

DEC/NRB Proposed Technical Corrections

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Administration Proposed Changes

- Brownfield Program Salvage Yard Program
- ~~Beverage Container Commingling~~
- Clean Water Investment Report
- Act 150 Changes
 - Permit Transfers
 - Wetlands Determinations
 - Lake Encroachment Permits
- Drinking Water Revolving Fund
- ~~NRB database related changes~~
- Fee-related Language Cleanups
 - Septage fee
 - Hauler fee (paired with technical changes)

Strikethrough reflects changes made by House Natural Resources, Fish, and Wildlife in H.446 (we plan to reintroduce)

Brownfield Program (in H. 446)

- Challenge:
 - Currently Regional Development Corps (RDCs) and Regional Planning Commissions (RPCs) can acquire a brownfield, enter into an agreement with ANR and stay outside the chain of liability. Municipalities cannot do this except when a property is being taken for involuntary acquisition.
 - Contribution protection from past owners/responsible parties is only available to the applicant in the BRELLEA program after assessment and cleanup of the brownfield is complete and the certificate of completion is provided.
- Proposed Solution:
 1. Allow Municipalities to have the same provisions that currently exist in statute for the RPC and RDC.
 2. Amend the BRELLEA statute to allow for prospective purchasers, approved into the BRELLEA program, to receive contribution protection upon approval of a corrective action plan.

Salvage Yard Program (in H.446)

- Challenge:
 - The Statute requires DEC to provide/require annual training for permitted Salvage Yards
 - Regulations are not dynamic enough to warrant annual training; staff resources are limited as well
- Proposed Solution:
 1. Eliminate the training requirement

Clean Water Investment Report (in H.446)

- Challenge:
 - 10 VSA Chapter 47 contains multiple clean water reporting requirements resulting from several years of policy development, addressed in the *Vermont Clean Water Initiative Annual Performance Report* (see page 2 of the 2020 Performance Report).
 - Challenges include: (1) some reporting requirements are duplicate/outdated; (2) the Performance Report is lengthier than its target audience may desire; and (3) the Performance Report requires significant state employee capacity to produce annually.
- Proposed Solution:
 1. Align reporting requirements and dates to provide intended content without duplication;
 2. Eliminate duplicate/outdated reporting requirements; and
 3. Eliminate reporting on completed initiatives.
 4. **Additional changes proposed.**

Act 150: Permit Transfers (in H.446)

- Challenge:
 - The current definition of administrative amendment does not account for transfers of ownership (and permit). An example we have seen recently is in the transfer of Underground Storage Tank permits to new owners.
- Proposed Solution:
 1. Revise Act 150 so that the definition of administrative amendment includes a transfer of ownership if it's authorized by rule.

Act 150: Wetland Determinations (in H.446)

- Challenge:
 - Individual wetland determinations are processed with general permit authorizations, but authorizations can be processed faster (14-day notice) than the wetland determination (30-day notice). The decision by the Agency on whether a wetland should be protected should come before or concurrently with the authorization to do work in a wetland, not after.
- Proposed Solution:
 1. Move wetland determinations notice requirements from Type 2 to Type 4 so that determinations can be noticed for a minimum of 14 days.

Act 150: Lake Encroachment Permits (in H.446)

- Challenge:
 - Per statute Permits aren't effective until 10 days after they are issued, which is unique to lake encroachment permits
 - *29 VSA 11 405 c: The action of approving or denying an application shall not be effective until 10 days after the department's notice of action.*
 - This situation causes unnecessary variability / inconsistency in how DEC issues and enforces permits, and hasn't led to any benefits from the additional period between issuance and effective date
- Proposed Solution:
 1. Make the lake encroachment permit effective date the same as other permits which become effective as soon permit is signed and issued

Drinking Water Revolving Fund (in H. 446)

- Challenge:
 - Current statute at 24 VSA §4763c(i) specifies a fixed interest fee of 3% and maximum loan term of 20 years for land acquisition for public water source protection precluding flexible terms for such loans, unlike other DWSRF loans.
- Proposed Solution:
 1. Repeal the subsection entirely. By repealing the subsection, the rate set for these loans can be adjusted as frequently as annually to adjust to changing market rates.

NRB Application/Database-Related Changes

(H.NRF&W Struck all but days change)

- Challenge:
 - The NRB is in the process of creating a new online application and a new database. These new technological advancements require three changes to Act 250 so that when the application and database are rolled out, the NRB's practice will be consistent with the statute.
- Proposed Solutions:
 1. ~~Shifting the obligation to submit notice of a new Act 250 permit application from the applicant to the District Commission. (10 V.S.A. 6084(a)).~~
 2. Extend existing deadlines under 11 days. This change (along with similar changes to the Act 250 Rules) will convert all deadlines to "calendar days" as opposed to "business days." The end result will be similar to the "day is a day" rule amendments made the Vermont Judiciary in 2018. (Various sections).
 3. ~~Change existing statutory provision, regarding application requirements, so that it will be consistent with current practice and with future practice once the online application is rolled out. (10 V.S.A. 6083(a)).~~

Septage Fee Clarification (in H.446)

- Challenge:
 - The septage fee language is overly complicated under 3 V.S.A. § 2822(j)(33): "\$10.00 per 1,000 gallons based on the rated capacity of the tank being pumped rounded to the nearest 1,000 gallon"
 - The language is not clear on applying fee to out-of-state septage brought to VT for management and/or septage pumped from VT tanks and hauled out of state for disposal/management at an out-of-state facility. The program is currently assessing the fee on both.
- Proposed Solution:
 1. Change/simplify language to require that septage transporters must pay "\$.01 per gallon of septage managed in Vermont"

Solid Waste Haulers (in H446)

- Challenge:
 - The definition of commercial hauler (and thus who needs a permit) conflicts in two sections of statute.
 - The exemption intended for property managers incorrectly references transportation-related services.
 - The fee statute incorrectly references "tandem trailers" (two trailers hauled by one tractor) without specifying a fee for regular tractor trailers.
- Proposed Solution:
 1. Revise the older statute to include the newer definition of commercial hauler.
 2. Correct the exemption language to correctly reference hauling incidental to non-waste services.
 3. Change the fee language to correctly reference "transfer trailers". Fees will remain the same.

H.NRF&W Added Changes

- Increases Environmental Contingency Fund spending cap (we support and had in budget)
- Solid Waste Management Assistance Fund to Environmental Contingency Fund Transfer
 - We want the transfer language; we agreed to a greater base share to the solid waste management entities before making a transfer. Overall a good change
- ~~Fish and Wildlife Billback Authority~~
 - Committee added it and then took it back out.

Strikethrough reflects changes made by House Natural Resources, Fish, and Wildlife

New Proposals for 2022

- Dam Safety Rule Extension
- Clarification of Private Ponds Definition
- Reclassification prohibitions (1000 GPD)
- Salvage Yard Closures
- CWSRF Loans for Failed Septic Systems
- Additional Clean Water Investment Reporting Changes

Dam Safety Rule Extension

- Challenge:
 - Act 161 (2018) required two rulemakings by the Dam Safety Program. Because of significant workload challenges along with the ramp up in Agency Dam Safety work as part of the FY22 budget (\$5m), we do not believe we will meet the second rulemaking deadline and would like to see it extended.
- Proposed Solution:
 - Extend the rulemaking and an associated report deadline.

Clarification of Private Ponds Definition

- **Challenge:**
 - Multiple definitions of “Private Ponds” exist in statute that are substantially different, which causes confusion for the public and creates challenges for DEC:
 - Lake Encroachment Statute (29 V.S.A. § 402 (7)) cites a definition from [10 V.S.A. § 5210](#) (Chapter 119)
 - Shoreland Protection Act ([10 V.S.A. § 1442](#)) uses its own definition in section 14
 - The definition for private pond under Shoreland is the most accurate and clearly written definition for our purposes. The definition under Encroachment mostly deals with fishing and DEC only use part of that definition
- **Proposed Solution:**
 1. In Encroachment Statute (29 V.S.A. § 402), replace the current definition with the definition used in more recent Shoreland Statute as follows below:
 - 29 V.S.A. § 402 (7) "Public waters" means navigable waters excepting those waters in private ponds as set forth in [10 V.S.A. § 1442](#)

Surface Water Reclassification

- Challenge:
 - Statute currently prohibits new 1000 gallon per day on-site wastewater systems in the watersheds of Class A waters. There is no environmental benefit to this; it is simply a check on development.
- Proposed Solution:
 - Amend statute to remove the prohibition after July 1, 2022 to enable data-driven reclassifications to move forward.

Salvage Yard Closures

- Challenge:
 - Unregistered salvage yards have become an increasing problem around the state. We often struggle to close them down because of the cost of vehicle removal. Current statute doesn't allow for a mobile car crusher to come and address closure for unregistered salvage yards.
- Proposed Solution:
 - Amend statute to enable the use of mobile car crusher at an unregistered facility only to facilitate closure.

CWSRF Loans for Failed Septic Systems

- Challenge:
 - When a septic system fails, the replacement can be very costly. At the federal level, the U.S. EPA has authorized the use of the Clean Water State Revolving Fund for the replacement of failed systems. However, state statute would need to be amended to allow the use of the fund.
- Proposed Solution:
 - We propose the legislature amend 10 V.S.A. Chapter 120 to allow the fund to be used for this purpose.