

DEC/NRB Proposed Technical Corrections

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Proposed Changes

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

Brownfield Program

- 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 BRELLA 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 BRELLA statute to allow for prospective purchasers, approved into the BRELLA program, to receive contribution protection upon approval of a corrective action plan.

Salvage Yard Program

- 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

- 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 - Challenges include: (1) some reporting requirements are duplicate/outdated; (2) the Performance Report is lengthier than its target audience may desire; and (3) the Performance Report requires significant state employee capacity to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 Eliminate duplicate/outdated reporting requirements; and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.

Act 150: Permit Transfers

- 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: Dam Orders

- Challenge:
 - Dam Safety Orders under Chapter 43: Dams use Type 3 Notification Procedures
 - We have found the ENB alone is insufficient in some cases for public notification
 - Private landowners adjoining dam removal projects are currently not individually notified
 - This lack of awareness among these key stakeholders has created situations where certain dam removal projects were significantly delayed. The delay and associated costs are preventable with prior stakeholder notification and education.
- Proposed Solution:
 1. Change the public notification process for dam removal or dam breach projects to Type 2, requiring adjoining landowner notification by the applicant.

Act 150: Wetland Determinations

- 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

- 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

- 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

- 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 Fees

- 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.
 - The language is not clear if this fee can be assessed on portable toilets. Currently the fee is not being assessed on portable toilet waste.
- Proposed Solution:
 1. Change/simplify language to require that septage transporters must pay "\$.01 per gallon of septage and portable toilet waste managed in Vermont"

Solid Waste Haulers

- 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.