

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
PERMIT APPLICATION REVIEW GUIDANCE
March 14, 2019

1. PURPOSE AND APPLICABILITY

This guidance is adopted to establish consistent requirements for permit application review throughout the Department in support of permit performance standards. This guidance applies to the processing of most applications including new projects, amendments, and renewals. It includes general definitions, the key components of reviewing a permit application for administrative and technical completeness, and how to determine how to calculate the time spent on internal processing versus the overall time taken to issue or deny a permit. This guidance is not applicable to licenses or 401 certifications required in response to federal licenses or permits. This guidance does not address every aspect of application review and processing; those areas not specifically addressed by the guidance shall be conducted at the discretion of each program. This guidance does not supersede rules that include provisions addressing any of these processing areas.

2. DEFINITIONS

- 2.1 Application means a written request for authorization to conduct an activity under the Department's jurisdiction. This authorization is typically in the form of a permit, registration or certificate. The request is made on forms specified by the program; is signed or certified by the applicant or their authorized agent; and is usually accompanied by a fee. Other information such as site maps, project plans or supporting data and calculations may be required as part of an application. The exact nature of the information will be specified by the program.
- 2.2 Amendment means a modification to an individual permit, general permit, or notice of intent under a general permit.
- 2.3 Administratively Complete Application means an application for a permit for which all initially required documentation has been submitted, along with any required permit fee, and the information submitted initially addresses all application requirements but has not yet been subjected to a complete technical review.
- 2.4 Administrative Fee is an application review fee allowed by statute, or a non-refundable portion of the application fee, as determined by the division or program and approved by the Commissioner.
- 2.5 Agency means the Agency of Natural Resources (ANR).
- 2.6 Department means the Department of Environmental Conservation (DEC).
- 2.7 Permit includes any permit, certification, license, registration, determination or similar form of permission from the Department required by law. However, the term excludes a professional license issued pursuant to chapter 48, subchapter 3 (licensing of well drillers) of this title and sections 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous waste transporters) and 6607a (waste transportation) of this title.
- 2.8 PEP or PEP Standard: means the standard set by the Permit Expediting Program (PEP), which was mandated by the Legislature in Act 76 of the 1987. Standards are expressed in calendar days and reflect the application processing time consumed by the Department.
- 2.9 Processing time. Total processing time is the number of calendar days required to process an application starting with receipt and ending with the determination of approval or denial. Total processing time includes the time used by the applicant to respond to requests for additional

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information made by the Department. Department processing time includes “clock on days” only, which is the time consumed by the Department to issue a permit.

- 2.10 Program means the authorized group, section or division within the Department responsible for the processing of an application.
- 2.11 Technical review means the evaluation of scientific, engineering, or other professional documentation to determine whether the application for which a permit is requested meets the standards for issuing the permit under statute and rule.
- 2.12 Technically Complete Application is an application which has been determined to be administratively complete and which provides sufficient information and documentation to allow the Department to determine whether the application meets the applicable standards and undergo a public notice process, if applicable.

3. RECORDS RETENTION AND DEBARMENT CHECK

The purpose of this section is to ensure consistency in the review of applications and the retention of documents.

- 3.1 The Agency shall retain an electronic copy of all administratively complete applications.
- 3.2 When an application is determined to be administratively complete, it moves on to technical review and a notice shall be sent to the applicant informing them of the status. Staff should document when technical review begins.
 - 3.2.1 *Debarment List Check*: prior to deeming an application administratively complete, staff must confirm the applicant is not on the debarment list maintained on the DEC Intranet. Pursuant to 10 V.S.A. §8014(b), the department “shall stay the effective date or the processing of any pending permit application or renewal application ... until payment in full of all outstanding penalties has been received.”
- 3.3 During the course of a review, any revised documents should be posted to the ENB and labeled “revised.” No original documents should be deleted once they have been posted to the ENB.
- 3.4 Application Withdrawal. A permit application may be withdrawn only at the written request of the applicant. Programs shall develop a standard letter or notice to respond to applicants making such a request.

4. FEE REFUNDS

The purpose of this section is to ensure consistency regarding the return of application fees when an application is withdrawn or denied.

- 4.1 When an application is withdrawn by the applicant prior to the administrative review, or prior to the assignment of a permit number, or the permit is not required for the activity described in the application, the program shall refund all fees or transfer the fees to the permit that is required.
- 4.2 The program shall retain an administrative fee and refund the remainder of the application fee to the applicant when:
 - 4.2.1 an administratively incomplete application is returned to an applicant following an administrative review, but prior to a technical review;
 - 4.2.2 an application is withdrawn by the applicant during or after the administrative review but prior to commencement of a technical review.
- 4.3 When an application is modified, withdrawn or denied after technical review has commenced, the program shall retain all application fees.

5. DENIAL

This section provides guidance to program staff for requesting additional documentation from applicants, timeframes for submitting additional documentation, and denial of applications when such documentation is not provided.

- 5.1 Programs may deny an application at any time either because the application is administratively or technically incomplete, or because the application is complete but does not meet the standards in the program's rules and regulations.
- 5.2 When an application is either administratively or technically incomplete, programs may request additional information from the applicant. In this instance, the program shall not deny an application during the timeframe provided by the program for submitting the additional information.
 - 5.2.1 First Notice. When an application is found to be administratively or technically incomplete, the program may provide a first notice to the applicant with the following information:
 - 5.2.1.1 A list of the information necessary to make the application complete;
 - 5.2.1.2 A schedule that is reasonably achievable, but not exceeding 60 days, for providing the information requested; and
 - 5.2.1.3 Information on how to withdraw an application and the department's refund policy.
 - 5.2.2 Second Notice. If the timeframe in the first notice is exceeded, the program may provide a second notice to the applicant. This notice shall reference the notice described in 5.2.1 above and document that the necessary information has not been received by the established deadline. This second notice shall indicate that if the information or the request for withdrawal is not submitted by a new established timeframe, the Department must make a finding that the application is incomplete or deficient, thereby requiring the Department to deny the application and not refund the fee. A basic description of the denial process should be included. The new timeframe shall not exceed 60 days.
 - 5.2.3 If the final date for the submittal of information in the second notice is exceeded without Department approval, then the Department shall deny the application.
- 5.3 If the applicant or applicant's consultant fails to withdraw an application or provide the requested information within the timeframe specified by the program, then the Department shall initiate action to deny the application. The same process used by a program for a permit issuance may be used for processing denials. Where appropriate, the denial notice shall include the following language: "Following a review and consideration of available information the Department has made a determination that the application is incomplete and must be denied. In other words, the denial is due to incomplete information and will not impact future review of applications." Following this process, the denial letter, or other appropriate format, shall be signed by the program designee of the Secretary. Refunds shall be made pursuant to sections 4.1, 4.2 and 4.3. Any further action on this activity will require submittal of a new application and fee.

5.4 When an application is determined to be complete, but the activity cannot be approved (i.e. the application does not document that the activity either does or can meet the appropriate standards), then the application shall be denied.

5.5 The denial of a permit application is appealable, and the denial notice shall include a statement that the action is appealable. The appropriate authority and the timeframe for filing the appeal should be included in the final correspondence.

6. APPLICATION TRACKING SYSTEM 'CLOCK' TRIGGERS DENIAL

The purpose of this section is to promote consistency between programs regarding events that trigger “clock on” and “clock off” in the program application tracking system.

Events that trigger “Clock On” are those that place the application review process within the program's control, such as: the date the program receives a new or revised application; or the submission of additional information from an applicant.

Events that trigger “Clock Off” are those that place the application review process outside of the program’s control, such as: the program requests information from the application, the program requests a decision from other programs within the department, the program requests a decision from other state or federal agencies, or the permit is placed on public notice as required by statute.

The descriptions in the following table serve as a guidance for DEC programs tracking permit application review and processing.

Status Options	Clock On/Off	Descriptions
Application Received	on	The application is date stamped by admin, if received via e-mail the initial business date that the e-mail arrived.
Admin Incomplete	off	Incomplete if any part of the application is missing. Examples of missing information: co-applicant’s signature, public notice plan, inadequate payment, all required forms and signatures, etc. Clock is off until all information is submitted. The Clock should be turned off after the request is made to the applicant. The request should be documented.
Info Received	on	When missing information is submitted and program reviews information. The Clock should start again on the date the information is received.
Admin Complete	on	All initially required documentation has been submitted, along with any required permit fee, and the information submitted initially addresses all application requirements regardless of, whether the information, maps, fees and documents would be sufficient for issuance of the permit.
Technically Incomplete	off	Technical information is inadequate to comply with the rules to make a decision, and notification is sent to applicant.
Technically Complete	on	Application contains all information, maps, fees, and other documents necessary to complete DEC review.
Draft Permit (Draft Decision)	off	The draft decision is issued and public comment period starts.
Public Comment Start	off	The first day of the public comment period.
Public Comment End	on	The last day of the public comment period. Clock start begins the next day.
Public Meeting or Hearing	off	Date field for public meeting or hearing.
Public Appeal	off	Date field for public appeal.
Final Action Type		
Denied/Terminated	off	The application does not meet the rules. Subject to a public comment period and a 30-day appeal period.
Issued	off	The application has met the rules.
Withdrawn by applicant	off	Applicant no longer wants to pursue application. Can be withdrawn prior to a comment period and is not subject to an appeal period.
Permit not Required	off	A determination by the program that the activity does not fall under the rule(s).

On project Hold		
Internal	off	When the program requests a review, approval, or information from other programs within ANR/DEC but outside of the permitting program.
External	off	When the program requests a review, approval, or information or regulatory standards from other state or federal agencies.
Applicant	off	When an applicant requests or agrees to place a project on hold for a specific or indefinite period of time.

Signed by:



Emily Boedecker, DEC Commissioner

Date: March 18, 2018