

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

**Permit Writer's Handbook  
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## **CHAPTER I. INTRODUCTION**

In light of the adoption of Act 150 and other Department wide changes to the permit process, the Department of Environmental Conservation has developed this permit writer's handbook to provide guidance to Department employees on regulatory research, best practices with respect to common elements of the permit process, and examples employees may elect to follow when performing their duties writing permits.

This is intended to be a guidance document to assist employees in performing their functions within the Department. It is not binding and a failure to follow recommendations in this document does not constitute a procedural failure in a permit.

This guidance provides an overview at the Department level of the permit process. Divisions and Sections within the Department are encouraged to develop program specific addendum, if useful, that address program specific requirements.

## CHAPTER II. STATUTORY AND REGULATORY RESEARCH

### Where Can I Find a copy of a Statute? and Other Research Questions

#### 1. What are statutes?

State and federal statutes are laws created by the respective legislative body, in Vermont by the Vermont General Assembly and, on a federal level, by United States Congress.

State statutes create and dictate the scope of the Department's authority over environmental and human health protection. They also impose requirements on the Department, such as public records act requirements, and establish administrative processes the Department must follow, such as how to engage in rulemaking.

#### 2. Where can I find a copy of a statute?

Vermont statutes are published as the Vermont Statutes Annotated and are organized by title, chapter, and section. See the citations section in the General Drafting Best Practices chapter of this guide for information on how to cite to them.

For a Vermont statute, a copy of the most up-to-date version can be obtained from Westlaw, an online service that Agency attorneys have subscriptions to, by speaking with your Department attorney.

In many instances an unofficial copy of the text maintained by the Vermont General Assembly website may serve your purpose and is a handy reference. It is located on "The Vermont Statutes Online" page currently found at this URL: <http://legislature.vermont.gov/statutes/> While this copy is frequently updated it may not reflect the most recent changes made by the legislature.

Laws passed by the Vermont General Assembly may include text that does not become codified in the Vermont Statutes Annotated, such as text capturing conclusions reached by the legislature or imposing requirements on Agencies to engage in a study or complete a report. You may hear these referred to as "session laws," and they can be located by identifying the legislative session during which they were passed and searching within that time frame for the final Act number or underlying bill numbers on the Vermont General Assembly's "Bill, Act & Resolution Search" page currently found at this URL: <http://legislature.vermont.gov/bill/search/2018>

Federal statutes are called U.S. Code. A copy of the most up-to-date version of a federal statute can also be obtained from Westlaw by speaking with your Department attorney.

Here too in many cases the copy maintained on one of the two following websites may be sufficient for your purpose. The U.S. House of Representatives provides a regularly updated version on their "Office of the Law Revision Counsel United States Code," page currently found at this URL: <http://uscode.house.gov/browse.xhtml> The U.S. Government Publishing Office provides an annually updated version on their "United States Code" page currently found at this URL: <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?collectionCode=USCODE>

### **3. What are administrative rules or regulations?**

Administrative rule or regulations are laws that an administrative agency, like the Vermont Agency of Natural Resources or Environmental Protection Agency, adopts through a formal rulemaking process and that establish how the agency will administer the authority provided to it by the state or federal legislative body through statute. We, as staff of the Agency of Natural Resources, are the authors of rules concerning administration of our programs.

Often the term “administrative” is dropped and you will commonly hear these referred to as rules or, on a federal level, federal regulations.

### **4. Where can I find a copy of a state rule?**

When the rule is a Department rule, obtain a copy from the “DEC Rules and Regulations Summary” page currently found at this URL: <http://dec.vermont.gov/laws> If you suspect the rule may not be the current version, speak with the program most closely involved with administering the rule.

If you are seeking a prior version of the rule, speak with the program most closely involved with administering the rule.

When the rule you seek is in a different Department or an agency outside of the Agency of Natural Resources, you can search their websites online and, if you cannot find the rule, contact the person identified as the person most closely involved with administering the rule, checking with your supervisor as appropriate.

### **5. Where can I find a copy of a federal rule (i.e., federal regulation)?**

Federal regulations are published in the Code of Federal Regulations (CFR). Changes to the CFR go through a public notice and comment process organized and publicized in the Federal Register.

A regularly updated unofficial copy of the CFR can be found on the “Electronic Code of Federal Regulations” page currently found at this URL: <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>. The U.S. Government Publishing Office provides an annually updated version on their “Code of Federal Regulations (Annual Edition)” page currently found at this URL: <https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2017&go=Go>

### **6. Where can I find a copy of a prior version of a statute or rule?**

Occasionally you may want a copy of what the law used to be at some point in time.

For a Vermont statute, speak with your Department attorney about obtaining a copy from Westlaw. For a federal statute, use the search feature on the U.S. Government Publishing Office’s “United States Code” page currently found at this URL: <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?collectionCode=USCODE>

For a Vermont rule, speak with the program most closely involved with administering the rule, checking with your supervisor as appropriate. For a federal rule, use the search feature on the U.S. Government Publishing Office’s “Code of Federal Regulations (Annual Edition)”

page currently found at this URL:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2017&go=Go>

## **CHAPTER III – ADMINISTRATIVE RECORD**

### **1. What is an Administrative Record?**

An administrative record is the file that the Agency creates in the context of making a permit decision that documents the basis for that permit decision. The administrative record is the set of records that the decision-maker considered, directly or indirectly (e.g., through staff), in making the final decision. The record should include all the factual, technical, and scientific material or data considered in making the decision, whether or not those materials or data support the decision.

### **2. Why is an Administrative Record Important?**

Compiling an accurate and thorough Administrative Record serves many important functions. A complete Administrative Record documents the process the Department used in reaching its final decision to issue or deny a permit; demonstrates the Department considered all relevant material, both favorable and unfavorable; establishes that relevant statutory and regulatory requirements were followed; and explains and rationally supports the final decision. The Administrative Record also ensures that the decision-maker, typically the person signing the decision document, has access to all of the important substantive information related to the decision in the Department's possession at the time of the decision. Finally, if the decision is challenged in court, a thorough Administrative Record will help the Department to defend the decision.

### **3. When Should the Administrative Record Be Compiled?**

The Administrative Record is the contemporaneous record of the Department's decision-making process. The Administrative Record should be compiled as documents are received, considered, or produced by the Department during the decision-making process. Creating and maintaining the Administrative Record contemporaneously with the decision-making process ensures that issues raised and relevant factors identified during the process are addressed in the Administrative Record documents.

The decision-making process is initiated when the Department begins to consider a concrete proposal for action, which will vary depending on the situation. For example, in many cases, a permitting decision may be initiated when an application is submitted to the Department; in some cases, a permitting decision may be initiated when the Department meets with a potential applicant to discuss a project for which a permit will be needed. Once a final decision is made (i.e., the permit decision is signed), materials that were not in the Department's possession at the time of the decision should not be added to the Administrative Record.

### **4. Who Should Compile the Administrative Record?**

Generally, the Department employee responsible for compiling the Administrative Record should be the employee who has primary responsibility for reviewing a permit application and drafting a permit decision.

### **5. What Materials Should Be Included in a Administrative Record?**

The Administrative Record should consist of all documents and materials directly or indirectly considered by the Department during the decision-making process. Except as noted below, it should include all documents and materials before the Department at the time of the permitting decision **whether or not they support the final decision**. Materials included in the Administrative Record should include paper, electronic, and other forms of communication. When questions arise about what documents to include in the Administrative Record, consult with Department legal counsel. Set forth below is a list of the kinds of materials that should be included in the Administrative Record, but only to the extent that such materials are considered, received, or produced by the Department during a particular permitting decision:

- The application, if required, and any supporting data furnished by the applicant;
- The draft permit or notice of intent to deny the application or to terminate the permit;
- Any public notice provided;
- The statement of basis, technical support document(s), or fact sheet(s), and all documents cited therein that are not generally available;
- Documentation of other materials relied upon or considered in the decision-making process such as articles, studies, reports, factual or technical information (e.g., monitoring data, sampling results, survey information, etc.);
- The tape or transcript of any public informational meeting held;
- Any written materials submitted at such a public informational meeting;
- All comments received during the public comment period and responses to comments;
- External communications and information received from the public, the applicant, or other government entities outside of the public comment period, and any responses;
- Internal communications such as meeting minutes, memoranda, and emails that contain factual information, include substantive analysis, or document the decision-making process;
- Any documentation or information required by state or federal laws (e.g., the National Environmental Policy Act for NPDES new source draft permits); and
- The final permit decision.

## **6. What Materials Should Not Be Included in the Administrative Record?**

Some examples of documents that do not need to be included in the Administrative Record are:

- Transitory records (see approved DEC records management procedures for permitting and transitory records), including but not limited to:
  - Records that appear in duplicate (e.g., multiple copies of the same email);
  - Electronic communications that do not contain factual information, a substantive analysis or discussion, or information documenting the decision-making process (e.g., emails merely scheduling meetings or transmitting records);
- Materials that were not in the Department's possession at the time of the decision.
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## **7. How Should a Administrative Record Be Organized?**

Programs should organize Administrative Records consistently. Administrative Records should be organized either by record type (e.g., "correspondence") or chronologically (e.g., the time of receipt of the record). Programs should review the approved records management procedures for permitting and transitory documents when considering how to organize their file



to facilitate record management and retention. Metadata standards established for the Department and Programs may also inform file organization.

### **8. How Should Protected and Privileged Documents Be Handled?**

Protected records that the Department is prohibited from disclosing, for example trade secrets or confidential business information under the Public Records Act, should be segregated from the other materials in the Administrative Record. Although protected records should be included in the Administrative Record, they should be set apart from the other records to guard against unlawful disclosure of the protected information. Likewise, any privileged information, such as attorney-client communications or attorney work product, should be segregated. Department employees responsible for compiling Administrative Records should consult with legal counsel regarding questions about protected and privileged records.

## **CHAPTER IV – DRAFTING PERMITTING AND OTHER REGULATORY DOCUMENTS**

### **Permit Drafting Basics**

#### **1. What is a permit?**

A permit is a legal document that grants a person or entity a right to do something that the person or entity would otherwise not legally be allowed to do without a permit.

#### **2. When is a permit needed?**

A person or entity needs a permit when proposing to do something that requires a permit under the law.

#### **3. What are the standards that a permitting decision must comply with, and what are the requirements in a permit based upon?**

All permitting standards and permit requirements, however general or specific, ultimately trace their origin back to statute or rule. Some statutes and rules are prescriptive and dictate with great specificity what must be included in a permit, while others provide the Agency with general authorities and standards, but leave a great deal of discretion to the Agency in developing the specific permit provisions.

If you are unsure of what statutes, rules, and other legal documents apply to a permitting decision, consult with your Program Manager or a Department attorney. Additionally, if you are working with an existing permit or permit template and are unsure where permit language came from or whether it must be included, consult with your Program Manager or a Department attorney.

#### **4. Why does it matter what a permit says?**

Words matter! Permit language is important for a host of reasons.

First, as stated above, permits grant people legal rights to do things they would not otherwise be allowed to do. Therefore, it is essential for permit language to be clear and understandable, so that the permittee, the public, and the Agency all understand what legal rights are being granted and what terms and conditions the permittee must comply with.

Second, permit language matters for purposes of enforceability. If the terms or conditions of a permit are vague, unclear, or exceed the Agency's legal authority, the Agency will not be able to enforce those provisions of the permit, so, in essence, those provisions are meaningless.

Third, permit language matters when it comes to appeals, litigation, and defending Agency permits. If the terms or conditions of a permit are not in compliance with the Agency's legal authority, the Agency will not be able to defend those provisions of the permit on appeal and will likely have to ask the court to remand the permit to the Agency to correct the issues and re-issue the permit. If the terms or conditions of a permit are vague, unclear, confusing, or not adequately supported or explained in the administrative record for the permit, the Agency will have to expend more staff time and legal resources defending the permit in court or trying to settle the case.

## 5. What basic provisions must be included in a permit?

Virtually every permit must include three basic components:

- i. **Person or entity.** The permit must clearly and accurately identify the person or legal entity receiving the permit and responsible for compliance with it. If the permittee is not accurately named, the Agency will not be able to enforce the permit. Verify the name of a business through the Secretary of State’s website:  
<https://www.vtsosonline.com/online/BusinessInquire>
- ii. **Legal rights.** The permit must clearly and specifically state the legal rights granted by the permit (i.e. the specific activity or activities allowed by the permit).
- iii. **Conditions.** The permit must clearly and specifically state unambiguous and enforceable standards, terms, and conditions that the permittee and the authorized activity must comply with. Where possible, include measurable and quantifiable requirements.

Some permits may also include an explanation of the basis for granting the permit, in other words, an explanation of how the information provided in the permit application complies with applicable law to justify permit issuance. If a permit includes an explanation of the basis for granting the permit, it is important to keep those sections of the permit distinct and separate from the sections regarding the legal rights granted and the standards, terms, and conditions of the permit. Depending on the type of permit, the explanation of the basis for granting a permit may be included in a separate fact sheet or detailed permit application.

Regardless of whether a permit includes an explanation of basis within the four corners of the permit or in a separate document, the administrative record for the permit must provide sufficient basis and justification to support issuance of the permit.

### General Drafting Best Practices

This section includes general best practices for drafting all documents that have legal significance and effect, including permits, rules, procedures, and all documents constituting “acts or decisions” of the Secretary.

#### 1. Organization, brevity, and plain English

- Write in a logical organized manner, and use informative headings to guide the reader.
- Keep sentences and paragraphs short and precise. Avoid wordiness and run-ons. Consider using a bulleted list when the requirements listed in a sentence exceed one or two items.
- Use simple language that is understandable by lay people, if possible. Avoid legalese, and words that are not commonly understood. If unfamiliar terms or acronyms must be used, be sure to include definitions or sufficient explanations.

#### 2. Avoid ambiguity

- Be specific. Avoid using language subject to further interpretation, if possible.

- Arrange words carefully so that they have only one meaning, and re-read sentences and requirements to ensure they are not ambiguous or could be read in more than one way.
- Avoid double negatives.

### 3. **Active voice**

- Use the active voice. The active voice clarifies who must act and is more direct than the passive voice. A sentence is in the passive voice if the verb “to be” is combined with the past participle of another verb. For example:
  - Active voice – The permittee shall submit a plan.
  - Passive voice – A plan shall be submitted.

### 4. **Use of terms, definitions**

- Choose a term; define it, if uncommon or unfamiliar; and use the term consistently throughout the document.
- Definitions should be precise and, to the extent possible, not open to further interpretation.
- Avoid using multiple terms interchangeably, if using one term would be sufficient.
- When a draft document is complete, review the draft before finalizing it to ensure that defined terms are used consistently and appropriately.

### 5. **“Shall” and “may”**

- “Shall” means that the specified action is *mandatory*.
- “May” means the specified action is *optional/discretionary*.
- “Shall not” means the action is *prohibited*.
- When drafting documents with legal effect, use “shall,” “may,” and “shall not.”
- Avoid using “should” and “will,” unless drafting a document that is purely guidance and describes things that are preferred or best practices, but that are not required.

### 6. **And/or**

- Never use “and/or.”
- If possible, use only “and” or “or,” but be sure to use the terms correctly.
- If necessary, say “A or B or both.”

### 7. **Dates**

- Dates are crucial in documents that have legal significance.
- Dates often change between putting a document on public notice and issuing the final document.
- Before issuing a final document, review the document to ensure all dates have been updated, as necessary, and are accurate.

### 8. **Citations**

- When citing to the Vermont Statutes Annotated state the title first, followed by “V.S.A.,” followed by the applicable section or chapter. Include a space in between each item. For example:
  - 10 V.S.A. § 1251
  - 10 V.S.A. chapter 47
- When citing to the Code of Federal Regulations or the United States Code follow the same format:
  - 40 C.F.R. § 122.26
  - 33 U.S.C. § 1251
- Be mindful of what statutory unit you are referring to. Statutes change over time, so if you are writing a document that may be in effect for a long time, you may want to consider referring to a chapter rather than a specific section, or a section, rather than a specific subsection. However, there are many instances in which it may be appropriate or important to refer to a very specific subsection or subdivision (e.g. if a section of law is long and complicated and you want to refer to a specific requirement or provision within the section).
- Statutory units:
  - 10 V.S.A. chapter 47 (reference to a whole chapter of law)
  - 10 V.S.A. § 1264 (reference to a specific section)
  - 10 V.S.A. § 1264(a) (reference to a specific subsection)
  - 10 V.S.A. § 1264(h)(2) or 10 V.S.A. § 1264(h)(2)(A)(i) (references to specific subdivisions)
  - 10 V.S.A. §§ 1250-1254 or 10 V.S.A. §§ 1259 and 1263 (references to multiple specific sections of law)
- If you have questions about proper legal citation, consult with a Department attorney.

## 9. Commas

- Pay attention to commas and make sure they are used properly.
- Use serial commas, also known as Oxford commas.
- Using serial commas avoids ambiguities when lists get long or terms are complicated or technical.
- A serial comma comes after the second to last item in a list. For example, in the following sentence the serial comma comes after the word “plan” - “Please include with your application a map, a plan, and the application fee.”

## 10. Footnotes and endnotes

- Avoid putting substantive requirements in footnotes, if possible. If a footnote is the only logical place to put a substantive requirement, make sure the footnote is in a readable font size, preferably size 12.
- Use footnotes to provide references or examples.
- Don’t use endnotes.

## 11. Style recommendations

- **Lettering/numbering conventions.** When drafting documents with sections, subsections, and subdivisions, avoid “hanging” or “floating” paragraphs and

sentences; in other words, every provision should be clearly associated with a section, subsection, or subdivision, so that it can be easily identified and cited to.

- **Secretary.** When referring to the State, the Agency, or the Department, it is generally appropriate to use the term “the Secretary.” The Secretary is the individual vested with authority from the Governor to administer the environmental laws of the state. The Secretary then delegates the Secretary’s authority to individuals within the Agency.
- **Including.** When creating a non-exhaustive list, just use the word “including.” It’s unnecessary to say “including, but not limited to.”
- **Numbers.** Write-out the numbers one through ten and use numerals for all other numbers 11 and up. However, always use numerals for citations and dates.
- **Capitalization.** Follow normal capitalization rules (i.e. capitalize proper names, the names of places, incorporated entities, etc.).

## 12. Further resources

- Consult with a Department attorney if these best practices do not address a specific question that you have.

## CHAPTER V – FACT SHEETS

### 1. What is a fact sheet? When is it required?

The fact sheet (also referred to as the “technical support document”) is a legal document that is part of the administrative record of a permit issued by the Agency. It includes the principal facts relied upon in issuing a permit, including significant legal, methodological, and policy questions that a program considers in preparing a draft decision to issue a permit. The fact sheet is not meant to be duplicative of the information contained in the permit, but is a document that allows the Agency to provide the public and the permittee with a detailed description of its rationale and analysis that led to decisions stated in the permit.

A fact sheet is required to be included with the Agency’s final decision on an application for a permit.

### 2. Best practices in drafting fact sheets.

Generally, a fact sheet is the Agency’s opportunity to provide a clear basis for its permitting decision, and to help the public and permittee fully understand that this decision is supported by relevant facts applied to the appropriate legal authority. When considering what to include in a fact sheet, consider all of the factual, scientific, and technical information the permittee and the public will need to know in order to evaluate the Agency’s permitting decision in light of the legal standard for the permit and the facts.

While the fact sheet is required to be included with the final permit decision, including the fact sheet with the notice of draft decision to issue a permit gives the public a better understanding of the basis for the Agency’s draft decision, and will likely preemptively respond to or answer some of the public’s comments and questions on the draft permit.

Fact sheets should provide a general overview of the facts surrounding the permit application and the Agency’s decision, and an explanation of the relevant legal authority that requires the applicant to obtain a permit before conducting the permitted activity. After setting the stage for the draft decision, the fact sheet should then explain facts that are significant or unique to the application so that the public and the permit applicant can understand the rationale for specific provisions within the permit. Similarly, any significant legal analysis or application of a methodology relied on by the Agency to determine a permit outcome should be explained in the fact sheet.

Any documents, including state or federal legal authority, Agency practices or procedures, or other technical information that are referenced in the fact sheet should be included in the administrative record for the permit decision.

### 3. What should I include in the fact sheet?

#### *The Basics - Title Page and Introduction*

Start the fact sheet by providing the public and the permittee with a basic understanding of the permit. For example, basic information should include:

1. The name of the issuing Agency and the Agency’s contact information;
2. The title of the fact sheet and the month/year of issuance;

3. The title of the permit, the permit number;
4. Any other helpful state or federal identifiers associated with the permit;
5. The name and address of the applicant; and
6. The name and address of the facility where the permitted activity will occur (note that this will sometimes be different than the applicant)

#### *Section I – General factual information*

This section should provide additional general factual information relevant to the facility and the permitted activity, for example:

1. Whether the applicant is applying for a permit renewal, amendment to an existing permit, or a permit for a new activity;
2. When the Agency received the application for the permit/renewal/amendment;
3. If it is a permit renewal application, include information about the issuance of the previous permit, and any significant history regarding the previous permit;
4. If the permittee is seeking an amendment to an existing permit, explain what the permittee is proposing and why that requires the permit to be amended;
5. The type of the facility that will be the subject of the permit and the activity that takes place at the facility; and
6. Other general, yet relevant, information that is appropriate to include to set the stage for the analysis of the permit decision.

#### *Section II – Specific information about the permitted activity*

This section of the fact sheet should include a detailed description of the activity taking place at the facility, including but not limited to:

1. Information about processes or other functions that the facility performs;
2. Identification of pollutants being emitted or discharged from the facility; and
3. Quantification of pollutants being emitted or discharged.

#### *Section III – Statutory and Regulatory Authority, Agency Policies and Procedures*

This section of the fact sheet should include a list applicable state and federal law and regulations that are applicable to the facility and the permitted activity. Also, the Agency may have specific methodologies that are to be used in making permit calculations or determinations. These methodologies should be contained in policies or procedures adopted by the Agency or the Department. If applicable, include a list and description of such methodologies in this section.

#### *Section IV – Basis and Explanation for conditions within the permit*

This section should include the Agency's analysis of the facts described in Sections I and II of the fact sheet in the context of the applicable state and federal authority described in Section III. For example:

- If the permit includes a limitation of a pollutant discharge or emission, explain how that limitation was derived based on the applicable law, Agency policy or procedure;



- Be precise about how different pollutants may be treated differently under the law or applicable methodology. For example, if a pollutant has been classified by the Agency as having a particular toxicity, explain how the limitation is impacted by that classification and if there are any other considerations (sometimes these considerations are legally mandatory) that need to be explored and evaluated in the fact sheet;
- If the permit includes any provisions that require monitoring or reporting, explain the technical and legal rationale for such requirements.

### *Attachments*

The fact sheet should include either an electronic reference or an attachment of all documents relied upon in the analysis provided in the fact sheet. For example:

1. Maps, schematics, tables, or other non-narrative descriptions of facts;
2. State and Federal laws and regulations discussed in the fact sheet;
3. Federal guidance documents relied on to calculate pollutants emitted or discharged;
4. Agency or Department policies and procedures that contain methodologies applicable to the permit application;
5. Any other documents relied upon in the fact sheet.

### *Other considerations*

Keep in mind that this template will not be appropriate for every fact sheet accompanying a permit decision. Federal rules often dictate what needs to be included in permits (and fact sheets) issued in accordance with federal law. If federal requirements are applicable, be sure to include the appropriate content or documents in the fact sheet. If you have any questions about federal requirements and how to apply them, consult with your supervisor or legal staff.

## CHAPTER VI – PUBLIC INFORMATIONAL MEETINGS

### Public Informational Meetings

Public informational meetings provide a critical opportunity for the public to participate in the permit review process and engage with the regulated community. They are open to all members of the public, and give permit writers and Agency officials a chance to hear concerns about a proposed activity from impacted communities. In addition to giving the public a chance to participate in the process, public informational meetings are an opportunity for the Agency to present clear and accurate information about the draft permit or rule change at issue, and clarify any confusion related to the draft permit.

The term “public informational meeting” is used broadly to describe any meeting or “hearing” held by the Agency that is (1) open to the public, and (2) provides the Agency an opportunity to present information about a permit or rulemaking, and the public an opportunity to ask questions about the matter at hand. In the context of the Uniform Environmental Administrative Procedure Rules (“Act 150 Rules”), public informational meetings may be required by rule, may be called by the Agency, or may be requested by a member of the public, to review draft permitting decisions made by the Department of Environmental Conservation. While it differs in name from the public hearing required during the formal rulemaking process, it is similar in format and substance.

Public informational meetings are not “hearings” for purposes of the Vermont Administrative Procedures Act and are not required to follow the process established for contested case proceedings.

#### 1. Time and location of public informational meetings

When a member of the public requests a public meeting, it is the Agency’s responsibility to schedule the meeting, at an appropriate time based on when the draft permit was noticed, and in an appropriate location. If the permit at issue is an individual permit or authorization under a general permit, the meeting should be held in the municipality where the permitted activity will take place. If the permit at issue is a general permit, several meetings around the state, including a meeting in a central location such as Montpelier, are recommended.

Public informational meetings may be held during business hours or in the evening. They are not required to be held outside of normal business hours, although an evening meeting may allow for greater community participation. Schedule the meeting for an appropriate length of time based on the complexity of the project, but at least an hour should be allowed for any public informational meeting.

#### 2. Conducting a public informational meeting

A public meeting is as much the Agency’s opportunity to explain a permit or permitting decision as it is the public’s opportunity to comment on the permit.

- a. Be prepared to facilitate the meeting, and to present background information on the permit or permitting decision, including an explanation of the project and the project location.
- b. For individual permits and authorizations under a general permit, the applicant must be present at the public meeting. Inform the applicant that they or their

- representatives are required to attend, as well as any the professionals retained by the applicant to prepare the application. The applicant and the professionals who prepared the application should be prepared to answer questions from the public.
- c. For complex general permits imposing new requirements on the regulated community, be prepared with a more comprehensive presentation, including an explanation of the enabling statute or rule, and a brief explanation of the outreach done in developing the permit language. PowerPoint presentations can be an effective tool for laying out the components of the permit.
  - d. Allow ample time to take questions from the public. Do not attempt to answer legal questions or questions that you are not sure of the answer. The meeting is an opportunity for the public to ask questions and express concerns, but the Agency is not expected to provide immediate responses. The Agency will have the opportunity to consider all comments submitted before issuing the permit decision, and written responses to all comments will be provided when the final permit or authorization is issued.
  - e. Provide a sign-in sheet and bring printed comment cards if possible, for those attendees who wish to submit written comments at the meeting. Inform attendees of the date by which written comments must be submitted.
  - f. The Agency is responsible for audio-recording the meeting. The audio-recordings or transcripts of those recordings of all public meetings become part of the administrative record for the permit issuance or authorization.
  - g. Be professional and courteous. You represent the Agency, and are there to provide the public with an opportunity to ask questions. Everything you say and do will become part of the recorded administrative record.

### **3. Large and Complex projects.**

Applicants for large and complex projects are required to hold a pre-application public informational meeting at least 14 days before filing a permit application with the Department. To determine whether a project is large and complex, refer to Appendix B of the Act 150 Rules. Large and complex projects are still required to comply with all applicable requirements for notice and comment after the application has been filed; the pre-application public meeting is an additional requirement for these projects.

An applicant for a large and complex project shall provide notice of the pre-application meeting at least 14 days prior to the meeting. The notice shall inform interested persons how to obtain future updates on the project.

After the pre-application meeting has taken place, the applicant must provide the Agency with documentation of the names of those who received notice of the pre-application meeting, and certify to the fact that the applicant complied with all pre-application notice requirements for large and complex projects. Once the Agency receives this certification, the Agency shall post the notice of the project application to the environmental notice bulletin.

Instead of conducting a pre-application public informational meeting, applicants for large and complex projects have the option of initiating a project scoping process pursuant to 3 V.S.A. § 2828.

### **4. Extension of deadline for public meetings**

Any person may request that the Agency extend the deadline for requesting a public informational meeting. The person shall submit the extension request before the deadline, and include a brief explanation of why the extension is justified. If the request is granted, the Agency shall provide notice of the new deadline through the ENB.

## **CHAPTER VII – RESPONSE TO COMMENTS**

### **1. When are responses to comments required?**

The Agency is required to issue a Response to Comments after close of the public comment period for permits or decisions included in Types 1 – 4 processes (not for permits or decisions under Type 5 process). The Response to Comments is a part of the Administrative Record for the Agency’s decision on which the comments were received.

The Response to Comments serves as the Agency’s response to all comments received during the public comment period regarding a draft permit or decision. The Response to Comments also documents any changes made to the final permit or decision in response to comments, and the Agency’s rationale for those changes.

### **2. What are the best practices in preparing a response to comments?**

The Agency should respond to each comment regardless of identity of the commenter. For each response, the Agency must explain how the Agency resolved the comment. If changes were made to the decision in response to the comment the responsiveness summary should show changes either narratively in the response or as a redline to a draft of the final permit or decision. If no changes are made in response to a comment, the Agency should identify this and explain why no changes are warranted in response to the comment.

If the same comment (or similar comments expressing the same issue or concern) is received from multiple commenters, the response to comment may address the comment in two ways: (i) it may summarize the comments and draft a single response addressing the summarized comment. In this case, the permit writer should attach all comments to the responsiveness summary; or (ii) serially list all similar comments and provide one response that addresses the similar comments.

With respect to minor typographic and grammatical changes, the Agency may make a general statement about any changes made to the final decision to correct typos, grammar, and/or other minor, non-substantive issues instead of listing each such change.

