

1 H.258

2 Introduced by Representatives Klein of East Montpelier and Deen of

3 Westminster

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; environmental law enforcement;

7 public participation

8 Statement of purpose: This bill proposes to require the secretary of natural  
9 resources, the land use panel, or the natural resources board to provide at least  
10 20 days during which an aggrieved person may comment on a draft assurance  
11 of discontinuance or administrative order. The bill also requires a draft  
12 assurance of discontinuance or administrative order to be published for notice  
13 on the relevant website of the secretary of natural resources, the land use panel,  
14 or the natural resources board. In addition, the bill would prohibit the  
15 environmental division from signing an assurance of discontinuance or  
16 administrative order until any additional filings or proceedings are complete,  
17 including those filings or proceedings subsequent to a timely motion for  
18 intervention. The bill would also allow for public notice and comment on  
19 certain environmental tickets issued by the secretary of natural resources.

20 An act relating to public participation in environmental enforcement  
21 proceedings

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

2 Sec. 1. 10 V.S.A. § 8002 is amended to read:

3 § 8002. DEFINITIONS

4 As used in this chapter:

5 (1) "Board" means the natural resources board defined by subdivision  
6 6001(1) of this title.

7 (2) "Compliance" means compliance with the statutes specified in  
8 section 8003 of this title, and with any related rules, permits, assurances, or  
9 orders.

10 (3) "Investigator" means an investigator designated and duly authorized  
11 by the secretary or the board.

12 (4) "Person" means any individual, partnership, company, corporation,  
13 association, unincorporated association, joint venture, trust, municipality, the  
14 state of Vermont or any agency, department, or subdivision of the state, federal  
15 agency, or any other legal or commercial entity.

16 (5) "Permit" means any permit, license, certification, or transitional  
17 operational authority issued under any of the statutes specified in section 8003  
18 of this title.

19 (6) "Respondent" means a person who has committed or is alleged to  
20 have committed a violation.

21 (7) "Secretary" means the secretary of the agency of natural resources,  
22 or the secretary's duly authorized representative.

1 (8) "Stop work order" means an order to cease construction or other  
2 activity.

3 (9) "Violation" means noncompliance with one or more of the statutes  
4 specified in section 8003 of this title, or any related rules, permits, assurances,  
5 or orders.

6 (10) "Land use panel" means the land use panel of the board, as  
7 established under chapter 151 of this title.

8 (11) "Economic benefit" means a reasonable approximation of any gain,  
9 advantage, wrongful profit, or delayed avoided cost, financial or otherwise,  
10 obtained as a result of a violation. Economic benefit shall not be limited to  
11 only competitive advantage obtained.

12 (12) "Environmental court" or "environmental division" means the  
13 environmental division of the superior court established by 4 V.S.A. § 30.

14 (13) "Aggrieved person" means any person or persons having an interest  
15 that is or may be adversely affected by a violation subject to an enforcement  
16 action under this chapter.

17 (14) "Federally authorized or delegated program" means an area of  
18 environmental regulation where the U.S. Environmental Protection Agency has  
19 authorized or delegated to Vermont primary regulatory responsibility,  
20 including the Clean Water Act, the Clean Air Act, and the Resource  
21 Conservation and Recovery Act.

1 ~~Sec. 2. 10 V.S.A. § 8007 is amended to read:~~

2 ~~§ 8007. ASSURANCES OF DISCONTINUANCE~~

3 ~~(a) As an alternative to administrative or judicial proceedings, the~~  
4 ~~secretary, or the land use panel, may accept from a respondent an assurance of~~  
5 ~~discontinuance of a violation. An assurance of discontinuance shall include:~~

6 ~~(1) a statement of the facts which provide the basis for claiming the~~  
7 ~~violation exists and a description of the alleged violation determined by the~~  
8 ~~secretary or the land use panel; and~~

9 ~~(2) an agreement by the respondent to perform specific actions to~~  
10 ~~prevent, abate or alleviate environmental problems caused by the violation, or~~  
11 ~~to restore the environment to its condition before the violation, including~~  
12 ~~financial responsibility for such actions.~~

13 \* \* \*

14 ~~(c) An assurance of discontinuance shall be in writing and signed by the~~  
15 ~~respondent and shall specify the statute or regulation alleged to have been~~  
16 ~~violated. The draft assurance of discontinuance shall be simultaneously~~  
17 ~~published for public notice and filed with the attorney general and the~~  
18 ~~environmental division. The secretary or the land use panel shall post a final~~  
19 ~~draft assurance of discontinuance to its website and shall provide a final draft~~  
20 ~~assurance of discontinuance to a person upon request. When signed by the~~  
21 ~~environmental division, the assurance shall become a judicial order. Upon~~  
22 ~~motion by the attorney general made within 10 days of the date the assurance~~

1 ~~is signed by the court and upon a finding that the order is insufficient to carry~~  
2 ~~out the purposes of this chapter, the court shall vacate the order. The~~  
3 ~~environmental division shall not sign the final draft of the assurance of~~  
4 ~~discontinuance until at least 20 days have passed from the date the draft~~  
5 ~~assurance was filed and published for public notice. The date the draft~~  
6 ~~assurance was filed shall be noted with the filing. During the time period~~  
7 ~~between the filing of a draft assurance and the environmental division's~~  
8 ~~signing of a final draft, the environmental division shall allow an aggrieved~~  
9 ~~person or the attorney general to intervene as a matter of right under the~~  
10 ~~Vermont Rules of Civil Procedure. The environmental division shall allow an~~  
11 ~~aggrieved person or the attorney general to request a hearing under section~~  
12 ~~8012 of this title and shall grant a hearing at its discretion. The environmental~~  
13 ~~division shall not sign an assurance of discontinuance until it has reviewed any~~  
14 ~~additional filings and evidence presented at any hearing granted under section~~  
15 ~~8012 of this title and any filings or proceedings subsequent to a timely motion~~  
16 ~~for intervention from an aggrieved person or the attorney general. After such~~  
17 ~~review, the environmental division may sign the assurance of discontinuance~~  
18 ~~unless the environmental division makes a finding that the order is insufficient~~  
19 ~~to carry out the purposes of this chapter.~~

20 (d) If the respondent complies with an assurance of discontinuance signed  
21 by the division, the respondent shall not be liable for additional civil or

1 criminal penalties with respect to the facts set forth in the assurance of  
2 discontinuance.

3 Sec. 3. 10 V.S.A. § 8008 is amended to read:

4 § 8008. ADMINISTRATIVE ORDERS

5 (a) The secretary may issue an administrative order when the secretary  
6 determines that a violation exists. The order shall be served as provided for  
7 under the Vermont Rules of Civil Procedure. ~~A copy of the order also shall be~~  
8 ~~delivered to the attorney general.~~ An order shall be effective on receipt unless  
9 stayed under subsection 8012(e) of this title.

10 (b) An order shall include:

11 (1) a statement of the facts which provide the basis for claiming the  
12 violation exists;

13 (2) identification of the applicable statute, rule, permit, assurance or  
14 order;

15 (3) a statement that the respondent, the attorney general, or an aggrieved  
16 person has a right to a hearing under section 8012 of this title, and a  
17 description of the procedures for requesting a hearing;

18 (4) a statement that the order is effective on receipt unless stayed on  
19 request for a hearing filed within 15 days;

20 (5) if applicable, a directive that the respondent take actions necessary to  
21 achieve compliance, to abate potential or existing environmental or health

1 hazards, and to restore the environment to the condition existing before the  
2 violation; and

3 (6) a statement that unless the respondent, the attorney general, or an  
4 aggrieved person requests a hearing under this section, the order becomes a  
5 judicial order when filed with and signed by the environmental ~~court~~ division.

6 (c) An order may include:

7 (1) a “stop work” order that directs the respondent to stop work until a  
8 permit is issued, compliance is achieved, a hazard is abated, or any  
9 combination of the above. In issuing such an order, the secretary shall  
10 consider the economic effect of the order on individuals other than the  
11 respondent;

12 (2) a stay of the effective date or processing of a permit under section  
13 8011 of this title; and

14 (3) a proposed penalty or penalty structure.

15 (d)(1) The administrative order and proof of service shall be  
16 simultaneously published for public notice and filed with the attorney general  
17 and the environmental ~~court~~ division. The environmental division shall not  
18 sign the administrative order until at least 20 days have passed from the date of  
19 filing and public notice. The date the administrative order is filed shall be  
20 noted with the filing. During the time period between the filing of a draft order  
21 and the environmental division’s signing a final draft, the environmental  
22 division shall allow an aggrieved person or the attorney general to intervene as

1 ~~a matter of right under the Vermont Rules of Civil Procedure and shall allow~~  
2 ~~an aggrieved person or the attorney general to request a hearing under section~~  
3 ~~8012 of this title. The court environmental division shall sign the~~  
4 administrative order in the event that:

5 (A) The administrative order is properly served on a respondent in  
6 accordance with subsection (a) of this section;

7 (B) The respondent, the attorney general, or an aggrieved person does  
8 not request a hearing in accordance with subsection (b) of this section; ~~and~~

9 (C) Any additional filings or proceedings are complete, including  
10 those subsequent to a timely motion for intervention; and

11 ~~(C) the~~ (D) The order otherwise meets the requirements of this  
12 chapter.

13 (2) When signed by the environmental ~~court~~ division, the administrative  
14 order shall become a judicial order. ~~Upon motion by the attorney general~~  
15 ~~made within 10 days of the date the administrative order is signed by the court~~  
16 ~~and upon a finding by the court that the order is insufficient to carry out the~~  
17 ~~purposes of this chapter, the court shall vacate the order.~~

18 Sec. 4. 10 V.S.A. § 8012 is amended to read:

19 § 8012. REQUEST FOR HEARING

20 (a) A respondent, an aggrieved person, or the attorney general may request  
21 a hearing on an administrative order or an assurance of discontinuance issued  
22 by the secretary. Notice of a request for hearing shall be filed with the



1 ~~environmental division and the secretary. Upon receipt of the notice, the~~  
2 ~~secretary shall forward a copy of the order to the environmental division.~~

3 (b) The environmental division shall have authority to:

4 (1) ~~for an administrative order,~~ determine whether a violation has  
5 occurred. An administrative order shall be reversed when it is determined that  
6 a violation has not occurred;

7 (2) affirm, or vacate and remand to the secretary an order or assurance  
8 issued under subdivision ~~8007(a)(2) or 8008(b)(5)~~ of this title. The  
9 environmental division shall vacate and remand an order or assurance under  
10 this subdivision when a violation is found to exist but the procedure contained  
11 in the order or the assurance is not reasonably likely to achieve the intended  
12 result or is insufficient to carry out the purposes of this chapter;

13 (3) to affirm, modify, or reverse any provision of any order or assurance  
14 issued by the secretary except those identified by subdivision (2) of this  
15 subsection. In deciding whether to affirm or reverse a stop work order under  
16 this subdivision, the environmental division shall consider the economic effect  
17 of the order on individuals other than the respondent;

18 (4) to review and determine anew the amount of a penalty by applying  
19 the criteria set forth in subsections 8010(b) and (c) of this title; and

20 (5) to affirm, modify, or dissolve an emergency order.

21 (c) Notice of the request for hearing shall be filed within 15 days of receipt  
22 of the order or within 20 days of the order's filing and publication for public

1 notice. The hearing shall be held before the environmental division within 30  
2 days of receipt by the division of the notice, unless continued for good cause.

3 The environmental division shall issue a written decision within 20 days of the  
4 conclusion of the hearing, and no later than 60 days from the request for  
5 hearing, unless the hearing process is extended for good cause. The decision  
6 shall be sent to the parties by certified mail, return receipt requested, and shall  
7 include:

8 (1) a statement of conclusion as to whether a violation exists and  
9 findings of facts in support of the conclusion;

10 (2) identification of the applicable statute, rule, permit, assurance, or  
11 order;

12 (3) the order or assurance to be imposed or penalty to be assessed, or  
13 both, if a violation is determined to exist;

14 (4) a statement that the respondent, an aggrieved person, the secretary,  
15 and the attorney general have a right to appeal the decision, and a description  
16 of the procedures for requesting an appeal; and

17 (5) a warning that the decision will become final if no appeal is  
18 requested within 10 days of the date the decision is received.

19 ~~(e)~~(d) Notice of a request for hearing shall stay the order and payment of  
20 the penalty, if imposed, pending the hearing. The secretary may issue an  
21 emergency order with regard to the alleged violation that is the subject of the  
22 hearing, if grounds for such an order develop during the hearing process.

1 ~~(f)(e)~~ Any claim a person may have under a private right of action which is  
2 not determined in a proceeding under this chapter shall be preserved.

3 Sec. 5. 10 V.S.A. § 8013 is amended to read:

4 § 8013. CONDUCT OF HEARINGS; APPEAL; STAY

5 (a) The secretary, the attorney general, or an aggrieved person shall have  
6 the burden of proof by a preponderance of the evidence.

7 (b) Parties may be represented by counsel in hearings before the  
8 environmental division. The agency of natural resources may represent itself.  
9 A party may conduct cross-examination required for a full and true disclosure  
10 of the facts.

11 (c) An appeal from a decision of the environmental division may be taken  
12 by the secretary or the respondent to the supreme court. The attorney general  
13 or an aggrieved person also may appeal if the attorney general or aggrieved  
14 person has appeared as a party.

15 (d) An appeal by a respondent, an aggrieved person, or the attorney general  
16 to the supreme court shall not stay an order, but shall stay payment of a  
17 penalty. A respondent may petition the supreme court for a stay of an order.

18 Sec. 6. 10 V.S.A. § 8019 is amended to read:

19 § 8019. ENVIRONMENTAL TICKETING

20 (a) The secretary and the board each shall have the authority to adopt rules  
21 for the issuance of civil complaints for violations of their respective enabling  
22 statutes or rules adopted under those statutes that are enforceable in the judicial

1 bureau pursuant to the provisions of chapter 29 of Title 4. Any proposed rule  
2 under this section shall include both the full and waiver penalty amounts for  
3 each violation. The maximum civil penalty for any violation brought under  
4 this section shall not exceed \$3,000.00 exclusive of court fees.

5 (b) A civil complaint issued under this section shall preclude the issuing  
6 entity from seeking an additional monetary penalty for the violation specified  
7 in the complaint when any one of the following occurs: the waiver penalty is  
8 paid, judgment is entered after trial or appeal, or a default judgment is entered.  
9 Notwithstanding this preclusion, the agency and the board may issue additional  
10 complaints or initiate an action under chapter 201 of this title, including a  
11 monetary penalty when a violation is continuing or is repeated, and may also  
12 bring an enforcement action to obtain injunctive relief or remediation and, in  
13 such additional action, may recover the costs of bringing the additional action  
14 and the amount of any economic benefit the respondent obtained as a result of  
15 the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1)  
16 of this title.

17 (c) The secretary or board chair and his or her duly authorized  
18 representative shall have the authority to amend or dismiss a complaint by so  
19 marking the complaint and returning it to the judicial bureau or by notifying  
20 the hearing officer at the hearing.

21 (d) Subsequent to the issuance of a civil complaint under this section and  
22 the conclusion of any hearing and appeal regarding that complaint, the

1 following shall be considered part of the respondent's record of compliance  
2 calculating a penalty under section 8010 of this title:

3 (1) The respondent's payment of the full or waiver penalty stated in the  
4 complaint.

5 (2) The respondent's commission of a violation after the hearing before  
6 the judicial bureau on the complaint.

7 (3) The respondent's failure to appear or answer the complaint resulting  
8 in the entry of a default judgment.

9 (4) A finding, after appeal, that the respondent committed a violation.

10 (e) For violations of statutes that implement a federally authorized or  
11 delegated program, or any implementing rule, permit, assurance, or order:

12 (1) The secretary shall publish a notice of its intent to issue a civil  
13 complaint, along with the contents of the proposed civil complaint. The public  
14 shall have 30 calendar days to submit comments prior to the issuance of the  
15 civil complaint. At the close of the comment period, the secretary shall  
16 evaluate the appropriateness of the civil complaint in light of any and all  
17 comments received.

18 (2) A civil complaint shall not be considered diligent prosecution for the  
19 purpose of precluding a private right of action.

1 ~~Sec. 7. 10 V.S.A. § 8020 is added to read:~~

2 ~~§ 8020. PUBLICATION FOR NOTICE~~

3 ~~When the secretary, the board, or the land use panel is required under this~~  
4 ~~chapter to publish a draft or final assurance of discontinuance, an~~  
5 ~~administrative order, a civil complaint, or any other information, the~~  
6 ~~information shall be posted to the relevant website of the secretary, the board,~~  
7 ~~or the land use panel and shall be provided to any person upon request.~~

8 Sec. 8. EFFECTIVE DATE

9 This act shall take effect on July 1, 2011.

*Sec. 1. 10 V.S.A. § 8002 is amended to read:*

*§ 8002. DEFINITIONS*

*As used in this chapter:*

*\* \* \**

*(4) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.*

*\* \* \**

*(12) "Environmental court" or "environmental division" means the environmental division of the superior court established by 4 V.S.A. § 30.*

~~*(13) "Federally authorized or delegated program" means an area of environmental regulation where the U.S. Environmental Protection Agency has authorized or delegated to Vermont primary regulatory responsibility, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.*~~

~~*(14) "Post" means the placing of the required information on the website of the secretary or the board.*~~

~~*(14) "Post" means the placing of the required information on the website of the secretary, if he or she initiates an enforcement action under this chapter, or on the website of the board, if it initiates an enforcement action under this chapter.*~~

(13) "Civil complaint" means an environmental citation issued by the secretary or the board for a violation of a statute listed under subsection 8003(a) of this title.

(14) "Federally authorized or delegated program" means an area of environmental regulation where the U.S. Environmental Protection Agency has authorized or delegated to Vermont primary regulatory responsibility, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

(15) "Post" means:

(A) placing a draft administrative order, assurance of discontinuance, or civil complaint or a final administrative order, assurance of discontinuance, or civil complaint on the website of the secretary if he or she initiates an enforcement action under this chapter or on the website of the board if it initiates an enforcement action; and

(B) providing public notice about the opportunity to:

(i) submit written comments regarding a draft administrative order, assurance of discontinuance, or civil complaint; or

(ii) request intervention in a final administrative order, assurance of discontinuance, or civil complaint.

Sec. 2. 10 V.S.A. § 8012 is amended to read:

§ 8012. REQUEST FOR HEARING

\* \* \*

(b) The environmental division shall have authority to:

\* \* \*

(2) affirm, or vacate and remand to the secretary an order issued under subdivision 8008(b)(5) of this title. The environmental division shall vacate and remand an order under this subdivision when a violation is found to exist but the procedure contained in the order is ~~not reasonably likely to achieve the intended result~~ insufficient to carry out the purposes of this chapter;

\* \* \*

~~(d) The environmental division may grant party status to an aggrieved person for the purpose of providing evidence and legal arguments only in relation to the sufficiency of an order issued under the authority of section 8008 of this title. As used in this subsection, an "aggrieved person" means a person who demonstrates that the interest of that person is not adequately represented by any other party and who at the time of the alleged violation had:~~

~~(1) an ownership, leasehold or contractual interest in real property directly affected by the violation described in the order; or~~

~~(2) an interest in the outcome of the proceeding which is distinct from the interest of the public at large because of the person's place of residence, place of employment or place of business.~~

~~(e)(d)~~ Notice of a request for hearing shall stay the order and payment of the penalty, if imposed, pending the hearing. The secretary may issue an emergency order with regard to the alleged violation that is the subject of the hearing, if grounds for such an order develop during the hearing process.

~~(f)(e)~~ Any claim a person may have under a private right of action which is not determined in a proceeding under this chapter shall be preserved.

Sec. 3. 10 V.S.A. § 8013 is amended to read:

**§ 8013. CONDUCT OF HEARINGS; APPEAL; STAY**

(a) The secretary shall have the burden of proof by a preponderance of the evidence.

(b) Parties may be represented by counsel in hearings before the environmental division. The agency of natural resources may represent itself. A party may conduct cross-examination required for a full and true disclosure of the facts.

(c) An appeal from a decision of the environmental division may be taken by the secretary, the board, or the respondent to the supreme court. The attorney general also may appeal if the attorney general has appeared as a party.

(d) An appeal by a respondent or the attorney general to the supreme court shall not stay an order, but shall stay payment of a penalty. A respondent may petition the supreme court for a stay of an order.

Sec. 4. 10 V.S.A. § 8014(a) is amended to read:

(a) The secretary may seek enforcement of a final administrative order, final orders pursuant to an assurance of discontinuance, or civil complaints pursuant to section 8019 of this title, or a landfill extension order in the civil, criminal, or environmental division of the superior court.

Sec. 5. 10 V.S.A. § 8019 is amended to read:

**§ 8019. ~~ENVIRONMENTAL TICKETING~~ CIVIL COMPLAINTS**

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling statutes or rules adopted under those statutes that are enforceable in the ~~judicial bureau pursuant to the provisions of chapter 29 of Title 4~~



environmental division. Any proposed rule under this section shall include ~~both~~ the full, minimum, and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed \$3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1) of this title.

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so marking the complaint and returning it to the ~~judicial bureau~~ environmental division or by notifying the hearing officer or judge at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance when calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the ~~judicial bureau~~ environmental division on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation.

(e) Penalties assessed under this section shall be deposited in the general fund.

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~~Sec. 6. 10 V.S.A. § 8020 is added to read:~~

~~§ 8020. PUBLIC PARTICIPATION IN ENFORCEMENT~~

~~(a) Prior to sending an administrative order, assurance of discontinuance, or civil complaint issued under this chapter to the environmental division, the secretary or the board shall post the administrative order, assurance of discontinuance, or civil complaint for public notice and written comment for~~

~~30 days. At the conclusion of the 30-day notice and written comment period, the secretary or the board shall evaluate the proposed action pursuant to the written comments received. After the evaluation of the written comments, the secretary or the board may withdraw an administrative order, assurance of discontinuance, or civil complaint. At the conclusion of the 30-day notice period, if no comments have been received, the secretary or the board shall file the administrative order, assurance of discontinuance, or civil complaint with the environmental division, and the environmental division shall process the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter.~~

~~(b) When the secretary or board issues a final administrative order, assurance of discontinuance, or civil complaint, it shall be sent to the environmental division along with any written comments received during the 30-day comment period. Concurrent with filing, the secretary or board shall post the final proposed action for public notice for 14 days. The environmental division shall hold the administrative order, assurance of discontinuance, or civil complaint for 14 days from the date of filing to allow any person to file a motion for permissive intervention pursuant to the procedure in Rule 24(c) of the Vermont Rules of Civil Procedure. At the conclusion of the 14-day period, if no motion to intervene has been filed, the environmental division shall process the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter.~~

~~(c) In order for a person to intervene permissively in an administrative order, assurance of discontinuance, or civil complaint, the person shall have filed a written comment with the agency or board setting out the specific objection to the proposed action during the 30-day comment period required under subsection (a) of this section.~~

~~(d) When the secretary issues an emergency administrative order, the pre-filing public notice and comment provisions contained in this section shall not apply. The environmental division shall act on the emergency administrative order as required by section 8009 of this title. The secretary shall publish the emergency administrative order concurrent with filing it with the environmental division. A person shall have 14 days from the date the emergency administrative order is filed to file a motion for permissive intervention. A motion to intervene shall not stay an emergency administrative order.~~

~~(e) The environmental division shall evaluate a motion from an aggrieved person for permissive intervention in light of Rule 24(b)(1) of the Vermont Rules of Civil Procedure. A motion for permissive intervention shall clearly state the basis for the claim that the administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the motion for permissive intervention.~~

~~in the discretion of the environmental division. When the environmental division determines that a motion to intervene fails to meet the requirements for permissive intervention, the court shall deny the motion.~~

~~(f) When the environmental division permits an aggrieved person to intervene, it shall be for the sole purpose of establishing that the terms of an administrative order, emergency administrative order, assurance of discontinuance, or civil complaint are insufficient to carry out the purposes of this chapter. The intervenor shall have the burden of proof by a preponderance of the evidence that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the claim that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter in the discretion of the environmental division. The environmental division upon finding that the proposed action is insufficient to carry out the purposes of this chapter shall inform the parties in writing and shall include the basis of its decision and shall vacate the proposed action.~~

~~(g) The secretary or board shall not oppose any motion filed for permissive intervention, but when the environmental division permits a person to intervene, the secretary or board may oppose the intervenor's claim that the proposed action is insufficient to carry out the purposes of this chapter. The secretary shall investigate all citizen complaints of a violation of a federally authorized or delegated program and shall respond to known complainants in writing.~~

~~(h) As used in this section, an "aggrieved person" means a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this section, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance, administrative order, emergency order, or civil complaint issued under this chapter. An organization or association is an aggrieved person under this section when one or more of its members would be an aggrieved person in his or her own right, the interests at stake are germane to the purposes of the organization or association, and neither the claim asserted nor the relief requested by the organization or association requires participation of the individual member.~~

Sec. 6. 10 V.S.A. § 8020 is added to read:

§ 8020. PUBLIC PARTICIPATION IN ENFORCEMENT

(a) Aggrieved person. As used in this section, an "aggrieved person" means a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this section, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance, administrative order, emergency order, or civil complaint issued under this

chapter. An organization or association is an aggrieved person under this section when one or more of its members would be an aggrieved person in his or her own right, the interests at stake are germane to the purposes of the organization or association, and neither the claim asserted nor the relief requested by the organization or association requires participation of the individual member.

(b) Draft and final action. Prior to issuing an administrative order, assurance of discontinuance, or civil complaint under this chapter and sending it to the environmental division, the secretary or the board shall post a draft copy of the administrative order, assurance of discontinuance, or civil complaint for public notice and written comment for 30 days. At the conclusion of the 30-day notice and written comment period, the secretary or the board shall evaluate the proposed action pursuant to the written comments received. After the evaluation of the written comments, the secretary or the board may withdraw an administrative order, assurance of discontinuance, or civil complaint. At the conclusion of the 30-day notice period, if no comments have been received, the secretary or the board shall file the draft as a final administrative order, assurance of discontinuance, or civil complaint with the environmental division, and the environmental division may review and approve as an order of the court the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter. When the secretary or board issues a final administrative order, assurance of discontinuance, or civil complaint, it shall be sent to the environmental division along with any written comments received during the 30-day comment period. Concurrent with filing with the environmental division, the secretary or board shall post the final proposed action for public notice for 14 days.

(c) Filing with court. The environmental division shall hold the administrative order, assurance of discontinuance, or civil complaint for 14 days from the date of filing to allow any person who has filed written comments under subsection (b), who is not satisfied with the final action of the agency or the board, and who meets the definition of "aggrieved person" under subsection (a) of this section to file a motion for permissive intervention pursuant to the procedure in Rule 24(c) of the Vermont Rules of Civil Procedure.

(d) Court action without motion to intervene. At the conclusion of the 14-day period, if no motion to intervene has been filed, the environmental division shall take into consideration any comments received and in its discretion, with or without a hearing, shall issue an order to affirm, vacate, or remand the administrative order, assurance of discontinuance, or civil complaint.

(e) Condition precedent to intervention. In order for a person to intervene permissively in an administrative order, assurance of discontinuance, or civil

complaint, the person shall have filed written comments with the agency or board setting out the specific objection to the proposed action during the 30-day comment period required under subsection (b) of this section.

(f) Court action upon motion to intervene. A motion for permissive intervention shall clearly state the basis for the claim that the administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the motion for permissive intervention in the discretion of the environmental division. When the environmental division determines that a motion to intervene fails to meet the requirements for permissive intervention, the court shall deny the motion.

(g) Emergency administrative order. When the secretary issues an emergency administrative order, the prefiling public notice and comment provisions contained in this section shall not apply. The environmental division, without comment or hearing, shall act on the emergency administrative order as required by section 8009 of this title and may issue its own order. The secretary shall publish the emergency administrative order concurrent with filing it with the environmental division. A person shall have 14 days from the date the emergency administrative order is filed to file a motion for permissive intervention. A motion to intervene shall not stay an emergency administrative order.

(h) Standard of review on motion to intervene. The environmental division shall evaluate a motion from an aggrieved person for permissive intervention in light of Rule 24(b)(1) of the Vermont Rules of Civil Procedure. When the environmental division permits an aggrieved person to intervene, it shall be for the sole purpose of establishing that the terms of an administrative order, emergency administrative order, assurance of discontinuance, or civil complaint are insufficient to carry out the purposes of this chapter. The intervenor shall have the burden of proof by a preponderance of the evidence that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the claim that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter in the discretion of the environmental division. The environmental division upon finding that the proposed action is insufficient to carry out the purposes of this chapter shall inform the parties in writing and shall include the basis of its decision and shall vacate the proposed action.

(i) Authority of secretary to object. The secretary or board shall not oppose any motion filed for permissive intervention. When the environmental division permits a person to intervene, the secretary, the board, or the respondent may oppose the intervenor's claim that the proposed action is insufficient to carry out the purposes of this chapter.

(j) Response to citizen complaints. The secretary shall investigate all citizen complaints of a violation of a federally authorized or delegated program and shall respond to known complainants in writing.

~~Sec. 7. 10 V.S.A. § 8021 is added to read:~~

~~§ 8021. COST RECOVERY~~

~~(a) When the secretary expends monies from a special fund to remediate an environmental violation, the secretary may recover such monies through an administrative order, emergency administrative order, or assurance of discontinuance issued under this chapter.~~

~~(b) When costs are recovered under this section, they shall be deposited into the special fund from which they were expended.~~

Sec. 7. 10 V.S.A. § 8021 is added to read:

§ 8021. COST RECOVERY

(a) In addition to any existing authority, the secretary, in issuing an administrative order, emergency order, or assurance of discontinuance under this chapter, may recover monies expended from a special fund for a cleanup related to an environmental violation, provided that such recovered monies not exceed \$20,000.00.

(b) When monies are recovered under this section, they shall be deposited into the special fund from which they were expended.

Sec. 8. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

\* \* \*

(6) Violations of 24 V.S.A. § 2201, relating to littering, burning of solid waste, and illegal dumping.

\* \* \*

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

\* \* \*

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

*(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.*

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

*Sec. 9. 4 V.S.A. § 1106 is amended to read:*

*§ 1106. HEARING*

*\* \* \**

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

*\* \* \**

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

*\* \* \**

*Sec. 10. 4 V.S.A. § 1107 is amended to read:*

*§ 1107. APPEALS*

*(a) A decision of the hearing officer may be appealed to the criminal division of the superior court, ~~except for a decision in a proceeding under subdivision 1102(b)(17) of this title.~~ The proceeding before the criminal division of the superior court shall be on the record, or at the option of the*

*defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty and the imposition of points.*

*~~(b) A decision of the hearing officer in a proceeding under subdivision 1102(b)(17) of this title may be appealed to the environmental division of the superior court created under chapter 27 of this title. The proceedings before the environmental division shall be on the record. The defendant shall not have a right to a jury trial. An appeal shall stay the payment of a penalty.~~*

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

*~~(d) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the criminal or environmental division of the superior court.~~*

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*~~Sec. 11. SALVAGE YARD OPERATIONAL STANDARDS~~*

*~~Sec. 6 of No. 93 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:~~*

*~~Sec. 6. REPEAL~~*

*~~24 V.S.A. § 2248(a) (statutory operational standards for salvage yards) is repealed March 31, 2011 on the effective date of the rules required by 24 V.S.A. § 2248.~~*

*~~Sec. 12. EFFECTIVE DATE~~*

*~~This act shall take effect on July 1, 2011, except for Sec. 11 which shall take effect on passage.~~*

*~~Sec. 11. EFFECTIVE DATE~~*

*~~This act shall take effect on July 1, 2012.~~*