Unless otherwise provided in a rule adopted by the Department, the statutory and regulatory requirements applicable to a

permit shall be those in effect on the date that the Department's draft decision is issued.

SUBCHAPTER 4. CONTESTED CASE PROCEEDINGS

§ 37-401. APPLICABILITY

This subchapter shall apply to the revocation of a permit and for any other proceeding where a contested case proceeding is required by law.

§ 37-402. HEARING OFFICER.

The Commissioner shall appoint a hearing officer to preside over the contested case proceeding. At the time the Commissioner appoints a hearing officer, the Commissioner shall either delegate authority to the hearing officer to issue a ruling in the proceeding or retain decision making authority. If the Commissioner retains decision making authority, the same restrictions that apply to the hearing officer shall apply to the Commissioner. A person who has been personally and substantially involved at any stage of the matter subject to the proceeding shall be disqualified from serving as a hearing officer.

§ 37-403. EX PARTE COMMUNICATIONS.

The hearing officer shall not communicate with any person who is a party to the proceeding concerning an active proceeding without notice and opportunity for all parties to participate in the communication. This prohibition on ex parte communication shall not apply to:

- (1) Communications between the hearing officer and the Commissioner;
- (2) Communications between the hearing officer, including the Commissioner, and counsel authorized to provide legal advice with respect to the matter subject to the proceeding; or
- (3) Communications between the hearing officer or the Commissioner and an Department employee, provided:
 - (A) the Department employee has not been personally and substantially involved at any stage with respect to the subject matter of the proceeding;
 - (B) the Department employee has not communicated with any other person with respect to the subject matter of the proceeding; and
 - (C) the communication with the Department employee does not augment, diminish, or modify the hearing record and:
 - (i) is an explanation of technical or scientific basis of evidence in the hearing record; or

- (ii) is an explanation of precedent, policies, or procedures of the Department.

§ 37-404. INITIATION OF PROCEEDING AND ENTRY OF APPEARANCE

- (a) Initiation of proceeding.
 - (1) Generally. Initiation of a contested case shall be governed by the law that requires a contested case proceeding for that decision of the Commissioner, except for decision by the Commissioner to revoke a permit.
 - (2) Revocations. The Commissioner may initiate a contested case to revoke a permit by notifying the permittee that a revocation proceeding has been initiated, by notifying the permittee of the opportunity to participate in the proceeding, and by providing a brief summary of the factual basis of the grounds for initiating the proceeding to the permittee. A revocation proceeding may be initiated by the Commissioner on the following grounds:
 - (A) a violation of a permit condition;
 - (B) false or misleading information was provided in support of a permit application;
 - (C) a violation of the rules or authorizing statutes governing the activity that is subject to the proceeding;
 - (D) specific grounds for revocation identified in the rules governing the activity has occurred;
 - (E) the holder of the permit has requested that it be revoked; or
 - (F) the creation of a condition that may present threat to human health or the environment.
 - (3) A permittee may waive the right to a contested case proceeding. A waiver shall be in writing and shall be signed by all co-permittees to the permit requested to be revoked.
- (b) Necessary parties. The person initiating a proceeding shall provide notice to all persons whose participation is required for the Department to provide relief in the proceeding or any person who has a legal interest related to the subject of the proceeding and a failure to participate in the proceeding could result in that person being unable to protect that legal interest. In all cases a permittee and any person whose property is affected by the decision shall be provided notice under this section.
- (c) Interested persons. When applicable, the Secretary should provide notice to any person who commented on the Department action that is subject to the

revocation proceeding. A failure to provide an interested person with notice shall not create a procedural defect to the proceeding.

- (d) Initial notice of proceeding. For all contested case proceedings, the Department shall provide notice to all parties of, at a minimum, the following:
- (1) The time, method, and location of an initial conference to be provided pursuant to § 37-405;
 - (2) A statement of the legal authority and jurisdiction governing the proceeding;
 - (3) A reference to the applicable sections of statute or rule that require a contested case; and
 - (4) A short, plain statement of the matters at issue. The statement shall be as detailed as possible in light of the information available at the time of the notice.
- (e) Entry of Appearance. Any person may enter an appearance to participate in a contested case proceeding by filing a written notice within 14 days of receiving the initial notice of the proceeding with the Commissioner that identifies the following information. Upon receipt by the Commissioner of a notice by a person, the person shall be treated as a party unless and until the Commissioner rules the party does not have party status in response to an objection made pursuant to § 37-405.
- (1) The name of the person entering an appearance;
 - (2) The name of any person representing the person requesting to enter an appearance;
 - (3) Contact information of the person entering an appearance, including the e-mail address where notices, filings, and other information shall be sent. If e-mail notice is refused, the person shall provide a mailing address for all notices, filings, and other information to be sent.
 - (4) A statement on how the interests of the person entering an appearance are or may be affected by the subject matter and may be affected by the potential outcome of the proceeding.

Note: If the case is a revocation and the person holding the permit fails to enter an appearance the Commissioner may enter a default order revoking the permit.

- (f) Service. Copies of all documents filed in a proceeding shall be served upon all other parties to the proceeding by the party making the filing. Service shall be made by emailing copies of the documents, or, if email service has been refused, by mailing physical copies, to each party's attention using the contact information as provided in each party's entrance of appearance. The party filing the document shall certify to the hearing officer that they have served all other parties with the document filed in accordance with this section.

§ 37-405. INITIAL CONFERENCE AND SCHEDULING ORDER

- (a) Initial Conference. Within 21 days of the initial notice of the proceeding required by § 37-404, the hearing officer shall hold an initial conference with the parties. The primary purposes of this conference include:
- (1) The simplification and clarification of the issues in the proceeding;
 - (2) Obtaining admissions of fact and of documents that will avoid the production of unnecessary proof;
 - (3) The limitation of the number of expert witnesses; and
 - (4) The formulation of a scheduling order for the proceeding.
- (b) Party status. Any objection to a person's party status and ability to appear in a proceeding shall be made in advance of the initial conference or five days from the party in question's entry of appearance, whichever is later. The Commissioner shall rule on the objection and person's party status within 10 days.
- (c) Scheduling Order.
- (1) The parties to a proceeding shall provide the hearing officer with a mutually agreed upon scheduling order at the pretrial conference. At a minimum, the scheduling order shall:
 - (A) Identify the date or dates by which all motions must be filed, except motions related to subject matter jurisdiction;
 - (B) Identify the type, sequence, and amount of discovery in the proceeding, limiting the discovery to that which is necessary for a full and fair determination of the proceeding;
 - (C) Identify the date or dates for filing prefiled testimony or any stipulated facts;
 - (D) Identify the date or dates for filing rebuttal prefiled testimony;

- (E) Identify whether an oral argument is required for the proceeding and if so the date for that oral argument; and
 - (F) Identify the date or dates that any final briefs are due.
- (2) If the parties are unable to reach agreement on a scheduling order either in part or in whole, by the date of the pretrial conference, the hearing officer may impose a deadline for reaching an agreement on the scheduling order, or may enter a scheduling order for the proceeding.

§ 37-406. DOCUMENTS AND SERVICE

- (a) All materials filed in a proceeding are considered filed when received by the hearing officer.
- (b) All materials must be signed by the party offering the document to the hearing officer or an attorney representing the party.
- (c) Service of all documents shall be through e-mail unless the party rejects electronic service, in which case service shall be made through U.S. Mail.
- (d) All materials filed with the hearing officer shall comply with the following page limits:
 - (1) Motions: No more than 10 pages.
 - (2) Memoranda, briefs, pleadings, and any other document not expressly identified in this subsection: No more than 15 pages.
 - (3) Reply memoranda, reply briefs: No more than 15 pages.
 - (4) Proposed findings of fact and conclusions of law: No more than 10 pages.
 - (5) Prefiled testimony, rebuttal prefiled testimony: No limitation on testimony or exhibits, unless established in scheduling order for the proceeding.
- (e) The hearing officer may modify or waive the limitations established in subsection (d) of this section upon a showing of good cause.
- (f) All proposed findings of fact and conclusions of law shall cite to the supporting evidence in the proceeding record and discuss the applicable legal provisions showing how each element of a claim is met or not met based on the facts of the proceeding.

§ 37-407. EVIDENCE AND PREFILED TESTIMONY

- (a) Generally. Evidentiary matters are governed by 3 V.S.A. § 810.
- (b) Prefiled testimony shall be in question and answer form. Its form and content shall be such as would entitle the same oral testimony to be admitted in proceedings before the hearing officer. Such testimony shall be typed and double spaced. Line numbers shall be placed in the left hand margin of each page.
- (c) Prefiled testimony shall be accompanied by a signed and notarized certification with the following certification from the witness:
“I [insert witness name] swear that I prepared the prefiled testimony, that the responses to all these questions are my own, and that my testimony is accurate and truthful. I also understand that if I intentionally provide inaccurate or untruthful testimony I subject myself to prosecution pursuant to 13 V.S.A. § 3016 (False Claim).”
- (d) Any witness offering prefiled testimony must be available to appear at a hearing.

§ 37-408. HEARING

- (a) Any party to a proceeding may petition the hearing officer to hold a hearing with respect to the matters at issue. The hearing officer shall hold a hearing to allow the parties to make argument as to any prefiled testimony presented to the hearing officer.
- (b) A hearing officer shall only hold an evidentiary hearing when it is necessary for a full and true disclosure of the facts or when a hearing will materially advance the hearing officer’s understanding of the matters at issue or at the hearing officer’s discretion. At a minimum, the hearing officer shall consider the following when determining whether a hearing is necessary:
 - (1) the credibility or veracity of a witness that filed prefiled testimony.
 - (2) the bias or other relationship that the person who filed prefiled testimony may have with respect to the matter.
- (c) All testimony offered in a hearing shall be made under oath or affirmation.

§ 37-409. PROCEEDING RECORD

- (a) At a minimum, the proceeding record shall contain:
- (1) all pleadings, motions, and intermediate rulings;
 - (2) all evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions, offers of proof, objections, and rulings thereon;
 - (5) proposed findings of fact and conclusions of law; and
 - (6) any decision, opinion, or report.
- (b) The hearing officer may take official notice of all facts of which judicial notice may be taken and of scientific, technical, or other facts within the specialized knowledge of the Department. The hearing officer shall notify parties at the earliest practical time of the facts proposed to be noticed and their source, including any staff memoranda or data. The party shall have the opportunity to contest any fact officially noticed prior to the finalization of the decision.
- (c) Any portion of an oral proceeding shall be transcribed. The party that petitioned for the hearing shall pay for the costs of transcription. If more than one party petitioned for a hearing, the costs shall be split equally between the petitioning parties.

§ 37-410. DECISIONS AND ORDERS

- (a) The experience, technical competence, and specialized knowledge of the hearing officer that is hearing the case may be used in evaluating the evidence in the hearing record.
- (b) Any decision or order shall be in writing, and include findings of fact and conclusions of law, separately stated and identified. Decisions and orders shall be based exclusively on the proceeding record.
- (c) If the hearing officer has been delegated authority to make a final decision, the written decision or order of the hearing officer shall take effect upon service to the parties.
- (d) If the hearing officer has not been delegated authority to make the final decision, the hearing officer shall provide a copy of the proposed order or decision to each party and the Commissioner, and the Commissioner shall render a final decision in accordance with subsection (e) of this section.

- (e) Decisions made by the Commissioner.
 - (1) When the Commissioner reviews a hearing officer's proposed order or decision, the Commissioner shall review the proposed decision or order as if the Commissioner conducted the proceeding.
 - (2) When reviewing findings of fact, the Commissioner shall consider the hearing officer's opportunity to observe the witnesses and determine their credibility.
 - (3) The parties shall be afforded an opportunity to present briefs and oral argument to the Commissioner prior to the decision.
 - (4) The Commissioner may render a final decision or order on the proceeding or remand the matter to the hearing officer with instructions for further action.
 - (5) The final decision or order must identify the differences between the proposed decision or order and the final. A written decision or order of the Commissioner shall take effect upon service to the parties.

- (f) Any decision or order, including any intermediate order or ruling issued by the hearing officer, shall be served on the parties in in the same manner as § 37-406(c) and shall constitute actual knowledge to the parties.

§ 37-411. EMERGENCY PROCEEDINGS.

If the Commissioner determines that an activity of an ongoing nature presents an immediate and substantial endangerment to human health, safety, or welfare or the environment, the Commissioner may temporarily suspend the activity authorized by the permit or license until a proceeding to revoke the license or permit has been completed.

SUBCHAPTER 5. STANDARD PROCEDURES FOR PERMIT PROCESSING

§ 37-501. PURPOSE.

- (a) Permit proceedings under this subchapter are informal adjudications of applications for a permit under the authorities listed pursuant to Appendix A.

Note: All Permit decisions of the Department follow the procedures outlined in this subchapter. Unless required by law, Department permits do not follow a contested case procedure.

- (b) The Secretary may adopt a procedure for any permit not included in Appendix A defining on an interim basis what standard procedure applies to decision-making for that permit.

§ 37-502. COMPUTATION OF TIME

In this subchapter:

- (1) When time is to be reckoned from a day, date, or an act done, the day, date, or day when the act is done shall not be included in the computation.
- (2) Computation of a time period shall use calendar days.

§ 37-503. ENVIRONMENTAL NOTICE BULLETIN.

- (a) When notice is required by this subchapter, at a minimum the following persons shall receive notice from the Environmental Notice Bulletin:
- (1) the applicant;
 - (2) any person who has requested to receive notice through the ENB;
 - (3) each municipality in which the activity to be permitted is located, except for notice of a draft or final general permit; and
 - (4) each other person to whom this subchapter directs that a particular notice be provided through the bulletin.
- (b) At a minimum, each notice generated by the bulletin shall contain:
- (1) the name and contact information for the person at the Agency processing the permit;

- (2) the name and address of the facility or activity to be permitted, if applicable;
 - (3) a brief description of the activity for which the permit would be issued;
 - (4) the length of the period for submitting written comments and the process for submitting those comments, if applicable, and notice of the requirements regarding submission of comments during that period or at a public meeting in order to appeal under chapter 220 of this title;
 - (5) the process for requesting a public meeting, if applicable;
 - (6) when a public meeting has been scheduled, the time, date, and location of the meeting and a brief description of the nature and purpose of the meeting;
 - (7) when issued, the draft permit or notice of intent to deny a permit, and the period and process for submitting written comments on that draft permit or notice;
 - (8) when issued, the final decision issuing or denying a permit, and the process for appealing the decision; and any other information that this chapter directs be included in a particular notice to be generated by the bulletin.
- (c) With respect to notice and a public meeting, the Secretary shall:
- (1) provide at least 14 days' prior notice of the public meeting through the environmental notice bulletin, unless this subchapter specifies a different notice period for a public meeting on the particular type of permit;
 - (2) include in the notice, in addition to the information required by subsections (b)-(d) of this section, the date the Secretary gave notice of an administratively complete application, if applicable; and
 - (3) hold the period for written comments open for at least seven days after the meeting.
- (d) Notice to adjoining property owners. When this subchapter requires notice of an application to adjoining property owners, the applicant shall provide notice of the application by U.S. mail to all adjoining property owners, on a form developed by the Secretary, at the time the application is submitted to the Secretary. The form shall state how the property owners can continue to receive notices and information concerning the project as it is reviewed by the Secretary. The applicant shall provide a signed certification with the application materials submitted to the Secretary that all adjoining property owners have been notified of the application. However, if the applicant has provided written notice to adjoining property owners as part of the

preapplication engagement process for complex projects under rules adopted in accordance with §37-510, then instead of the written notice required of the applicant by this subsection, the Department shall provide notice of the application through the environmental notice bulletin to those adjoining property owners who have requested electronic notice.

- (e) If an individual does not have an e-mail address, the individual may request to receive notifications through U.S. mail. On receipt of such a request, the Secretary shall mail to the individual the same information that the individual would have otherwise received through electronic notice through the bulletin.
- (f) Response to comments. When this subchapter requires the Secretary to provide a response to comments, the Secretary shall provide a response to each comment received during the comment period and the basis for the response. The Secretary also shall specify each provision of the draft decision that has been changed in the final decision and the reasons for each change. The Secretary shall post the response to comments to all persons requesting to receive notice through the bulletin.
- (g) Final decisions; content; notice.
 - (1) The Secretary's final decision on an application for a permit or on the issuance of a general permit shall include a concise statement of the facts and analysis supporting the decision that is sufficient to apprise the reader of the decision's factual and legal basis. The final decision also shall provide notice that it may be appealed and state the period for filing an appeal and how and where to file an appeal.
 - (2) When this chapter requires that the Secretary post a final decision to the environmental notice bulletin, the Secretary also shall send a copy of the final decision to all persons requesting to receive notice through the bulletin.

§ 37-504. TYPE 1 PROCEDURES

- (a) Purpose; scope.
 - (1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits and considering applications for individual permits under the Clean Air Act and Clean Water Act.

- (2) This section governs each application for a permit to be issued by the Secretary pursuant to the requirements of the Clean Air Act or Clean Water Act and to each general permit to be issued under one of those acts. However, the subsection does not apply to a notice of intent under a general permit, except as required under 40 C.F.R. § 122.28(d)(2) for notices of intent under a Municipal Separate Storm Sewer System (MS4) “two-step general permit”. The procedures under this section shall be known as Type 1 Procedures.
- (b) Notice of Application.
- (1) The applicant shall provide notice to adjoining property owners on a form developed by the Secretary. The applicant shall provide this notice by U.S. Mail. The notice shall be provided at the same time the application is provided to the Secretary.
 - (2) The applicant shall provide a signed certification to the Secretary that all adjoining property owners have been notified of the application with the application materials submitted to the Secretary.
 - (3) If an application is a large and complex project, notice needs to have been provided pursuant to § 37-510 (pre-application public meeting). When the applicant files the application with the Secretary, the applicant shall certify notice was provided as required by § 37-507(c).
 - (4) The Secretary shall provide notice of the application through the environmental notice bulletin when the application is deemed administratively complete.
 - (5) This subsection shall not apply to general permits issued pursuant to this section.
 - (6) If the permit application may affect a Class I Area as defined in the Clean Air Act, the Federal Land Manager shall be notified within 30 days of receipt of the application by the Secretary.
- (c) Notice of Draft Decision, Public Comment Period, Public Informational Meeting.
- (1) The Secretary shall not issue a draft decision unless the application has been noticed as administratively complete for at least 15 days. This requirement shall not apply to general permits.
 - (2) Notice of Draft Decision.
 - (A) Notice applicable to all permits. When the Secretary has issued a draft decision, the Secretary shall provide notice through the

- environmental notice bulletin of the draft decision. At a minimum, the notice shall include: the draft decision, and any required fact sheet associated with the draft decision. The notice shall also include how to request copies of the complete record associated with the application.
- (B) Additional notice requirements applicable to Clean Water Act (CWA) draft decisions.
- (i) Notice applicable to all CWA draft decisions. Notice shall be provided to all persons identified in 40 C.F.R. § 124.10(c) as requiring notice of NPDES permits.
 - (ii) Notice applicable to CWA draft decisions on individual permits. Notice shall include a general description of the location of each existing or proposed discharge point and the name of the immediate receiving water.
 - (iii) Notice applicable to CWA draft decisions on general permits and major individual permits. For a general permit, notice shall be provided in daily or weekly newspapers in each region of the State to which the general permit will apply, and for a major individual permit, notice shall be provided in daily or weekly newspapers in the area of the proposed project.
 - (iv) Notice applicable to CWA draft decisions on cooling water intake structures under section 316(b) of the CWA. Notice shall comply with 40 C.F.R. Part 125, Subparts I, J, and N.
- (C) Notice applicable to Clean Air Act Construction Permits. For a notice issued on a permit that is required to comply with 40 C.F.R. Part 51, the Secretary shall provide the notice to the applicant, the Environmental Protection Agency Regional Administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur, including: any other State or local air pollution control agencies, the chief executives of the city or town and county where the source would be located, any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification. The notice shall include, if applicable, the degree of increment consumption that is expected from the source or modification.
- (D) Notice applicable to Clean Air Act Operating Permits. For a notice issued on a permit that is required to comply with 40

C.F.R. Part 70, the Secretary shall provide the notice to any states affected by the source. The notice shall also include any emissions change proposed in any application for an operating permit amendment.

- (3) Fact sheets. When required under 40 C.F.R. 124.8, the Secretary shall produce a fact sheet and place it on notice with the draft decision
 - (4) After notice is provided, the Secretary shall provide a public comment period on the draft decision for no less than 30 days.
 - (5) Any person may request a public informational meeting within 30 days of the notice of the draft decision. If a public informational meeting is requested the Secretary shall provide 30 days' notice of the location, date, and time of the public informational meeting. The notice shall be provided to all persons who received notice of the draft decision through the environmental notice bulletin. When a public informational meeting is held, the public comment period shall not end until at least seven days following the public informational meeting.
- (d) Final Decisions. When the Secretary issues a final decision on an application or general permit, the Secretary shall post a copy on the environmental notice bulletin of the final decision or final general permit, the final fact sheet, a response to comments, and the Secretary shall show any changes made in response to the comments to the permit between the draft and final permit. The electronic notice bulletin shall send this information to any person that all persons requested to receive notice through the bulletin.

§ 37-505. TYPE 2 PROCEDURES

- (a) Purpose; scope.
 - (1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for individual permits, except for individual permits specifically listed in other sections of this subchapter, and when considering other permits listed in this section.
 - (2) The procedures under this section shall be known as Type 2 Procedures. This section governs an application for each of the following:
 - (A) an individual permit issued pursuant to the Secretary's authority under Title 10 of the Vermont Statutes and 29 V.S.A. chapter 11, except for permits governed by §§ 37- 504 and 506 - 508;

- (B) a wetland determination under 10 V.S.A. § 914;
- (C) an individual shoreland permit under 10 V.S.A chapter 49A;
- (D) a public water system source permit under 10 V.S.A. § 1675;
- (E) a provisional certification issued under section 10 V.S.A. § 6605d; and
- (F) a corrective action plan under 10 V.S.A. § 6648.

(b) Notice of Application.

- (1) The applicant shall provide notice to adjoining property owners on a form developed by the Secretary. The applicant shall provide this notice by U.S. Mail. The notice shall be provided at the same time the application is provided to the Secretary.
- (2) For public water system source protection areas, the applicant also shall provide notice to all property owners located in:
 - (A) zones 1 and 2 of the source protection area for a public community water system source; or
 - (B) the source protection area for a public nontransient noncommunity water system source.
- (3) For individual shoreland permits under chapter 49A, aquatic nuisance control permits for activities taking place on a shoreline, and lake encroachment activities:
 - (A) The notice to adjoining property owners shall be to the adjoining property owners on the terrestrial boundary of the shoreland.
 - (B) This chapter does not require notice to owners of property across the lake as defined in that chapter.
- (4) The applicant shall provide a signed certification to the Secretary that all adjoining property owners have been notified of the application with application materials submitted to the Secretary.
- (5) If an application is a large and complex project, notice needs to have been provided pursuant to § 37-510 (pre-application public meeting). When the applicant files the application with the Secretary, the Applicant shall certify notice was provided as required by § 37-507(c).
- (6) The Secretary shall provide notice of the application through the environmental notice bulletin when the application is deemed administratively complete.

(c) Notice of Draft Decision, Public Comment Period, Public Informational Meeting.

- (1) When the Secretary has issued a draft decision, the Secretary shall provide notice through the environmental notice bulletin of the draft decision. At a minimum, the Secretary shall post the draft decision and how to request copies of the complete record associated with the application.
 - (2) After notice is provided, the Secretary shall provide a public comment period on the draft decision for no less than 30 days.
 - (3) Any person may request a public informational meeting within 14 days of the notice to the environmental notice bulletin. If a public informational meeting is requested the Secretary shall provide 14 days' notice of the location, date, and time of the public informational meeting. The notice shall be provided to all persons who received notice of the draft decision through the environmental notice bulletin. When a public informational meeting is held, the public comment period shall not end until at least seven days following the public informational meeting.
- (d) Final Decisions. When the Secretary issues a final decision on an application, the Secretary shall post a copy on the environmental notice bulletin of the of the final decision, a response to comments, and the Secretary shall show any changes made in response to the comments to the permit between the draft and final permit. The electronic notice bulletin shall send notice of availability this information to any person that requested to receive notice through the bulletin.

§ 37-506. TYPE 3 PROCEDURES

- (a) Purpose; scope.
 - (1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits, except for general permits governed by § 37-504 of this chapter, and when considering other permits listed in this section.
 - (2) The procedures under this section shall be known as Type 3 Procedures. This section governs each of the following:
 - (A) Each general permit issued pursuant to the Secretary's authority under this title other than a general permit subject to §37-504. This section does not apply to a notice of intent under a general permit.

- (B) Issuance of a dam safety order under 10 V.S.A. chapter 43, except for an unsafe dam order under 10 V.S.A. § 1095.
 - (C) An application or request for approval of:
 - (i) an aquatic nuisance control permit under 10 V.S.A. chapter 50;
 - (ii) a change in treatment for a public water supply 10 V.S.A. chapter 56;
 - (iii) a collection plan for mercury-containing lamps under 10 V.S.A. § 7156;
 - (iv) an individual plan for the collection and recycling of electronic waste under 10 V.S.A. § 7554; and
 - (v) a primary battery stewardship plan under 10 V.S.A. § 7586.
- (b) Notice of Application. The Secretary shall provide notice of the application through the environmental notice bulletin when the application is deemed administratively complete.
- (c) Notice of Draft Decision, Public Comment Period, Public Informational Meeting.
- (1) When the Secretary has issued a draft decision, the Secretary shall provide notice through the environmental notice bulletin of the draft decision. At a minimum, the notice shall include the draft decision, and include how to request copies of the complete record associated with the application.
 - (2) After notice is provided, the Secretary shall provide a public comment period on the draft decision for no less than 30 days.
 - (3) Any person may request a public informational meeting within 14 days of the notice to the environmental notice bulletin. If a public informational meeting is requested the Secretary shall provide 14 days' notice of the location, date, and time of the public informational meeting. The notice shall be provided to all persons who received notice of the draft decision through the environmental notice bulletin. When a public informational meeting is held, the public comment period shall not end until at least seven days following the public informational meeting.
- (d) Final Decisions. When the Secretary issues a final decision on an application, the Secretary shall post a copy on the environmental notice bulletin of the of the final decision, a response to comments, and the

Secretary shall show any changes made in response to the comments to the permit between the draft and final permit. The electronic notice bulletin shall send this information to any person requested to receive notice through the bulletin.

§ 37-507. TYPE 4 PROCEDURES

- (a) Purpose; scope.
 - (1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for notice of intent under a general permit and other permits listed in this section.
 - (2) The procedures under this section shall be known as Type 4 Procedures. This section applies to each of the following:
 - (A) a notice of intent under a general permit issued pursuant to the Secretary's authority under this title; and
 - (B) an application for each of following permits:
 - (i) construction or operation of an air contaminant source or class of sources not identified in the State's implementation plan approved under the Clean Air Act;
 - (ii) construction or expansion of a public water supply under 10 V.S.A. chapter 56, except that a change in treatment for a public water supply shall proceed in accordance with 10 V.S.A. § 7714;
 - (iii) a category 1 underground storage tank under 10 V.S.A. chapter 59;
 - (iv) a categorical solid waste certification under 10 V.S.A. chapter 159; and
 - (v) a medium scale composting certification under 10 V.S.A. chapter 159.
- (b) Notice of Application. The Secretary shall provide notice of the application through the environmental notice bulletin when the application is deemed administratively complete.
- (c) Notice of Draft Decision, Public Comment Period.
 - (1) When the Secretary has issued a draft decision, the Secretary shall provide notice through the environmental notice bulletin of the draft decision. At a minimum, the notice shall include: the draft decision,

and how to request copies of the complete record associated with the application.

- (2) After notice is provided, the Secretary shall provide a public comment period on the draft decision of no less than 14 days.
- (d) **Final Decisions.** When the Secretary issues a final decision on an application, the Secretary shall post a copy on the environmental notice bulletin of the of the final decision, a response to comments, and the Secretary shall show any changes made in response to the comments to the permit between the draft and final permit. The electronic notice bulletin shall send this information to any person that requested to receive notice through the bulletin.
- (e) **Additional Notice.** At any time during the review of an application, the Secretary may require that a permit being reviewed under the procedures of this section may be reviewed under § 37-504 (Type 2 Procedures). When making this determination, the Secretary may base the decision on the size, complexity, potential environmental impact, or degree of public interest associated with the project.

§ 37-508. TYPE 5 PROCEDURES

- (a) **Purpose; scope.**
- (1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when issuing emergency permits and other permits listed in this section.
 - (2) The procedures under this section shall be known as Type 5 Procedures. This section shall govern each of the following:
 - (A) issuance of temporary emergency permits under 10 V.S.A. § 912;
 - (B) applications for public water system operational permits under 10 V.S.A. chapter 56 of this title;
 - (C) issuance of authorizations, under a stream alteration general permit issued under 10 V.S.A. chapter 41, for reporting without an application, for an emergency, and for activities to prevent risks to life or of severe damage to improved property posed by the next annual flood;
 - (D) issuance of emergency permits issued under 10 V.S.A. § 1268 of this title;
 - (E) issuance of emergency sludge and septage disposal approvals under 10 V.S.A. § 6605; and
 - (F) shoreland registrations authorized under 10 V.S.A. chapter 49A.

- (b) Final Decisions. When the Secretary issues a final decision on an application, the Secretary shall post a copy on the environmental notice bulletin of the of the final decision.
- (c) Additional Notice. At any time during the review of an application, the Secretary may require that a permit being reviewed under the procedures of this section may be reviewed under § 37-504 (Type 2 Procedures). When making this determination, the Secretary may base the decision on the size, complexity, potential environmental impact, or degree of public interest associated with the project.

§ 37-509. AMENDMENTS; RENEWALS

- (a) A major amendment shall be subject to the same procedures applicable to the original permit decision under this rule.
- (b) A minor amendment shall be subject to the Type 4 Procedures, except that the Secretary need not provide notice of the administratively complete application.
- (c) An administrative amendment shall not be subject to the procedural requirements of this rule.
- (d) A person may renew a permit under the same procedures applicable to the original permit decision under this chapter.
- (e) With respect to amending a permit issued under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this rule, the Secretary shall comply with the federal requirement.

§ 37-510. PRE-APPLICATION PUBLIC INFORMATIONAL MEETING

- (a) Applicability. This section shall apply to the permit applications identified in Appendix B of this rule or any person may voluntarily conduct a pre-application informational meeting as provided in this section.
- (b) Informational Meeting Required. An applicant subject to this section shall hold a pre-application public informational meeting at least 14 days before filing a permit application with the Department. The applicant shall present an overview of the project, an overview of the permits required for the project,

and respond to questions raised by meeting attendees. The applicant and the Secretary or designee shall attend the meeting. The applicant shall respond to questions from other attendees.

- (c) Notice. An applicant shall provide notice of the pre-application meeting at least 14 days prior to the meeting. The notice shall also inform interested persons how to obtain future updates on the project. At a minimum, the following parties shall be notified of the pre-application public informational meeting:
- (1) The owner of the property if the owner is not the applicant;
 - (2) The municipality where the project is located and if the project is on the boundary of a municipality, the adjoining municipality;
 - (3) The municipal planning commission and regional planning commission for any municipality where the project is located;
 - (4) Any adjoining property owner; and
 - (5) The Secretary by way of the Office of Policy and Planning in the Agency of Natural Resources.
- (d) Contents of Notice. A notice required by subsection (c) of this section shall contain the same information as required by § 37-503(b), as applicable.
- (e) Notice to the Secretary. The applicant shall furnish a certification to the Secretary the names of those furnished notice and shall certify compliance with the notice requirements of this section.
- (f) Project scoping process. In lieu of conducting a pre-application public informational meeting, an applicant for a project subject to this section may initiate a project scoping process pursuant to 3 V.S.A. § 2828.

§ 37-511. ADDITIONAL NOTICE.

The Secretary may, on a case-by-case basis:

- (1) Require a project designated as Type 4 or Type 5 to follow the procedures for Type 2 notice.
- (2) Require any additional notice beyond that required by this rule using a method reasonably calculated to provide notice to persons potentially affected by the decision on an application. Such additional notice may include extending deadlines for public comment and reopening a public comment period.

§ 37-512. EXTENSION OF DEADLINES.

A person may request that the Secretary extend any deadline for comment or requesting a public meeting established by this chapter. The person shall submit the request two business days before the relevant deadline and include an explanation of why the extension is justified. If the request is granted, the Secretary shall provide notice of the new deadline through the environmental notice bulletin.

§ 37-513. ADMINISTRATIVE RECORD.

- (a) The Secretary shall create an administrative record for each application for a permit and shall provide instructions to the public on how to obtain the administrative record.
- (b) The Secretary shall use the administrative record as the basis for each draft and final decision on each application received.

APPENDIX A – ANR PERMITS AND PUBLIC NOTICE TYPE

Public Notice Type	Type of Permit	PN Activity Name
Type 1	Air Quality Permits	Air Pollution Control Major Source Construction / Subchapter X Operating Permit
Type 1	Air Quality Permits	Air Pollution Control Major Source Construction / Title V Operating Permit
Type 1	Air Quality Permits	Air Pollution Control Major Source Construction Permit
Type 1	Air Quality Permits	Air Pollution Control Minor Source Construction / Title V Operating Permit
Type 1	Air Quality Permits	Air Pollution Control Title V Operating Permit
Type 1	Surface Water Permits -- Stormwater	Designated Discharges General Permit 3-9030
Type 1	Surface Water Permits -- Stormwater	Discharges From Medium Concentrated Animal Feeding Operations (CAFO) Stormwater General Permit 3-9100
Type 1	Surface Water Permits -- Stormwater	Multi-Sector General Permit (MSGP) 3-9003
Type 1	Surface Water Permits -- Stormwater	Municipal Separate Storm Sewer System (MS4) General Permit 3-9014
Type 1	Surface Water Permits -- Stormwater	Municipal Separate Storm Sewer System (MS4) General Permit 3-9014: Notice of Intent
Type 1	Surface Water Permits -- Stormwater	Transportation Separate Storm Sewer System (TS4) General Permit 3-9007

Type 1	Surface Water Permits -- Stormwater	Transportation Separate Storm Sewer System (TS4) General Permit 3-9007: Notice of Intent
Type 1	Surface Water Permits -- Stormwater	Municipal Roads General Permit (MRGP) 3-9040
Type 1	Surface Water Permits -- Stormwater	Stormwater Runoff from Construction Sites General Permit (CGP) 3-9020
Type 1	Surface Water Permits -- Wastewater	Federal Pretreatment Individual Permit
Type 1	Surface Water Permits -- Wastewater	Wastewater Discharge Individual Permit
Type 1	Surface Water Permits --Lakes and Ponds	Pesticide General Permit
Type 2	Air Quality Permits	Air Pollution Control Minor Source Construction / Subchapter X Operating Permit
Type 2	Air Quality Permits	Air Pollution Control Minor Source Construction Permit
Type 2	Groundwater Permits -- Drinking Water	Groundwater Withdrawal Permit
Type 2	Groundwater Permits -- Drinking Water	Public Water System Source Permit - Site Notification
Type 2	Groundwater Permits -- Drinking Water	Public Water System Source Permit - SPA/Final Report/Draft Permit
Type 2	Groundwater Permits -- Indirect Discharge and UIC	Indirect Discharge Permit - Individual

Type 2	Groundwater Permits -- Indirect Discharge and UIC	Underground Injection Control (UIC) Permit
Type 2	Surface Water Permits -- Lakes and Ponds	Aquatic Nuisance Control Individual Permit
Type 2	Surface Water Permits -- Lakes and Ponds	Lake Encroachment Individual Permit
Type 2	Surface Water Permits -- Lakes and Ponds	Shoreland Protection Individual Permit
Type 2	Surface Water Permits -- Rivers	Flood Hazard Area and River Corridor Individual Permit
Type 2	Surface Water Permits -- Rivers	Stream Alteration Individual Permit
Type 2	Surface Water Permits -- Stormwater	Individual Construction Stormwater Permit (INDC)
Type 2	Surface Water Permits -- Stormwater	Individual Stormwater Discharge Offset Permit (INDO)
Type 2	Surface Water Permits -- Stormwater	Individual Stormwater Discharge Permit
Type 2	Surface Water Permits -- Wetlands	Wetlands Determination
Type 2	Surface Water Permits -- Wetlands	Wetlands Individual Permit
Type 2	Waste Management Permits -- Salvage Yards	Salvage Yard Permit

Type 2	Waste Management Permits -- Sites Management	Corrective Action Plan
Type 2	Waste Management Permits -- Solid Waste Management	Large Composting Facility Certification
Type 2	Waste Management Permits -- Solid Waste Management	Solid Waste Facility Interim Certification
Type 2	Waste Management Permits -- Solid Waste Management	Solid Waste Facility Provisional Certification
Type 2	Waste Management Permits -- Solid Waste Management	Solid Waste Management Facility Certification
Type 3	Groundwater Permits -- Drinking Water	Public Water System Construction Permit - New Type of Chemical Disinfectant
Type 3	Groundwater Permits -- Indirect Discharge and UIC	Indirect Discharge General Permit
Type 3	Surface Water Permits -- Dams	Dam Order
Type 3	Surface Water Permits -- Rivers	Flood Hazard Area and River Corridor General Permit
Type 3	Surface Water Permits -- Rivers	Stream Alteration General Permit
Type 3	Surface Water Permits -- Stormwater	New Stormwater Discharges Stormwater General Permit 3-9015
Type 3	Surface Water Permits -- Stormwater	Previously Permitted Stormwater Discharges General Permit 3-9010

Type 3	Surface Water Permits -- Wastewater	General Permit 3-9004: Discharges to Surface Waters from Petroleum-related Remediation Activities
Type 3	Surface Water Permits -- Wastewater	General Permit 3-9016: Discharges from Petroleum-related Remediation Activities into Municipal Wastewater Treatment Facilities
Type 3	Surface Water Permits -- Wetlands	Wetlands General Permit
Type 3	Surface Water Permits --Lakes and Ponds	Aquatic Nuisance Control General Permit
Type 3	Waste Management Permits -- Solid Waste Management	Plan for Collection and Recycling of Electronic Waste; Individual
Type 3	Waste Management Permits -- Solid Waste Management	Plan for Collection of Mercury-Containing Lamps
Type 3	Waste Management Permits -- Solid Waste Management	Plan for Paint Stewardship
Type 3	Waste Management Permits -- Solid Waste Management	Plan for Primary Battery Stewardship
Type 3	Waste Management Permits -- Solid Waste Management	Plan for Solid Waste Implementation (SWIP)
Type 4	Air Quality Permits	Air Pollution Control Subchapter X Operating Permit
Type 4	Groundwater Permits -- Drinking Water	Authorization of Notice of Intent - Public Water System General Permit to Operate - Transient Non-Community
Type 4	Groundwater Permits -- Drinking Water	Public Water System Construction Permit

Type 4	Groundwater Permits -- Indirect Discharge and UIC	Indirect Discharge Notice of Intent General Permit
Type 4	Surface Water Permits -- Lakes and Ponds	Aquatic Nuisance Control General Permit: Notice of Intent
Type 4	Surface Water Permits -- Lakes and Ponds	Pesticide General Permit-Authorization
Type 4	Surface Water Permits -- Rivers	Flood Hazard Area and River Corridor General Permit-Authorization
Type 4	Surface Water Permits -- Rivers	Stream Alteration General Permit-Authorization
Type 4	Surface Water Permits -- Stormwater	Designated Discharges General Permit 3-9030: Notice of Intent
Type 4	Surface Water Permits -- Stormwater	Discharges from Medium Concentrated Animal Feeding Operations (CAFO) General Permit 3-9100: Notice of Intent
Type 4	Surface Water Permits -- Stormwater	Multi-Sector General Permit (MSGP) 3-9003: Notice of Intent
Type 4	Surface Water Permits -- Stormwater	New Stormwater Discharges General Permit 3-9015: Notice of Intent
Type 4	Surface Water Permits -- Stormwater	Previously Permitted Stormwater Discharges General Permit 3-9010: Notice of Intent
Type 4	Surface Water Permits -- Stormwater	Municipal Roads General Permit (MRGP) 3-9040: Notice of Intent
Type 4	Surface Water Permits -- Stormwater	Stormwater Runoff from Construction Sites General Permit (CGP) 3-9020: Notice of Intent

Type 4	Surface Water Permits -- Wastewater	General Permit 3-9004 Notice of Intent: Discharges to Surface Waters from Petroleum-related Remediation Activities
Type 4	Surface Water Permits -- Wastewater	General Permit 3-9016 Notice of Intent: Discharges from Petroleum-related Remediation Activities into Municipal Wastewater Treatment Facilities
Type 4	Surface Water Permits -- Wetlands	Wetlands General Permit Authorization
Type 4	Waste Management Permits -- Solid Waste Management	Categorical Mining Waste Certification
Type 4	Waste Management Permits -- Solid Waste Management	Categorical Solid Waste Certification
Type 4	Waste Management Permits -- Solid Waste Management	Insignificant Waste Management Event Approval
Type 4	Waste Management Permits -- Solid Waste Management	Medium Composting Facility Certification
Type 4	Waste Management Permits -- Underground Storage Tanks	Category 1 Underground Storage Tank - New Construction
Type 4	Waste Management Permits -- Underground Storage Tanks	Category 1 Underground Storage Tank - Operating Renewal
Type 5	Groundwater Permits -- Drinking Water	Public Water System General Permit to Operate - Transient Non-Community
Type 5	Groundwater Permits -- Drinking Water	Public Water System Individual Permit to Operate
Type 5	Groundwater Permits -- Drinking Water	Authorization of Notice of Intent - Public Water System General Permit to Operate - Transient Non-Community

Type 5	Groundwater Permits -- Drinking Water	Public Water System- Emergency Construction Permit
Type 4	Groundwater Permits -- Drinking Water	Approval to Sell Bottled Water in Vermont
Type 5	Surface Water Permits – Lakes and Ponds	Aquatic Nuisance Control Rapid Response General Permit: Notice of Intent
Type 5	Surface Water Permits -- Lakes and Ponds	Shoreland Project Registration
Type 5	Surface Water Permits -- Rivers	Flood Hazard Area River Corridor Registration
Type 5	Surface Water Permits -- Rivers	Stream Alteration General Permit Emergency Protective Measure
Type 5	Surface Water Permits -- Rivers	Stream Alteration General Permit Next Flood Measure
Type 5	Surface Water Permits -- Rivers	Stream Alteration General Permit Registration
Type 5	Surface Water Permits -- Rivers	Stream Alteration Mineral Prospecting
Type 5	Surface Water Permits -- Wastewater	Emergency Pollution Permit
Type 5	Waste Management Permits -- Hazardous Waste	Temporary Haz Waste Emergency Certification
Type 5	Waste Management Permits -- Solid Waste Management	Compost Facility Registration

Type 5	Waste Management Permits -- Solid Waste Management	Emergency Sludge and Septage Disposal Approval
Type 5	Waste Management Permits – Solid Waste Management	Beverage Redemption Facility Certification
Type 5	Waste Management Permits -- Underground Storage Tanks	Category 1 Underground Storage Tank - Emergency Permit

APPENDIX B – LARGE AND COMPLEX PROJECTS

When any trigger for a large and complex project occurs, the whole project shall be subject to the requirements of § 37-510. An application for a permit containing any of the following shall be a trigger for a project being large and complex:

- (1) Air construction permits that meet or exceed federal major source levels (50 tons per year for volatile organic compounds; 100 tons per year for nitrogen oxide; and 250 tons per year for particulate matter, sulfur dioxide; or carbon monoxide).
- (2) A construction stormwater permit where the total earth disturbance is greater than 50 acres. This shall not include the redevelopment or expansion of linear transportation projects.
- (3) An operational stormwater permit where the total new impervious surface is greater than 15 acres. This shall not include the redevelopment or expansion of linear transportation projects.
- (4) A wetland permit that impacts ten or more significant wetlands or their buffers.
- (5) A wetlands permit that authorizes wetland impacts greater than one acre.
- (6) A new wastewater treatment facility.
- (7) Any new significant industrial direct discharge.
- (8) The expansion of any direct discharge with an increase in design flow greater than 25 percent.
- (9) An in-lake management project designed to alter the water chemistry of a waterbody.
- (10) An aquatic nuisance control permit for the application of a chemical that is not a pesticide in a water of the State. This shall not include private ponds.
- (11) A new or the lateral expansion of an existing solid waste landfill.
- (12) A new municipal solid waste incineration or gasification facility.

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**UNIFORM ENVIRONMENTAL
ADMINISTRATIVE PROCEDURE AND
STANDARD PROCESSES FOR NOTICE AND
COMMENT ON ENVIRONMENTAL PERMITS**

RESPONSE TO COMMENTS

May 29, 2018

Comment: Several of the numbered minimum requirements of a petition are overly onerous. Specifically, section 37-301(b)(5), which requires the petitioner to supply a list of the people, enterprises, and government entities that may be affected by the rule or procedure and an estimate of the costs and benefits to each of those entities, is overly burdensome if the petitioner does not have the financial resources to employ a consultant to measure the costs or benefits of a new or revised rule or procedure. We suggest amending this language to require a narrative description of the costs and benefits to those entities listed. This would accomplish the goal of ensuring there is information regarding the impact of the rule without being overly burdensome to petitioners. In addition, section 37-301(b)(7), which requires submission of a written draft of the proposed rule or procedure, is similarly overly burdensome. We suggest the submission of draft language be encouraged and recommended as a part of a petition, but not a required component. We recommend that the rule be amended to allow either the submission of a draft proposed rule or a narrative description of the rule a petitioner is requesting that ANR propose

Response: The Vermont Administrative Procedure Act (VAPA) creates a right for a person to petition an Agency to adopt a rule. In some instances, whether an Agency adopts a rule is discretionary and in others the Agency is required to initiate rulemaking proceedings. See 3 V.S.A. §§ 808 and 831(c). In both instances, the Agency is required to make a decision within 30 days of receiving a petition.

In order to meet this 30-day requirement, it is reasonable to require the petitioner to fully develop his or her petition prior to filing it with the Agency. This includes providing a draft of the proposed rule and to touch on the information that the Agency is required to consider during its assessment of a rule under the VAPA.

The rule was not intended to require a petitioner to identify every person affected by the rule and describe economic impacts, in a specific way, to those persons. The following change has been made in response to this comment:

- (5) *A description list of the people, enterprises, and government entities that may be affected ~~effected~~ by the rule or procedure and an estimate of the costs and benefits to each of those entities;*

Comment: It is important that ANR is transparent about its response to petitions. As such, the Department should post on its website all responses to petitions-both those that were granted, and those that were denied. We suggest inserting this as a requirement in section 37-301(c).

Response: Agreed. The following change will be made to the rule:

- (d) *The Secretary shall post any petition for a rulemaking and its response on the Agency website.*

Comment: The issue of administrative continuation of permits is potentially problematic if continuation goes on for too many permit cycles. There are examples of facilities operating under permits that are more than 15 years old. It is unacceptable for these permits to continue authorizing activities that have an environmental impact for such a long period of time without a thorough review from ANR. As such, we suggest this rule should include a reasonable timeframe in section 37-303 restricting how many years in a row a permit can be administratively continued. As the rule is drafted, it appears that permits could be administratively continued indefinitely.

Response: No changes will be made in response to this comment. The purpose of the administrative continuation provisions of the VAPA (3 V.S.A. § 814(b)) is to hold permit holders harmless when an Agency fails to complete its consideration of a permit prior to the expiration of a permit. Making the proposed change would be inconsistent with the purpose of the statute, however, the Agency agrees to make the following change to § 37-303:

Note: Absent a compelling reason, long-term administrative continuations should be rare and are generally disfavored by the Agency.

Comment: We strongly support the Rule's adoption of the majority rule interpretation of the vested rights doctrine in section 37-304, wherein the statutory and regulatory requirements applicable to a permit are those in effect *on the date that the Department's draft decision is issued*. The ANR's current practice of reviewing a permit application based on the requirements in effect *on the date of the permit application* (i.e., the minority rule interpretation) is highly problematic and not adequately protective of the environment. This is because the minority view allows for scenarios where permit applications are reviewed against woefully out-of-date environmental rules and standards. For example, an entity could apply for a stormwater discharge permit in 2010, but due to project delays or changes, ANR does not issue its draft decision on the permit until 2017. Under the minority interpretation, that permit would be judged against the 2011 Vermont Water Quality Standards, even though the State has adopted revised Water Quality Standards in both 2014, and 2016. It is not adequately protective of the environment-nor does it make logical sense-to review a permit submitted in 2016 against Water Quality Standards adopted five years prior when the science and understanding of pollutant loads has changed in the intervening years and the State has adopted newer rules and standards as a result. In sum, we support this proposed change to move to the majority rule vested rights doctrine. This is a much-needed change that will apply to the variety of regulations and permitting programs ANR administers and provide more clarity (there have been many disputes over when an application was deemed "complete" under the minority rule vested rights posture), and it will be better protective of our natural resources.

Response: The concept of vested rights is a common law principle not articulated in the VAPA. The Vermont Supreme Court has addressed the question of when an applicant's rights vest in a regulatory structure, following the minority rule. The Courts decisions have primarily been in the area of land use law (planning and zoning as well as Act 250). The Agency agrees with the comment. When considering environmental permits that have a primary purpose to protect human health and the environment, the Agency should examine the standards in place at the time of administrative disposition of the permit (at issuance of a draft permit). This approach has the added benefit that it is consistent with how federally delegated permit programs are required to view vested rights pursuant to federal regulation and EPA decisions.

Comment: It is important for the hearing officer to be seen as impartial and insulated from internal influence by ANR. What mechanisms will be employed to ensure that they serve in an objective fashion? In addition, we have concerns about whether the hearing officer should be able to communicate with the Commissioner or Department employees, which could influence the objectivity of the hearing officer. We request that the rule provide that there be no ex parte communication between the hearing officer and the Commissioner or Department employees. Input from these entities should be part of the record.

Response: Ensuring that hearing officers are impartial is of significant importance with respect to how contested cases are conducted. When the Agency conducts a contested case, the appointing authority (either the Commissioner or Secretary) acts as a decision-maker in a quasi-judicial proceeding or delegates that authority to a hearing officer. 3 V.S.A. § 813 prohibits ex parte consultation but then says communications with “department employees” and “personal assistants” are not ex parte contacts. The proposed change in § 37-403 further clarifies and restricts which “department employees” may be communicated with as a part of a proceeding. The purpose of these limited exceptions is to ensure that the decision-maker has access to technical professionals to evaluate the evidence and testimony submitted by the parties. This provision was based on Section 408 of the 2010 Model State Administrative Procedures Act.

Specifically, the proposed rule restricts contacts with employees to those not personally and substantially involved with the matter on appeal, department employees has not communicated with a party in the case, and the communications are to help the hearing officer understand matters in the record. No changes will be made in response to these comments.

Comment: It is important that the Commissioner have authority to revoke a permit under any situation in which the permit is or may be harmful to human health or the environment. Accordingly, we suggest inclusion of a catch-all provision to this effect under section 37-404(2), perhaps as subheading (F).

Response: Agreed. The following change will be made to the proposed rule:

(D) *specific grounds for revocation identified in the rules governing the activity has occurred; ~~or~~*

(E) *the holder of the permit has requested that it be revoked; or-*

(F) *the creation of a condition that may present a significant threat to human health or the environment.*

Comment: The proposed rule should allow a person to petition for a permit to be revoked. Often citizens are the ones that identify and are affected by permit violations or misrepresentations. These citizens should be allowed to petition to revoke a permit if the person can provide a basis for doing so.

Response: Currently, most administrative rules administered by the Agency have unique requirements on how to revoke a permit issued under those rules. This is an effort to create a single standard for those revocation processes without materially changing our current revocation process. Since, as a general matter, a person does not currently have a right to petition for a permit to be revoked, the Agency does intend to create such a right as a part of this rule. This does not limit a person's ability to request that the Agency exercise its discretionary authority to revoke a permit. No changes will be made in response to this comment.

Comment: In regards to providing notice to persons under section 37-404(b), will this include people who commented on the underlying permit that is being revoked? We believe people who commented of the underlying permit should receive notice of a permit revocation.

Response: The proposed rule defines what constitutes a necessary party for purposes of receiving notice in a contested case. Necessary parties are identified as persons who have a legal interest related to the subject of the proceeding and a failure to participate in the proceeding could result in that person being unable to protect that legal interest.

That being stated, the following change will be made to the notice section:

(c) *Interested persons. When applicable, the Secretary should provide notice to any person who commented on the Department action that is subject to the revocation proceeding. A failure to provide an interested person with notice shall not create a procedural defect to the proceeding.*

Comment: In regards to party status and entry of appearance, we are concerned that a party must provide a statement outlining how they will be affected by the potential outcome of the proceeding

versus how they may be affected by the outcome in order to participate. We believe the "will" in this section should be changed to "may." This is consistent with standard for party status in ANR permit appeals filed with the Environmental Division of Superior Court under 10 VSA Chapter 220.

Response: Agreed. The rule will be changed as follows:

- (4) *A statement on how the interests of the person entering an appearance are or may be affected by the subject matter and may ~~will~~ be affected by the potential outcome of the proceeding.*

Comment: We have a concern that the number of expert witnesses may be arbitrarily capped. We believe there should be some rationale for limiting experts.

Comment: Limiting proposed findings of facts and conclusions of law to no more than 10 pages may be onerous for a large proceeding. Perhaps a fifteen-page limit is more appropriate or an opportunity be provided for a party to request that the page limitation and number of expert witnesses be waived.

Response: These requirements were modeled after the Natural Resources Board Rule of Practice and the Agency believes that it is reasonable in proceedings such as this, however, we agree that the parties or hearing officer should be able to set a different limit or waive this requirement on a showing of good cause. The following change will be made in response to this comment:

- (d) *All materials filed with the hearing officer shall comply with the following page limits:*
- (1) *Motions: No more than 10 pages.*
 - (2) *Memoranda, briefs, pleadings, and any other document not expressly identified in this subsection: No more than 15 pages.*
 - (3) *Reply memoranda, reply briefs: No more than 15 pages.*
 - (4) *Proposed findings of fact and conclusions of law: No more than 10 pages.*
 - (5) *Prefiled testimony, rebuttal prefiled testimony: No limitation on testimony or exhibits, unless established in scheduling order for the proceeding.*

- (e) *The hearing officer may modify or waive the limitations established in subsection (d) of this section upon a showing of good cause.*
- (f) *All proposed findings of fact and conclusions of law shall cite to the supporting evidence in the proceeding record and discuss the applicable legal provisions showing how each element of a claim is met or not met based on the facts of the proceeding.*

Comment: Under section 37-408(d), can a witness be "available to appear" telephonically, or must the witness be available to appear in person? This should be clarified. We believe appearance by telephone or other means like skype be allowed under the proposed rule.

Response: This level of specificity is not necessary for this rule and can be established as a part of the proceeding by agreement of the parties or by order of the hearing officer. No changes will be made in response to this comment.

Comment: The proposed rule does not articulate whether a decision in a contested case proceeding or a denial of a petition for a proposed rule denial may be appealed to the Environmental Division of Superior Court. The rule should clarify that these decisions are appealable and indicate what the standard of review would be under such an appeal.

Response: The proposed rule does not establish or clarify appeal routes. Appeal routes are established by statute. No changes will be made to the rule in response to this comment.

Comment: We suggest the computation of time in section 37-502 be consistent with the Vermont Rules of Civil Procedure to avoid confusion.

Response: How time is computed is established by statute. See 10 V.S.A. § 7705. No change will be made in response to this comment.

Comment: In regards to the number of days that are provided to request a hearing, we believe 14 days is too short and request that this be expanded to 30 days.

Response: The 14 day period in which a person may request a public meeting is set in statute. See 10 V.S.A. § 7711(d). No change will be made in response to this comment.

Comment: In regards to additional notice requirements applicable to Clean Water Act draft decisions, the notice should include a general description of the location of each existing or proposed discharge point the name of *all* receiving waters. As the text currently reads, ANR only requires the listing of the *immediate* receiving water. This distinction between immediate versus downstream or ultimate receiving waters has no basis in the law. Pursuant to the definition of "receiving waters" in the Vermont Water Quality Standards, all waters downstream of a discharge are receiving waters. This rule should reflect the correct definition of receiving waters.

Response: The immediate receiving water is the water in which the discharge takes place. While we agree that standards apply to all receiving waters, including downstream receiving waters, we believe that adding numerous downstream waterbodies will be confusing for persons who are interested in the proposed project. In addition, the Environmental Notice Bulletin allows people to search projects by watershed, so this larger view may be addressed through this. No changes will be made in response to this comment.

Comment: In regards to final decisions in section 37-504(d), we support the inclusion of a *final* fact sheet with final permit issuance. In our experience, ANR has included the *draft* fact sheets with the final permit issuances, which creates confusion if the permit underwent changes between the draft and final phase.

Response: The Agency prepares a fact sheet to document the basis in the record for issuing a permit. When the Agency issues a final permit it is required to produce a response to comments and show the changes between the draft decision and the final decision. Any changes from the original decision will be documented in the response to comments and summary of changes document. No changes will be made in response to this comment.

Comment: There appears to be missing text in regards to "Type 5 Proceedings." Also, based on the former Types 1-4 Procedures, we wonder whether this is meant to read "Type 5 Procedures" instead of "Proceedings"?

Response: The following changes will be made in response to this comment:

§ 37-501. TYPE 5 PROCEDURES PROCEEDINGS

(a) Purpose; scope.

- (1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when issuing emergency permits and other permits listed in this section.
- (2) The procedures under this section shall be known as Type 5 Procedures. This section shall govern each of the following:
 - (A) issuance of temporary emergency permits under 10 V.S.A. § 912;
 - (B) applications for public water system operational permits under 10 V.S.A. chapter 56 of this title;
 - (C) issuance of authorizations, under a stream alteration general permit issued under 10 V.S.A. chapter 41, for reporting without an application, for an emergency, and for activities to prevent risks to life or of severe damage to improved property posed by the next annual flood;
 - (D) issuance of emergency permits issued under 10 V.S.A. § 1268 of this title;
 - (E) issuance of emergency sludge and septage disposal approvals under 10 V.S.A. § 6605; and
 - (F) shoreland registrations authorized under 10 V.S.A. chapter 49A.

(b) *Final Decisions.* When the Secretary issues a final decision on an application, the Secretary shall post a copy on the environmental notice bulletin of the of the final decision.

(c) *Additional Notice.* At any time during the review of an application, the Secretary may require that a permit being reviewed under the procedures of this section may be reviewed under § 37-504 (Type 2 Procedures). When making this determination, the Secretary may base the decision on the size, complexity, potential environmental impact, or degree of public interest associated with the project.

Comment: We strongly support the pre-application public informational meeting and believe this was an important underlying policy in Act 150. We believe more clarity is needed regarding the duty of the applicant to answer questions and provide relevant information. For example, the rule should require the applicant to respond to questions by a date certain if they don't or can't provide answers at the meeting. In addition, the rule should provide more clarity about how the parties should be obligated in the pre-application process to

eliminate points of concern or improve the overall permit application.

Response: The rule currently requires that an applicant respond to any comments or questions raised at the pre-application public informational meeting. The Agency does not believe that it is reasonable to eliminate points of concern in light of the fact that the pre-application process is fundamentally a procedural requirement.

Comment: In regards to the triggers for large and complex projects, we believe the triggers are too large, and will likely result in few actual pre-application meetings. We strongly encourage you to lower these to more reasonable triggers. We would like the opportunity to meet with ANR to discuss what more reasonable triggers would be. We also recommend that the rule allow an applicant to engage in the formal scoping review on its own, or if requested by a party that may be affected by a project.

Response: The Agency will amend § 37-509(a), as follows, to clarify that a permit applicant may voluntarily initiate a project scoping process. The Agency has reviewed the thresholds for when a pre-application informational meeting is required and concluded that they are good start for constitutes a large and complex project. The Agency will periodically review Appendix B to determine whether adjustments should be made. Further, the Agency does not believe that it is appropriate to collect information after the close of the comment period to modify these thresholds.

(a) Applicability. This section shall apply to the permit applications identified in Appendix B of this rule or any person may voluntarily conduct a pre-application informational meeting as provided in this section.

Comment: The proposed rule does not articulate whether an appeal of a permit goes to the Environmental Division of Superior Court for de novo review. The rule should clarify whether this is the case.

Response: The proposed rule does not establish or clarify appeal routes. Appeal routes are established by statute. No changes will be made to the rule in response to this comment.

Other changes

1. The following amendments were made to § 37-201 make the proposed rule consistent with the changes enacted in H. 908:

(15) “Guidance document” means a written record that has not been adopted in accordance with 3 V.S.A. chapter 25 and that is issued by an agency to assist the public by providing an agency’s current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (25)(A) through (F) of this section.

* * *

(16) “Procedure” means a practice that has been signed by the Commissioner and posted in the electronic compellation under § 37-303, either at the election of the Agency or as the result of a request under § 37-302 adopted in writing at the election of the agency or as the result of a petition under 37-301. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

- (A) a rule adopted pursuant to 3 V.S.A. chapter 25;
- (B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;
- (C) a statement that concerns only:
 - (i) the internal management of an agency and does not affect private rights or procedures available to the public;
 - (ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them;
 - (iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;
- (D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;
- (E) an opinion of the Attorney General; or
- (F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an

investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

2. The following change to § 37-301 in response to an oversight / confusion surrounding the interplay between 3 V.S.A. §§ 806 and 831(c)
 - (a) *Generally. Any person may submit a petition requesting that the Commissioner adopt, amend, or repeal a rule or procedure. If the petition is to adopt a procedure as a rule and is accompanied by the signatures of 25 persons or made by the Legislative Committee on Administrative Rules, then the Commissioner shall initiate the rulemaking process.*

~~Note: The Commissioner is not required to file a petition to initiate the rulemaking process under 3 V.S.A. chapter 25.~~

3. The following change was made to § 37-302 to make the proposed rule consistent with H. 908:

On or before July 1, 2019, the Department shall maintain an electronic compilation of all procedures and guidance documents on the Department webpage. The compilation shall be organized by subject and contain the date the procedure or guidance document was adopted. Each addition, change, or deletion to the official compilation shall also be signed, dated, indexed, and recorded. The most recently dated procedure shall be the effective procedure. Any procedure or guidance document that does not appear in the electronic compilation shall no longer be effective. The Department shall not rely on a procedure or guidance document or cite it against any party to a proceeding, unless the procedure or guidance document is included in a compilation maintained and published in accordance with this section.

4. The following amendment was made to § 37-504(a) to ensure consistency with a recently adopted amendment to federal rule that changes the treatment of notices of intent under the municipal separate storm sewer program:
 - (2) *This section governs each application for a permit to be issued by the Secretary pursuant to the requirements of the Clean Air Act or Clean Water Act and to each general permit to be issued under one of those acts. However, the subsection does not apply to a notice of intent under a general permit, except as required under 40 C.F.R. § 122.28(d)(2) for notices of intent under a Municipal Separate Storm Sewer System (MS4) “two-step general permit”. The procedures under this section shall be known as Type 1 Procedures.*

5. The following section was added to ensure consistency with 10 V.S.A. chapter 170:

§ 37-502. AMENDMENTS; RENEWALS

- (a) A major amendment shall be subject to the same procedures applicable to the original permit decision under this rule.
- (b) A minor amendment shall be subject to the Type 4 Procedures, except that the Secretary need not provide notice of the administratively complete application.
- (c) An administrative amendment shall not be subject to the procedural requirements of this rule.
- (d) A person may renew a permit under the same procedures applicable to the original permit decision under this chapter.
- (e) With respect to amending a permit issued under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this rule, the Secretary shall comply with the federal requirement.

6. Cross references to 37-309 were modified to 37-310 in 37-303(d), 37-504(b)(3), 37-505(b)(5) and Appendix B due to adding a new section to address amendments.

7. The following changes were made to Appendix A:

- Added Municipal Separate Storm Sewer System (MS4) General Permit 3-9014: Notice of Intent to Type 1 and deleted from Type 4.
- Added Transportation Separate Storm Sewer System (TS4) General Permit 3-9007 to Type 1 and deleted from Type 4.
- Added Transportation Separate Storm Sewer System (TS4) General Permit 3-9007: Notice of Intent to Type 1 and deleted from Type 4.
- Added Municipal Roads General Permit (MRGP) 3-9040 to Type 1.
- Added Municipal Roads General Permit (MRGP) 3-9040: Notice of Intent to Type 4.
- Added Beverage Redemption Facility Certifications to Type 4.

- Added Authorization of Notice of Intent - Public Water System General Permit to Operate - Transient Non-Community to Type 5 and deleted from Type 4.
- Added Aquatic Nuisance Control Rapid Response General Permit: Notice of Intent to Type 5.
- Added Approval to Sell Bottled Water in Vermont to Type 5 and deleted it from Type 4.



May 4, 2018

Matt Chapman
General Counsel
Agency of Natural Resources
One National Life Drive
Montpelier, VT 05620

Re: Rule to Implement the Requirements of Act 150 of 2016

Dear Matt:

Please find attached comments from Vermont Natural Resources Council (VNRC) and Conservation Law Foundation (CLF) in regards to the proposed rule to implement the requirements of Act 150 of 2016.

In general, we find the proposed rule is easy to understand and is consistent with the requirements of Act 150. We appreciate the effort that has gone into the writing of the proposed rule. The following are our specific comments on the proposed rule.

In regards to Subchapter 3 –Uniform Environmental Administrative Procedures, we have the following questions or concerns:

- Several of the numbered minimum requirements of a petition are overly onerous. Specifically, section 37-301(b)(5), which requires the petitioner to supply a list of the people, enterprises, and government entities that may be affected by the rule or procedure and an estimate of the costs and benefits to each of those entities, is overly burdensome if the petitioner does not have the financial resources to employ a consultant to measure the costs or benefits of a new or revised rule or procedure. We suggest amending this language to require a narrative description of the costs and benefits to those entities listed. This would accomplish the goal of ensuring there is information regarding the impact of the rule without being overly burdensome to petitioners. In addition, section 37-301(b)(7), which requires submission of a written draft of the proposed rule or procedure, is similarly overly burdensome. We suggest the submission of draft language be encouraged and recommended as a part of a petition, but not a required component. We recommend that the rule be amended to allow either the submission of a draft proposed rule or a narrative description of the rule a petitioner is requesting that ANR propose.

- It is important that ANR is transparent about its response to petitions. As such, the Department should post on its website all responses to petitions—both those that were granted, and those that were denied. We suggest inserting this as a requirement in section 37-301 (c).
- The issue of administrative continuation of permits is potentially problematic if continuation goes on for too many permit cycles. There are examples of facilities operating under permits that are more than 15 years old. It is unacceptable for these permits to continue authorizing activities that have an environmental impact for such a long period of time without a thorough review from ANR. As such, we suggest this rule should include a reasonable timeframe in section 37-303 restricting how many years in a row a permit can be administratively continued. As the rule is drafted, it appears that permits could be administratively continued indefinitely.
- We strongly support the Rule's adoption of the majority rule interpretation of the vested rights doctrine in section 37-304, wherein the statutory and regulatory requirements applicable to a permit are those in effect *on the date that the Department's draft decision is issued*. The ANR's current practice of reviewing a permit application based on the requirements in effect *on the date of the permit application* (i.e., the minority rule interpretation) is highly problematic and not adequately protective of the environment. This is because the minority view allows for scenarios where permit applications are reviewed against woefully out-of-date environmental rules and standards. For example, an entity could apply for a stormwater discharge permit in 2010, but due to project delays or changes, ANR does not issue its draft decision on the permit until 2017. Under the minority interpretation, that permit would be judged against the 2011 Vermont Water Quality Standards, even though the State has adopted revised Water Quality Standards in both 2014, and 2016. It is not adequately protective of the environment—nor does it make logical sense—to review a permit submitted in 2016 against Water Quality Standards adopted five years prior when the science and understanding of pollutant loads has changed in the intervening years and the State has adopted newer rules and standards as a result. In sum, we support this proposed change to move to the majority rule vested rights doctrine. This is a much-needed change that will apply to the variety of regulations and permitting programs ANR administers and provide more clarity (there have been many disputes over when an application was deemed “complete” under the minority rule vested rights posture), and it will be better protective of our natural resources.

In regards to Subchapter 4 – Contested Case Proceedings we have the following questions or concerns:

- It is important for the hearing officer to be seen as impartial and insulated from internal influence by ANR. What mechanisms will be employed to ensure that they serve in an objective fashion? In addition, we have concerns about whether the hearing officer should be able to communicate with the Commissioner or Department employees, which could influence the objectivity of the hearing officer. We request that the rule provide that there be no *ex parte* communication between the hearing officer and the Commissioner or Department employees. Input from

these entities should be part of the record.

- It is important that the Commissioner have authority to revoke a permit under any situation in which the permit is or may be harmful to human health or the environment. Accordingly, we suggest inclusion of a catch-all provision to this effect under section 37-404(2), perhaps as subheading (F).
- The proposed rule should allow a person to petition for a permit to be revoked. Often citizens are the ones that identify and are affected by permit violations or misrepresentations. These citizens should be allowed to petition to revoke a permit if the person can provide a basis for doing so.
- In regards to providing notice to persons under section 37-404(b), will this include people who commented on the underlying permit that is being revoked? We believe people who commented of the underlying permit should receive notice of a permit revocation.
- In regards to party status and entry of appearance, we are concerned that a party must provide a statement outlining how they will be affected by the potential outcome of the proceeding versus how they may be affected by the outcome in order to participate. We believe the “will” in this section should be changed to “may.” This is consistent with standard for party status in ANR permit appeals filed with the Environmental Division of Superior Court under 10 VSA Chapter 220.
- We have a concern that the number of expert witnesses may be arbitrarily capped. We believe there should be some rationale for limiting experts.
- Limiting proposed findings of facts and conclusions of law to no more than 10 pages may be onerous for a large proceeding. Perhaps a fifteen-page limit is more appropriate or an opportunity be provided for a party to request that the page limitation and number of expert witnesses be waived.
- Under section 37-408(d), can a witness be “available to appear” telephonically, or must the witness be available to appear in person? This should be clarified. We believe appearance by telephone or other means like skype be allowed under the proposed rule.
- The proposed rule does not articulate whether a decision in a contested case proceeding or a denial of a petition for a proposed rule denial may be appealed to the Environmental Division of Superior Court. The rule should clarify that these decisions are appealable and indicate what the standard of review would be under such an appeal.

In regards to Subchapter 5 – Standard Procedures for Permit Processing we have the following questions or concerns:

- We suggest the computation of time in section 37-502 be consistent with the Vermont Rules of Civil Procedure to avoid confusion.
- In regards to the number of days that are provided to request a hearing, we believe 14 days is too short and request that this be expanded to 30 days.
- In regards to additional notice requirements applicable to Clean Water Act draft decisions, the notice should include a general description of the location of each existing or proposed discharge point the name of *all* receiving waters. As the text currently reads, ANR only requires the listing of the *immediate* receiving water. This

distinction between immediate versus downstream or ultimate receiving waters has no basis in the law. Pursuant to the definition of "receiving waters" in the Vermont Water Quality Standards, all waters downstream of a discharge are receiving waters. This rule should reflect the correct definition of receiving waters.

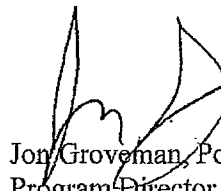
- In regards to final decisions in section 37-504(d), we support the inclusion of a *final* fact sheet with final permit issuance. In our experience, ANR has included the *draft* fact sheets with the final permit issuances, which creates confusion if the permit underwent changes between the draft and final phase.
- There appears to be missing text in regards to "Type 5 Proceedings." Also, based on the former Types 1-4 Procedures, we wonder whether this is meant to read "Type 5 Procedures" instead of "Proceedings"?
- We strongly support the pre-application public informational meeting and believe this was an important underlying policy in Act 150. We believe more clarity is needed regarding the duty of the applicant to answer questions and provide relevant information. For example, the rule should require the applicant to respond to questions by a date certain if they don't or can't provide answers at the meeting. In addition, the rule should provide more clarity about how the parties should be obligated in the pre-application process to eliminate points of concern or improve the overall permit application.
- In regards to the triggers for large and complex projects, we believe the triggers are too large, and will likely result in few actual pre-application meetings. We strongly encourage you to lower these to more reasonable triggers. We would like the opportunity to meet with ANR to discuss what more reasonable triggers would be. We also recommend that the rule allow an applicant to engage in the formal scoping review on its own, or if requested by a party that may be affected by a project.
- The proposed rule does not articulate whether an appeal of a permit goes to the Environmental Division of Superior Court for de-novo review. The rule should clarify whether this is the case.

Thank you for the opportunity to comment on the proposed rule. Please do not hesitate to contact us with any questions.

Best,



Jamey Fidel, General Counsel/
Forest and Wildlife Program Director
Vermont Natural Resources Council



Jon Groveman, Policy and Water
Program Director
Vermont Natural Resources Council



Elena Mihaly, Staff Attorney
Conservation Law Foundation