

1 S.102

2 Introduced by Senators Brock, Carris, Choate, Giard, Maynard, Mullin and

3 Starr

4 Referred to Committee on

5 Date:

6 Subject: Land use; conservation and development; Act 250; agency of natural
7 resources; municipal land use bylaws; environmental court; permit
8 process; environmental enforcement

9 Statement of purpose: This bill proposes to exempt from Act 250 remedial
10 actions ordered by the agency of natural resources related to hazardous
11 materials; provide for “on-the-record appeals” from Act 250 district
12 commissions to the environmental court, at the applicant’s option; modify
13 various Act 250 criteria to allow consideration of a development’s economic,
14 social, cultural, recreational, or other benefits; establish a presumption in Act
15 250 that a project approved by a development review board complies with the
16 local plan; require that, in Act 250, technical determinations made by agency
17 of natural resources personnel in issuing agency permits are dispositive; enable
18 the agency of natural resources to issue general permits under many of its
19 permitting programs, including air pollution control, water quality, and waste
20 management; enable environmental enforcement through ticketing; provide, on
21 appeal, for deference to technical determinations and legal interpretations of

1 the agency of natural resources and to legal interpretations of the natural
2 resources board; address the effective date of local permits that are delayed by
3 litigation; allow municipal panels issuing land use decisions to make those
4 decisions by a majority of a quorum; require appearance at the local hearing in
5 order to appeal the local permit; and, for local permit decisions, allow delivery
6 of notices of appeal by means other than certified mail.

7 An act relating to environmental and land use permits

8 It is hereby enacted by the General Assembly of the State of Vermont:

9 * * * Act 250 Exemption: Hazardous Materials Remediation * * *

10 Sec. 1. 10 V.S.A. § 6001(3)(D) is amended to read:

11 (D) The word “development” does not include:

12 (i) The construction of improvements for farming, logging or
13 forestry purposes below the elevation of 2,500 feet.

14 (ii) The construction of improvements for an electric generation or
15 transmission facility that requires a certificate of public good under ~~section~~ 30
16 V.S.A. § 248 or a natural gas facility as defined in ~~subdivision~~ 30 V.S.A.
17 § 248(a)(3).

18 (iii) [Repealed.]

1 (iv) The construction of improvements for agricultural fairs that
2 are open to the public for 60 days per year, or fewer, provided that any
3 improvements constructed do not include one or more buildings.

4 (v) The construction of improvements for the exhibition or
5 showing of equines at events that are open to the public for 60 days per year, or
6 fewer, provided that any improvements constructed do not include one or more
7 buildings.

8 (vi) The construction of improvements for any one of the
9 following:

10 (I) A remedial or removal action for which the secretary of
11 natural resources has authorized disbursement under section 1283 of this title.

12 (II) Abating a release or threatened release, as directed by the
13 secretary of natural resources under section 6615 of this title.

14 (III) A remedial or removal action directed by the secretary of
15 natural resources under section 6615 of this title.

16 (IV) A corrective action authorized in a corrective action plan
17 approved by the secretary of natural resources under section 6615b of this title.

18 (V) A corrective action authorized in a corrective action plan
19 approved by the secretary of natural resources under subchapter 3 of chapter
20 159 of this title.

1 * * * “On-the-Record” Appeals from Act 250 District Commissions * * *

2 Sec. 2. 10 V.S.A. § 6085a is added to read:

3 § 6085a. RECORDED HEARINGS

4 (a) At the time an applicant files an application under section 6084 of this
5 title, the applicant may submit a demand for recorded hearings, in which case
6 any appeal under section 6089 of this title shall be a review of the record of the
7 proceeding before the district commission in accordance with subdivision
8 8504(h)(3) of this title.

9 (b) Within 10 calendar days of receipt of both a complete application under
10 section 6084 of this title and a timely demand for recorded hearings under
11 subsection (a) of this section, the district commission shall provide notice of
12 the demand for recorded hearings in accordance with the procedures of
13 subdivision 6084(b)(1) of this title.

14 (c) Each of the following shall apply to the review of an application for
15 which the applicant has demanded a recorded hearing:

16 (1) The district commission shall extend the hearing schedule or take
17 other appropriate action as necessary to provide a fair and reasonable
18 opportunity for parties to prepare, present, and respond to evidence without
19 creating undue delay in the review of the application.

20 (2) The district commission may require parties to submit prefiled
21 testimony and exhibits. If the district commission requires submission of

1 prefiled evidence, the applicant and any parties supporting the application shall
2 submit their prefiled direct evidence first, and then other parties shall be given
3 a reasonable opportunity to submit their prefiled direct evidence. The district
4 commission may then allow the submission or presentation of rebuttal
5 testimony and exhibits in the sequence and form that it reasonably determines
6 to be appropriate.

7 (3) Unless the parties agree otherwise, the district commission in a
8 prehearing order shall establish the type, sequence, and amount of discovery
9 available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting
10 the discovery permitted to that necessary for a full and fair determination of the
11 proceeding.

12 (d) During proceedings on an application for which the applicant has
13 demand recorded hearings, the district commission shall maintain the
14 flexibility regarding the introduction of evidence provided by 3 V.S.A. § 810
15 and the procedural flexibility and informality that has been characteristic of
16 district commission proceedings.

17 (e) On receipt of a request from the district commission for assistance with
18 regard to an application for which the applicant has demanded recorded
19 hearings, the board shall provide assistance to the district commission as
20 necessary.

1 (f) At the expense of the applicant, the district commission shall record by
2 video any hearing on an application for which the applicant has demanded
3 recorded hearings. In the event that appeal is taken from a district commission
4 act or decision on such an application, the district commission shall provide the
5 environmental court with the original recording of the hearing and a copy of
6 the complete written record and shall make and preserve a copy of the original
7 recording for the purpose of keeping record.

8 (g) The land use panel of the board may adopt rules to implement this
9 section.

10 Sec. 3. 10 V.S.A. § 8504(h) is amended to read:

11 (h) De novo hearing. The environmental court, applying the substantive
12 standards that were applicable before the tribunal appealed from, shall hold a
13 de novo hearing on those issues which have been appealed, except in the case
14 of:

15 (1) a decision being appealed on the record pursuant to 24 V.S.A.
16 chapter 117;

17 (2) a decision of the commissioner of forests, parks and recreation under
18 section 2625 of this title being appealed on the record, in which case the court
19 shall affirm the decision, unless it finds that the commissioner did not have
20 reasonable grounds on which to base the decision;

1 (3) an act or decision of a district commission on an application for
2 which the applicant has demanded recorded hearings under section 6085a of
3 this title, in which case the court’s review shall be on the record. Each of the
4 following shall apply to an appeal subject to this subdivision (3):

5 (A) The court shall remand to the district commission if the district
6 commission improperly excluded evidence, did not provide adequate notice or
7 opportunity to be heard, or otherwise failed to comply with the requirements of
8 3 V.S.A. chapter 25 pertaining to contested cases. The court need not remand
9 for harmless error.

10 (B) Findings of fact shall not be set aside unless clearly erroneous.

11 * * * Consideration of Economic or Other Benefits * * *

12 Sec. 4. 10 V.S.A. § 6086 is amended to read:

13 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

14 (a) Before granting a permit, the district commission shall find that the
15 subdivision or development:

16 * * *

17 (6) Will not cause an unreasonable burden on the ability of a
18 municipality to provide educational services, giving due consideration to the
19 economic, social, cultural, recreational, or other benefit to the public from the
20 development or subdivision.

1 (7) Will not place an unreasonable burden on the ability of the local
2 governments to provide municipal or governmental services, giving due
3 consideration to the economic, social, cultural, recreational, or other benefit to
4 the public from the development or subdivision.

5 (8) Will not have an undue adverse effect on the scenic or natural beauty
6 of the area, aesthetics, historic sites, or rare and irreplaceable natural areas,
7 giving due consideration to the economic, social, cultural, recreational, or other
8 benefit to the public from the development or subdivision.

9 * * *

10 (9) Is in conformance with a duly adopted capability and development
11 plan, and land use plan when adopted. However, the legislative findings of
12 subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria
13 in the consideration of applications by a district commission.

14 (A) Impact of growth. In considering an application, the district
15 commission shall take into consideration the growth in population experienced
16 by the town and region in question and whether or not the proposed
17 development would significantly affect their existing and potential financial
18 capacity to reasonably accommodate both the total growth and the rate of
19 growth otherwise expected for the town and region and the total growth and
20 rate of growth which would result from the development if approved. After
21 considering anticipated costs for education, highway access and maintenance,

1 sewage disposal, water supply, police and fire services and other factors
2 relating to the public health, safety and welfare, the district commission shall
3 impose conditions which prevent undue burden upon the town and region in
4 accommodating growth caused by the proposed development or subdivision,
5 giving due consideration to the economic, social, cultural, recreational, or other
6 benefit to the public from the development or subdivision. Notwithstanding
7 section 6088 of this title, the burden of proof that proposed development will
8 significantly affect existing or potential financial capacity of the town and
9 region to accommodate such growth is upon any party opposing an application,
10 excepting however, where the town has a duly adopted capital improvement
11 program the burden shall be on the applicant.

12 * * *

13 (D) Earth resources. A permit will be granted whenever it is
14 demonstrated by the applicant, in addition to all other applicable criteria, that
15 the development or subdivision of lands with high potential for extraction of
16 mineral or earth resources, will not prevent or significantly interfere with the
17 subsequent extraction or processing of the mineral or earth resources, giving
18 due consideration to the economic, social, cultural, recreational, or other
19 benefit to the public from the development or subdivision.

20 * * *

1 (G) Private utility services. A permit will be granted for a
2 development or subdivision which relies on privately-owned utility services or
3 facilities, including central sewage or water facilities and roads, whenever it is
4 demonstrated by the applicant that, in addition to all other applicable criteria,
5 the privately-owned utility services or facilities are in conformity with a capital
6 program or plan of the municipality involved, or adequate surety is provided to
7 the municipality and conditioned to protect the municipality in the event that
8 the municipality is required to assume the responsibility for the services or
9 facilities, giving due consideration to the economic, social, cultural,
10 recreational, or other benefit to the public from the development or
11 subdivision.

12 * * *

13 (J) Public utility services. A permit will be granted for a
14 development or subdivision whenever it is demonstrated that, in addition to all
15 other applicable criteria, necessary supportive governmental and public utility
16 facilities and services are available or will be available when the development
17 is completed under a duly adopted capital program or plan, an excessive or
18 uneconomic demand will not be placed on such facilities and services, and the
19 provision of such facilities and services has been planned on the basis of a
20 projection of reasonable population increase and economic growth, giving due

1 consideration to the economic, social, cultural, recreational, or other benefit to
2 the public from the development or subdivision.

3 * * *

4 (K) Development affecting public investments. A permit will be
5 granted for the development or subdivision of lands adjacent to governmental
6 and public utility facilities, services, and lands, including, but not limited to,
7 highways, airports, waste disposal facilities, office and maintenance buildings,
8 fire and police stations, universities, schools, hospitals, prisons, jails, electric
9 generating and transmission facilities, oil and gas pipe lines, parks, hiking
10 trails, and forest and game lands, when it is demonstrated that, in addition to all
11 other applicable criteria, the development or subdivision will not unnecessarily
12 or unreasonably endanger the public or quasi-public investment in the facility,
13 service, or lands, or materially jeopardize or interfere with the function,
14 efficiency, or safety of, or the public's use or enjoyment of or access to the
15 facility, service, or lands, giving due consideration to the economic, social,
16 cultural, recreational, or other benefit to the public from the development or
17 subdivision.

18 * * *

1 * * * Rebuttable Presumption: Development Review Board Decisions * * *

2 Sec. 5. 10 V.S.A. § 6086(a)(10) is amended to read:

3 (10) Is in conformance with any duly adopted local or regional plan or
4 capital program under chapter 117 of Title 24. In making this finding, if the
5 district commission finds applicable provisions of the town plan to be
6 ambiguous, the district commission, for interpretive purposes, shall consider
7 bylaws, but only to the extent that they implement and are consistent with
8 those provisions, and need not consider any other evidence. However, the
9 introduction by the applicant of a final decision of a development review board
10 approving the development or subdivision under chapter 117 of Title 24 shall
11 create a rebuttable presumption that the development or subdivision complies
12 with the local plan.

13 * * * Dispositive Determinations by the Agency of Natural Resources * * *

14 Sec. 6. 10 V.S.A. § 6086(d) is amended to read:

15 (d)(1)(A) In a proceeding before a district commission on a development or
16 subdivision, a technical determination made by the agency of natural resources
17 in issuing any of the following permits or approvals pertaining to the
18 development or subdivision shall be dispositive of the same determination if
19 the district commission otherwise would have to make that determination
20 under the criteria of subsection (a) of this section.

- 1 (i) An aquatic nuisance control permit under section 1263a of this
2 title.
- 3 (ii) An individual direct discharge, indirect discharge, stormwater
4 discharge, or underground injection control permit issued under chapter 47 of
5 this title.
- 6 (iii) An authorization to discharge under a stormwater general
7 permit under chapter 47 of this title.
- 8 (iv) A conditional use determination under section 1272 of this
9 title and rules of the board adopted under subdivision 6025(d)(7) of this title.
- 10 (v) A water quality certification under section 1004 of this title.
- 11 (vi) A dam order under sections 1082 and 1086 of this title.
- 12 (vii) An encroachment permit under chapter 11 of Title 29.
- 13 (viii) A public water system opermit under section 1675 of this
14 title.
- 15 (ix) A hazardous waste certification under section 6606 of this
16 title.
- 17 (x) A hazardous waste management facility certificate of need
18 under section 6606a of this title.
- 19 (xi) A solid waste management facility certification under section
20 6605 of this title.

1 (xii) A permit to construct, modify, or operate an air contaminant
2 source under sections 556 and 556a of this title.

3 (xiii) An authorization pursuant to a general permit under chapter
4 165 of this title.

5 (B) In the case of a permit or approval issued by the agency of
6 natural resources that is not listed in subdivision (d)(1)(A) of this section, a
7 technical determination of the agency shall be accorded substantial deference
8 by the district commission.

9 (2) The land use panel may by rule allow the acceptance of a permit or
10 permits or approval of any state agency with respect to subdivisions (1)
11 through (5) of subsection (a) or a permit or permits of a specified municipal
12 government with respect to subdivisions (1) through (7) and (9) and (10) of
13 subsection (a), or a combination of such permits or approvals, in lieu of
14 evidence by the applicant. A district commission, in accordance with rules
15 adopted by the land use panel, shall accept determinations issued by a
16 development review board under the provisions of 24 V.S.A. § 4420, with
17 respect to local Act 250 review of municipal impacts. The acceptance of such
18 approval, positive determinations, permit, or permits shall create a presumption
19 that the application is not detrimental to the public health and welfare with
20 respect to the specific requirement for which it is accepted. ~~In the case of~~
21 ~~approvals and permits issued by the agency of natural resources, technical~~

1 ~~determinations of the agency shall be accorded substantial deference by the~~
2 ~~commissions.~~ The acceptance of negative determinations issued by a
3 development review board under the provisions of 24 V.S.A. § 4420, with
4 respect to local Act 250 review of municipal impacts shall create a
5 presumption that the application is detrimental to the public health and welfare
6 with respect to the specific requirement for which it is accepted. Any
7 determinations, positive or negative, under the provisions of 24 V.S.A. § 4420
8 shall create presumptions only to the extent that the impacts under the criteria
9 are limited to the municipality issuing the decision. Such a rule may be
10 revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter
11 25, the Vermont Administrative Procedure Act. The rules adopted by the land
12 use panel shall not approve the acceptance of a permit or approval of such an
13 agency or a permit of a municipal government unless it satisfies the
14 appropriate requirements of subsection (a) of this section.

15 * * * Agency of Natural Resources General Permits * * *

16 Sec. 7. 10 V.S.A. chapter 165 is added to read:

17 CHAPTER 165. GENERAL PERMIT AUTHORITY

18 § 7500. PURPOSE AND DEFINITIONS

19 (a) This chapter is intended to provide for the protection of human health
20 and the environment while allowing the secretary to utilize general permits as

1 appropriate to streamline permitting processes and gain administrative
2 efficiencies.

3 (b) When used in this chapter:

4 (1) "Agency" means the agency of natural resources.

5 (2) "Commissioner" means the commissioner of the department or the
6 commissioner's duly authorized representative.

7 (3) "Department" means the department of environmental conservation.

8 (4) "General permit" means a permit that applies to a class or category
9 of discharges, emissions, disposal, facilities, or activities within a common
10 geographic area, including the entire state or a region of the state. For a class
11 or category to be eligible to be placed under a general permit under this
12 chapter, the class or category must meet each of the following:

13 (A) The discharges, emissions, disposal, facilities, or activities must
14 share the same or substantially similar qualities.

15 (B) Those qualities must be such that the requirements of statute and
16 rule applicable to the discharges, emissions, disposal, facilities, or activities
17 can be met and human health and the environment protected by imposition of
18 the same or substantially similar permit conditions on the class or category.

19 (5) "Individual permit" means a permit that authorizes a specific
20 discharge, emission, disposal, facility, or activity that contains terms and

1 conditions that are specific to the discharge, emission, disposal, facility, or
2 activity.

3 (6) "Secretary" means the secretary of the agency or the secretary's duly
4 authorized representative.

5 § 7501. GENERAL PERMITS

6 (a) When the secretary deems it to be appropriate and consistent with the
7 purpose of this chapter, the secretary may issue a general permit under chapters
8 23, 37, 41, 43, 47, 48, 56, 59, 64, or 159 of this title.

9 (b) A general permit issued under this chapter shall contain those terms and
10 conditions necessary to ensure that the category or class subject to the general
11 permit will comply with the provisions of the statutes and the rules adopted
12 under those statutes applicable to the category or class. These terms and
13 conditions may include providing for specific emission or effluent limitations
14 and levels of treatment technology; monitoring, recording, or reporting; the
15 right of access for the secretary; and any additional conditions or requirements
16 the secretary deems necessary to protect human health and the environment.

17 (c) This chapter is in addition to any other authority granted to the agency
18 or department.

19 (d) The secretary may adopt rules to implement this chapter.

1 § 7502. ISSUANCE OF GENERAL PERMITS; PUBLIC PARTICIPATION

2 (a) When, under section 7501 of this title, the secretary determines to issue
3 a general permit, the secretary shall prepare a proposed general permit and
4 shall provide for public notice of the permit in a manner designed to inform
5 interested and potentially interested persons of the proposed general permit.

6 (1) Notice of the proposed general permit shall be circulated within each
7 geographic area to which the permit would apply and shall include at least all
8 of the following:

9 (A) Written notice to the clerk of each municipality within the
10 geographic area.

11 (B) Written notice to each affected Vermont state agency and such
12 other government agencies as the secretary deems appropriate.

13 (C) Publication of notice of the proposed permit in a newspaper or
14 newspapers that circulate generally within each geographic area to which the
15 permit would apply.

16 (D) Posting of notice and a copy of the proposed general permit
17 prominently on the web page of the department.

18 (E) Mailing of notice and a copy of the proposed general permit to
19 any individual, group, or organization upon request.

20 (F) The inclusion in any notice issued under this subsection of a
21 summary of the proposed general permit, including a summary of the activities

1 to which it would apply and its terms and conditions; the deadlines by which
2 comments are to be submitted and a public information meeting requested; the
3 procedure for submitting comments and requesting a public information
4 meeting; the contact information for the agency or department concerning the
5 proposed permit; and a statement of how a copy of the proposed general permit
6 may be obtained.

7 (2) The secretary shall provide a period of not less than 30 days
8 following the date of publication in a newspaper or newspapers of general
9 circulation during which any person may submit written comments on the
10 proposed general permit.

11 (b) The secretary shall provide an opportunity for any person, state,
12 province, or country potentially affected by the proposed general permit to
13 request a public informational meeting with respect to the proposed permit.

14 (1) The deadline for any request under this subsection shall be no earlier
15 than the deadline for submitting written comments set under subdivision (a)(2)
16 of this section. The secretary shall hold an informational meeting if there is a
17 significant public interest in holding a meeting.

18 (2) The secretary shall provide public notice of any informational
19 meeting in at least the same manner as public notice of the proposed general
20 permit was given under subsection (a) of this section, except that the secretary
21 need not set a new comment deadline or provide, with the notice of the

1 meeting, a copy of the proposed general permit to any person or entity to
2 which the secretary has already provided a copy.

3 (3) Any person shall be permitted to submit oral or written statements
4 and data concerning the proposed general permit at the informational meeting.

5 (4) All statements, comments, and data presented at the meeting shall be
6 retained by the secretary and considered in the formulation of the secretary's
7 determinations regarding the final general permit.

8 (c) Whether or not requested, the secretary may hold a public informational
9 meeting on a proposed general permit at any time prior to final decision on and
10 issuance of the general permit. The provisions of subdivisions (b)(2) through
11 (4) of this section shall apply to such a meeting.

12 (d) The secretary may finally adopt a general permit following
13 consideration of any written comments submitted on the general permit and
14 any statements, comments, and data presented at a public information meeting
15 on the permit. Where the secretary decides, in finally adopting a proposed
16 general permit, to overrule substantial arguments and considerations raised for
17 or against the original proposal, the secretary's final adoption of the general
18 permit shall include a responsiveness summary stating the reasons for the
19 secretary's decision.

20 (e) On final adoption of a general permit, the secretary shall provide notice
21 of the permit's final adoption and an accompanying responsiveness summary

1 in at least the same manner as notice of the proposed general permit was issued
2 under subdivision (a)(1) of this section, except that the secretary need not set
3 or include further deadlines for comment or requesting an informational
4 meeting.

5 § 7503. AUTHORIZATION UNDER A GENERAL PERMIT

6 (a) Any person wishing to discharge, emit, dispose, or operate a facility or
7 engage in activity subject to a general permit under this chapter shall file an
8 application for authorization under the general permit on a form provided by
9 the secretary. Each application shall be accompanied by a fee as specified by
10 section 2822 of Title 3.

11 (b) For each application under this section, the applicant shall provide
12 notice, on a form provided by the secretary, to the clerk of the municipality in
13 which the discharge, emission, disposal, facility, or activity is located. The
14 applicant shall provide a copy of this notice to the secretary, with such
15 confirmation as the secretary deems adequate to demonstrate that the clerk has
16 received the notice. Following receipt of that confirmation, the secretary shall
17 provide an opportunity of at least ten working days for written comment
18 regarding whether the application complies with the terms and conditions of
19 the general permit under which coverage is sought.

20 (c) The secretary may grant an application for authorization to discharge,
21 emit, dispose, operate a facility, or engage in activity to which a general permit

1 under this chapter applies only after determining that each of the following
2 applies:

3 (1) The filings required in subsections (a) and (b) of this section are
4 complete.

5 (2) The discharge, emission, disposal, facility or activity is eligible for
6 coverage under and will meet the terms and conditions of the general permit.

7 (d) The secretary may:

8 (1) Allow a transfer from one person or entity to another of an
9 authorization to discharge, emit, dispose, operate a facility, or engage in
10 activity under a general permit issued under this chapter.

11 (2) Require notification to the secretary for changes to a discharge,
12 emission, disposal, facility, or activity for which authorization has been issued
13 under a general permit under this chapter.

14 (3) Under the procedures specified in subsection 814(c) of Title 3,
15 revoke or suspend authorization to discharge, emit, dispose, operate a facility,
16 or engage in activity under a general permit issued under this chapter.

17 § 7504. REQUIRING AN INDIVIDUAL PERMIT

18 The secretary may require any applicant for or permittee authorized unde, a
19 general permit issued under this chapter to apply for an individual permit. Any
20 interested person may petition the secretary to take action under this section.

1 The secretary may require an individual permit if any one of the following
2 applies:

3 (1) The discharge, emission, disposal, facility, or activity is a significant
4 contributor of pollution as determined by consideration of each of the
5 following factors:

6 (A) The location of the discharge with respect to waters of the
7 state of Vermont.

8 (B) The size and scope of the applicant's or permittee's activities
9 or operation.

10 (C) The quantity and nature of the pollutants.

11 (D) Other relevant factors.

12 (2) The permittee is not in compliance with the terms and conditions of
13 a general permit issued under this chapter.

14 (3) The application does not qualify for a general permit issued under
15 this chapter.

16 (4) A change has occurred in the availability of demonstrated
17 technology or practices for the control or abatement of wastes or pollutants
18 applicable to the discharge, emission, disposal, facility, or activity.

19 (5) Federal requirements have been adopted that conflict with one or
20 more provisions of a general permit issued under this chapter.

1 § 7505. REQUIRING AUTHORIZATION UNDER A GENERAL PERMIT

2 The secretary may require that a discharge, emission, disposal, facility, or
3 activity for which issuance or reissuance of an individual permit is sought be
4 subject to a general permit issued under this chapter if the secretary finds that
5 the discharge, emission, disposal, facility, or activity is eligible for coverage
6 under and will meet the terms and conditions of the general permit and that
7 authorization of the discharge, emission, disposal, facility, or activity under a
8 general permit will protect human health and the environment.

9 * * * General Permits and Permits by Rule: Appeals of Authorizations * * *

10 Sec. 8. 10 V.S.A. § 8504(j) is amended to read:

11 (j) Appeals to discharge under a general permit or permit by rule. Any
12 appeal of an authorization to discharge under the terms of a duly authorized
13 and finally adopted general permit or permit by rule shall be limited in scope to
14 whether the permitted activity complies with the terms and conditions of the
15 general permit or permit by rule.

16 * * * Deference to Agency and Natural Resources Board on Appeal * * *

17 Sec. 9. 10 V.S.A. § 8504(i) is amended to read:

18 (i) Deference to agency ~~technical determinations~~ district commissions,
19 coordinators, and board. ~~In~~ Notwithstanding the requirement of subsection (h)
20 of this section for a de novo hearing, in the adjudication of ~~appeals~~ an appeal
21 relating to ~~land use permits under chapter 154~~ an act or decision of the

1 secretary, district coordinator, or district commission under the provisions of
2 law listed in section 8503 of this title, the environmental court shall:

3 (1) Defer to a technical ~~determinations~~ determination of the secretary
4 ~~shall be accorded the same deference as they are accorded by a district~~
5 ~~commission under subsection 6086(d) of this title unless clearly erroneous,~~
6 except that in an appeal from a district commission the environmental court
7 shall treat as dispositive any technical determination of the secretary that the
8 district commission must treat as dispositive under subdivision 6086(d)(1)(A)
9 of this title.

10 (2) Defer to each of the following unless there is a compelling indication
11 of error:

12 (A) An interpretation by the secretary of the enabling statutes of or
13 rules adopted by the agency of natural resources.

14 (B) An interpretation by the district coordinator or district
15 commission, stated in the decision being appealed, of chapter 151 of this title
16 or the Act 250 rules adopted under that chapter by the land use panel, unless
17 that interpretation conflicts with an interpretation of the natural resources
18 board or either of its panels.

19 (C) An interpretation by the natural resources board of chapter 151 of
20 this title or the rules adopted by that board or either of its panels.

* * * Environmental Ticketing * * *

1
2 Sec. 10. 10 V.S.A. § 8019 is added to read:

3 § 8019. ENVIRONMENTAL TICKETING

4 (a) The secretary and the board each shall have the authority to promulgate
5 rules for the issuance of civil complaints for violations of their respective
6 enabling statutes or rules adopted under those statutes that are enforceable in
7 the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any
8 proposed rule under this section shall include both the full and waiver penalty
9 amount for each violation. The maximum civil penalty for any violation
10 brought under this section shall not exceed \$3,000.00 exclusive of court fees.

11 (b) A civil complaint issued under this section shall preclude the issuing
12 entity from seeking an additional monetary penalty for the violation specified
13 in the complaint when any one of the following occurs: the waiver penalty is
14 paid, judgment is entered after trial or appeal, or a default judgment is entered.
15 Notwithstanding this preclusion, the agency and the board may bring
16 additional enforcement action to obtain injunctive relief or remediation and, in
17 such additional action, may recover the costs of bringing the additional action
18 and the amount of any economic benefit the respondent obtained as a result of
19 the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1)
20 of this title.

1 (17) Violations of the statutes listed in 10 V.S.A. § 8003, any rules or
2 permits issued under those statutes, and any assurances of discontinuance or
3 orders issued under chapter 201 of Title 10, provided that a rule has been
4 adopted and a civil complaint issued concerning such a violation under 10
5 V.S.A. § 8019.

6 * * *

7 (d) Three hearing officers appointed by the court administrator shall
8 determine waiver penalties to be imposed for violations within the judicial
9 bureau's jurisdiction, except ~~that~~:

10 (1) Municipalities shall adopt full and waiver penalties for civil
11 ordinance violations pursuant to section 1979 of Title 24. For purposes of
12 municipal violations, the issuing law enforcement officer shall indicate the
13 appropriate full and waiver penalty on the complaint.

14 (2) The agency of natural resources and the natural resources board shall
15 include full and waiver penalties in each rule that is adopted under 10 V.S.A.
16 § 8019. For purposes of environmental violations, the issuing entity shall
17 indicate the appropriate full and waiver penalty on the complaint.

18 Sec. 12. 4 V.S.A. § 1106 is amended to read:

19 § 1106. HEARING

20 * * *

1 (b) The hearing shall be held before a hearing officer and conducted in an
2 impartial manner. The hearing officer may, by subpoena, compel the
3 attendance and testimony of witnesses and the production of books and
4 records. All witnesses shall be sworn. The burden of proof shall be on the
5 state or municipality to prove the allegations by clear and convincing evidence.
6 As used in this section, "clear and convincing evidence" means evidence
7 which establishes that the truth of the facts asserted is highly probable.
8 Certified copies of records supplied by the department of motor vehicles, the
9 agency of natural resources, or the natural resources board and presented by
10 the issuing officer or other person shall be admissible without testimony by a
11 representative of the department of motor vehicles, the agency of natural
12 resources, or the natural resources board.

13 * * *

14 (e) A state's attorney may dismiss or amend a complaint, except that
15 dismissal or amendment of a complaint subject to subdivision 1102(b)(17) of
16 this title shall be governed by 10 V.S.A. § 8019(c).

17 (f) The supreme court shall establish rules for the conduct of hearings
18 under this chapter.

1 Sec. 13. 4 V.S.A. § 1107 is amended to read:

2 § 1107. APPEALS

3 (a) A decision of the hearing officer may be appealed to the district court,
4 except for a decision in a proceeding under subdivision 1102(b)(17) of this
5 title. The proceeding before the district court shall be on the record, or at the
6 option of the defendant, de novo. The defendant shall have the right to trial by
7 jury. An appeal shall stay payment of a penalty and the imposition of points.

8 ~~(b) If a decision is appealed, the state's attorney of the county in which the~~
9 ~~violation occurred shall represent the state and the state's attorney, grand juror~~
10 ~~or municipal attorney shall represent the municipality~~ A decision of the
11 hearing officer in a proceeding under subdivision 1102(b)(17) of this title may
12 be appealed to the environmental court created under chapter 27 of this title.
13 The proceedings before the environmental court shall be on the record. The
14 defendant shall not have a right to a jury trial. An appeal shall stay the
15 payment of a penalty.

16 (c) If a decision is appealed, the state's attorney of the county in which the
17 violation occurred shall represent the state, and the state's attorney, grand
18 juror, or municipal attorney shall represent the municipality. In an appeal to
19 the environmental court from a decision under subdivision 1102(b)(17) of this
20 title, an attorney from the agency of natural resources or the natural resources
21 board shall represent the state.

1 (d) No appeal as of right exists to the supreme court. On motion made to
2 the supreme court by a party, the supreme court may allow an appeal to be
3 taken to it from the district court or environmental court.

4 Sec. 14. 20 V.S.A. § 2063 is amended to read:

5 § 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY
6 RECORD CHECK FUND

7 * * *

8 (b) Requests made by criminal justice agencies for criminal justice
9 purposes or other purposes authorized by state or federal law shall be exempt
10 from all record check fees. The following types of requests shall be exempt
11 from the Vermont criminal record check fee:

12 * * *

13 (5) Requests made by environmental enforcement officers employed
14 by the agency of natural resources.

15 * * *

16 * * * Amendments Relating to Municipal Land Use Permits and Appeals * * *

17 Sec. 15. 24 V.S.A. § 4449 is amended to read:

18 § 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
19 MUNICIPAL LAND USE PERMIT

20 (a) Within any municipality in which any bylaws have been adopted:

1 (1) No land development may be commenced within the area affected
2 by the bylaws without a permit issued by the administrative officer. No permit
3 may be issued by the administrative officer except in conformance with the
4 bylaws.

5 (2) If the bylaws so adopted so provide, it shall be unlawful to use or
6 occupy or permit the use or occupancy of any land or structure, or part thereof,
7 created, erected, changed, converted, or wholly or partly altered or enlarged in
8 its use or structure after the effective date of this chapter, within the area
9 affected by those bylaws, until a certificate of occupancy is issued therefor by
10 the administrative officer, stating that the proposed use of the structure or land
11 conforms to the requirements of those bylaws.

12 (3) No permit issued pursuant to this section shall take effect until the
13 latest of any the following has occurred:

14 (A) The time for appeal in section 4465 of this title has passed, ~~or,~~

15 (B) ~~in~~ In the event that a notice of appeal is properly filed, ~~no such~~
16 ~~permit shall take effect until~~ adjudication of that appeal by the appropriate
17 municipal panel is complete and the time for taking an appeal to the
18 environmental court has passed without an appeal being taken.

19 (C) If an appeal is taken to the environmental court, ~~the permit shall~~
20 ~~not take effect until~~ the date the environmental court rules in accordance with

1 10 V.S.A. § 8504 on whether to issue a stay, or until the expiration of 15 days,
2 whichever comes first.

3 (D) If the permit applies to land development that is also subject to
4 jurisdiction under chapter 151 of Title 10 and a complete application has been
5 filed under that chapter prior to issuance of a permit under this section, the date
6 of final decision by the district environmental commission on that application
7 or, if that decision is appealed, the date of final decision of the environmental
8 or supreme court on that appeal.

9 (4) The administrative officer or appropriate municipal panel shall grant
10 a request to extend any permit that has taken effect under this section for a
11 reasonable period if the land development approved in the permit is delayed by
12 litigation or proceedings to secure other permits or to secure title through
13 foreclosure or because of market conditions.

14 * * *

15 Sec. 16. 24 V.S.A. § 4461 is amended to read:

16 § 4461. DEVELOPMENT REVIEW PROCEDURES

17 (a) Meetings. An appropriate municipal panel shall elect its own officers
18 and adopt rules of procedure, subject to this section and other applicable state
19 statutes, and shall adopt rules of ethics with respect to conflicts of interest.
20 Meetings of any appropriate municipal panel shall be held at the call of the
21 chairperson and at such times as the panel may determine. The officers of the

1 panel may administer oaths and compel the attendance of witnesses and the
2 production of material germane to any issue under review. All meetings of the
3 panel, except for deliberative and executive sessions, shall be open to the
4 public. The panel shall keep minutes of its proceedings, showing the vote of
5 each member upon each question, or, if absent or failing to vote, indicating
6 this, and shall keep records of its examinations and other official actions, all of
7 which shall be filed immediately in the office of the clerk of the municipality
8 as a public record. For the conduct of any hearing and the taking of any action,
9 a quorum shall be not less than a majority of the members of the panel, and any
10 action of the panel shall be taken by the concurrence of a majority of the panel.
11 However, notwithstanding the foregoing or the provisions of 1 V.S.A. § 172,
12 an action on an application for a municipal land use permit shall be taken by
13 the concurrence of a majority of a quorum of the appropriate municipal panel.

14 * * *

15 Sec. 17. 24 V.S.A. § 4471 is amended to read:

16 § 4471. APPEAL TO ENVIRONMENTAL COURT

17 (a) Participation required. An interested person who has participated in a
18 municipal regulatory proceeding authorized under this title may appeal a
19 decision rendered in that proceeding by an appropriate municipal panel to the
20 environmental court. Participation in a local regulatory proceeding shall
21 consist of appearing at hearing, if held, and offering, through oral or written

1 testimony, evidence or a statement of concern related to the subject of the
2 proceeding. An appeal from a decision of the appropriate municipal panel, or
3 from a decision of the municipal legislative body under subsection 4415(d) of
4 this title, shall be taken in such manner as the supreme court may by rule
5 provide for appeals from state agencies governed by sections 801 through 816
6 of Title 3, unless the decision is an appropriate municipal panel decision which
7 the municipality has elected to be subject to review on the record.

8 * * *

9 (c) Notice. Notice of the appeal shall be filed by certified ~~mailing~~ mail,
10 hand delivery, or regular mail, with fees, to the environmental court and by
11 mailing a copy to the municipal clerk or the administrative officer, if so
12 designated, who shall supply ~~a list of interested persons~~ to the appellant within
13 five working days a list of persons who participated in the municipal
14 proceeding. Upon receipt of ~~the this~~ this list of interested persons, the appellant
15 shall, ~~by certified mail, hand delivery, or regular mail,~~ provide a copy of the
16 notice of appeal to every ~~interested~~ person who participated in the municipal
17 proceeding, and, if any one or more of those persons are not then parties to the
18 appeal, upon motion they shall be granted leave by the court to intervene. The
19 appellant also shall file a certificate of service stating the name and address of
20 party or party representative service and the date and manner of service.

21 * * *

- 1 Sec. 18. EFFECTIVE DATE
- 2 This act shall take effect from passage.