

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION**

**PROCEDURE FOR EVALUATING PETITIONS TO
ADOPT, AMEND OR REPEAL SURFACE WATER AND WETLAND RULES**

November 2013

§ 1. Purpose

The 2012 Vermont Legislature passed Act 138, which transferred surface water and wetland rulemaking authority from the Natural Resources Board's (NRB) Water Resources Panel to the Agency of Natural Resources' Department of Environmental Conservation (DEC) under 29 V.S.A. § 410.¹ DEC now has responsibility to administer the Water Resources Panel's surface water and wetland rules and to receive petitions to adopt, amend, or repeal such rules.

Act 138 made the existing rules of the Water Resources Panel rules of the Agency and gave the Secretary the power to amend those rules in accordance with 3 V.S.A. Chapter 25. Until such time as the Secretary adopts rules of procedure for those rules, the NRB Rules of Procedure (2006) shall govern rulemaking by DEC in connection with the transfer of the Panel's surface water and wetland rules.

DEC is issuing this "Procedure for Evaluating Petitions to Adopt, Amend or Repeal Surface Water and Wetland Rules" to provide guidelines for potential petitioners and other persons or entities interested in DEC's surface water and wetlands rulemaking. This procedure is intended to promote clear, transparent and consistent decision-making and assist petitioners and interested entities in submitting petitions during this interim period until the Secretary adopts a Department rule to supplant the NRB's Rules of Procedure. This procedure replaces the interim procedure of the same name signed on January 30, 2013.

§ 2. Definitions

The following definitions shall apply to this Interim Procedure:

- (1) "Administratively complete" means a petition that has been determined to meet all the initially required documentation for the Division to conduct a technical review of the petition.
- (2) "DEC Commissioner" means the Commissioner of the Department of Environmental Conservation.
- (3) "DEC" means the Vermont Agency of Natural Resources' Department of Environmental Conservation.
- (4) "Division" means the Watershed Management Division

¹ Pursuant to §§ 20 – 26 of Act 138, effective May 14, 2012.

- (5) “DFW” means the Vermont Agency of Natural Resources’ Department of Fish & Wildlife.
- (6) “FPR” means the Vermont Agency of Natural Resources’ Department of Forests, Parks & Recreation.
- (7) “Petition” means a submission to the Department of Environmental Conservation to adopt, amend or repeal a surface water management or wetland rule.

§ 3. Applicability

This Procedure applies to petitions to adopt, amend or repeal part or all of the following surface water and wetlands rules:

- (1) Vermont Water Quality Standards, 16-5-100 Vt. Code R. § 1-01, et seq.;
- (2) Vermont Wetland Rules, 16-5-103 Vt. Code R. § 1, et seq. (2010), adopted pursuant to 10 V.S.A. § 905b;
- (3) Vermont Use of Public Waters Rules, 16-5-102 Vt. Code R. § 1, et seq. (2011), adopted pursuant to 10 V.S.A. § 1424;
- (4) Vermont Surface Level Rules;
- (5) Vermont Rules Governing Mean Water Levels, 16-5-101 Vt. Code R. (2011);
- (6) Designations of Class I wetlands;
- (7) Designations of Outstanding Resource Waters pursuant to 10 V.S.A. 1424a;

§ 4. Petition Review and Evaluation Process

The Department will process petitions as follows:

- (1) **Petition Submission.** Petitioner(s) shall file a petition with DEC to adopt, amend or repeal a surface water or wetland rule. Petitions shall adhere to the requirements set forth in the NRB Rules of Procedure, attached here as Appendix A, and the applicable water rule being petitioned. Petitions and accompanying documents should be addressed to:

Division Director
Watershed Management Division
Department of Environmental Conservation
One National Life Drive—Main 2
Montpelier, VT 05620-3522

Note: For example, petitions to amend the Vermont Use of Public Waters (VUPW) Rule should include information required by the VUPW Rule in addition to the information required by the NRB Rules of Procedure.

Note: DEC does not require multiple hard copies of the petition, but encourages petitioners to also submit an electronic copy of the petition to: anr.wsmd@state.vt.us.

- (2) **Acknowledgment of Receipt.** DEC's Watershed Management Division shall review the petition for completeness. If the Division finds the petition is administratively complete, it shall notify the petitioner and the Division will begin its technical and legal analysis. If the Division finds the petition is not administratively complete, it shall reject the petition in a letter that lists the reason(s) for the rejection. The Division encourages petitioners with rejected petitions to cure the defects and re-submit.
- (3) **Consultation with DFW and FPR.** Within seven days after DEC notifies the petitioner that the petition is administratively complete, DEC shall notify DFW and FPR, provide a copy of the administratively complete petition and request written comments from DFW and FPR on the merits of the petition. DEC shall set a reasonable comment deadline with the discretion to extend the deadline if DFW or FPR so requests. If DEC receives comments from DFW and FPR that raise potential conflicts between any of the Departments, DEC and DFW or FPR shall initiate discussions to resolve any conflicts prior to the time that the Division drafts a recommendation to the DEC Commissioner on whether to initiate formal rulemaking proceedings. If necessary, such conflicts will be referred to the commissioners and agency management for resolution.
- (4) **Public Participation.** Upon determining that the petition is administratively complete, the Division shall hold one or more public meeting(s) to foster public participation in the petition process prior to making a determination on whether to initiate formal rulemaking. The Division shall publish notice of the meeting and the deadline for receiving public comments on the Department's website. The deadline for receiving written comments on the petition shall be for no fewer than 10 days following the last public meeting. The Division shall hold the meeting(s) in a place near the affected waters no sooner than 30 days after sending notice to the following:
 - (A) the petitioner;
 - (B) the municipal legislative body for the municipality in which the water is located;
 - (C) the regional planning commission in which the water is located;
 - (D) state and federal resource agencies that have an interest in the water; and

(E) any other interested person identified by the Division.

- (5) **Recommendation to DEC Commissioner.** After the public comment period has closed, DEC staff shall formulate a recommendation to the DEC Commissioner that addresses all comments received.
- (6) **DEC Commissioner's Decision.** Upon receiving the Division Director's recommendation for rulemaking the DEC Commissioner shall either deny the petition or advise the Division to initiate formal rulemaking.
- (7) **Notice.** DEC shall notify all parties that received notice under § 4(a)(3) and all persons who commented on the petition during the comment period of the DEC Commissioner's decision. Notice shall be provided by e-mail or U.S. mail. In addition, the Division shall publish the decision and proposed rule, if applicable, on the Department's website.
- (8) **Formal Rulemaking Process.** If the DEC Commissioner advises the Division to initiate rulemaking proceedings, those proceedings shall be in accordance with 3 V.S.A. § 806. DEC will continue to coordinate with DFW and FPR during the formal rulemaking process. DEC will share drafts of the proposed rules with DFW and FPR prior to initiating the rulemaking process. DFW and FPR will respond to the draft rules within fourteen days of receipt, unless a reasonable extension is requested and granted. Any potential conflicts shall be resolved prior to the initiation of rulemaking and if necessary, such conflicts will be referred to the commissioners and agency management for resolution. After the public comment period of rulemaking, DEC will share any proposed amendments to the draft rules with DFW and FPR prior to filing the rules with LCAR. Any potential conflicts shall be resolved prior to filing with LCAR and if necessary, such conflicts will be referred to the commissioners and agency management for resolution.

DEC Contact. For more information on petition submissions, contact Leslie Welts, DEC Staff Attorney at leslie.welts@state.vt.us or (802) 490-6103.

Signed this 15th of November 2013.

By:



David K. Mears, Commissioner, Department of Environmental Conservation