

**H.35. An Act Relating to Improving the Quality of State Waters:
Sec. 17 Consolidation and Enhancement of Agricultural Water Quality Enforcement Authority**

H.35, Sec. 17 Proposed Section	Summary of Section	Existing Agency of Agriculture Food and Markets' Enforcement Authority
<p style="text-align: center;"><u>6 V.S.A. § 4991</u> Purpose Section.</p> <p>Key difference: No purpose in existing law</p>	<ul style="list-style-type: none"> • Provides that purpose of the agricultural water quality enforcement subchapter is to provide Agency of Agriculture, Food and Markets (AAFM) with necessary authority to enforce the agricultural water quality requirements of 6 V.S.A. ch. 215. 	<ul style="list-style-type: none"> • No comparable section in existing law.
<p style="text-align: center;"><u>6 V.S.A. § 4992</u> Corrective Actions; Administrative Enforcement</p> <p>Key difference: AAFM issues a required corrective action instead of a recommended corrective action</p>	<ul style="list-style-type: none"> • Provides that AAFM may require a corrective action for a person who is violating an agricultural water quality requirements. • When AAFM determines a person is violating an agricultural water quality requirement, AAFM issues a warning that includes: a description of the alleged violation; identification of § 4992; identification of applicable statute, rule, or permit violated; a <u>required</u> corrective action; and a summary of federal and State assistance programs that may be utilized to assist the person in correcting the violation. • A person issued a warning shall have 30 days to respond to the written warning and shall provide an abatement schedule for curing the violation. • If a person who receives a warning under the section fails to respond in a timely manner, AAFM may pursue a cease and desist order, an emergency order, or civil enforcement. • Under proposed 6 V.S.A. § 4996, a person subject to corrective action or administrative enforcement may appeal to Superior Court within 30 days. The administrative judge may assign an environmental judge. 	<ul style="list-style-type: none"> • 6 V.S.A. § 4812 is existing AAFM Corrective Action Authority. • When AAFM determines a person is managing a farm in violation of agricultural water quality requirements, AAFM issues the person a warning that includes: a description of the alleged violation; identification of applicable statute, rule, or permit violated; a <u>recommended</u> corrective action; and a summary of federal and State assistance programs that may be utilized to assist the person in correcting the violation. • A person has 30 days to respond to the warning and provide an abatement schedule. • If the person fails to respond in 30 days, the Secretary may issue a cease and desist order and administrative penalties. • Any person subject to a corrective action may appeal to Superior Court within 30 days. The administrative judge may assign an environmental judge.

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<p><u>6 V.S.A. § 4993</u></p> <p>Administrative Orders; Cease and Desist orders; Emergency Orders</p> <p>Key difference: AAFM may issue administrative order for removal of livestock</p>	<ul style="list-style-type: none"> • Authorizes AAFM to pursue a cease and desist order against a person in violation of an agricultural water quality requirement. • AAFM may issue an administrative order to protect water quality when an alleged violation presents or is likely to present a threat of immediate harm to public health or welfare or an activity requires a permit. • AAFM may institute proceedings to enforce agricultural water quality requirements. • AAFM may seek administrative or civil penalties of \$5,000 for each violation and \$50,000 for maximum amount. • AAFM may order corrective actions, including the removal of livestock from a farm when volume of waste exceeds infrastructure capacity of farm. • A person may request a hearing from AAFM within 5 days of issuance of a cease and desist order or emergency order. 	<ul style="list-style-type: none"> • 6 V.S.A. § 4812(b) authorizes AAFM to issue a cease and desist order according to 6 V.S.A. §§ 15-17 (AAFM default enforcement authority and process) • 6 V.S.A. § 4854 and 6 V.S.A. § 4860 authorize AAFM to seek enforcement remedies, including administrative penalties of \$5,000 per violation and \$50,000 max, for violations of LFO or MFO permit. • 6 V.S.A. § 15 authorizes AAFM to assess administrative penalties of up to \$1,000 for any agricultural violation. \$25,000 max.
<p><u>6 V.S.A. § 4994</u></p> <p>Revocation of Permit or Certification</p> <p>Key difference: AAFM authority to revoke any agricultural water quality permit or certification, including small farm certification.</p>	<ul style="list-style-type: none"> • Authorizes AAFM, after due notice and hearing, to revoke individual permit, coverage under a general permit, a small farm certification, or any other AAFM issued ag. water permit or certification. • AAFM may pursue enforcement against any person who fails to comply with terms of permit or certification. 	<ul style="list-style-type: none"> • 6 V.S.A. § 4854 and 6 V.S.A. § 4860: AAFM may revoke LFO permit or MFO permit for failure to comply and may seek enforcement and administrative penalties against person.

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<p style="text-align: center;"><u>6 V.S.A. § 4995</u></p> <p style="text-align: center;">Civil Enforcement by Attorney General</p> <p>Key difference: Provided Attorney General with new <u>civil penalty</u> remedy for enforcement of agricultural water quality violations. The civil enforcement section added to the agricultural water quality chapter is substantially similar to the civil enforcement authority the Attorney General has for ANR violations.</p>	<ul style="list-style-type: none"> • Authorizes the Attorney General to bring actions in Civil Division of Superior Court to enforce agricultural water quality requirements of 6 V.S.A. ch. 215. • Attorney General may enjoin future actions; order corrective actions, including livestock removal; order mitigation; fix and order compensation for property destroyed or damaged; revoke coverage under a permit or certification; and order reimbursement of gov't expenditures. • Attorney general may levy a civil penalty of not more than \$85,000 for each violation, and not more than \$42,500 for each day of a continuing violation. • In any civil action, Attorney General may seek a temporary restraining order or preliminary injunction. Relief shall be obtained upon a showing or probability of success on the merits that a violation exists or a violation is imminent and substantial harm is likely to result. • Provides criteria for determination of amount of civil penalty. • AAFM may seek recapture of economic benefit in addition to penalty. 	<ul style="list-style-type: none"> • Under 6 V.S.A. § 4812(c), the Attorney General currently may bring a corrective action to enforce agricultural water quality violations—but only for injunctive relief. • The Attorney General does not have civil penalty authority for agricultural water quality violations. • Attorney General has civil penalty authority under 10 V.S.A. § 8221 for ANR violations, including water quality violations. • Under 10 V.S.A. § 8221, Attorney General may for ANR violations: enjoin future actions; order remedial actions to be taken to mitigate hazards to human health or the environment; order mitigation; fix and order compensation for property destroyed or damaged; and order reimbursement of gov't expenditures. • Attorney General may levy a <u>civil penalty</u> of not more than \$85,000.00 and not more than \$42,500.00 for each day of an ANR continuing violation. • 10 V.S.A. § 8221 provides criteria for determination of amount of civil penalty • 10 V.S.A. § 8221 sets the standard that Attorney General shall meet for a temporary restraining order or preliminary injunction for ANR violations. • ANR can recover economic benefit under 10 V.S.A. § 8010(c)(2).

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<p><u>6 V.S.A. § 4996</u> Appeals</p>	<ul style="list-style-type: none"> • Any person subject to an enforcement order, administrative penalty, or permit revocation under 6 V.S.A. chapter 215, subchapter 10, may appeal AAFM final decision to Superior Court within 30 days of AAFM decision. • The Administrative Judge may assign an Environmental judge to the appeal. • A person subject to an emergency order may request a hearing before Superior Court. Notice of the request for hearing shall be filed within 5 days of receipt of the order. • A Superior Court hearing on the emergency order shall be held at the earliest possible time and take precedence over all other hearing. • The Superior Court shall hold the hearing within 5 days of receipt of notice for the hearing request and the court shall issue the decision within 5 days from conclusion of hearing and no later than 30 days from date of notice for request for hearing. 	<ul style="list-style-type: none"> • 6 V.S.A. § 4854 provides any person may appeal corrective action to Superior Court within 30 days. • Under 6 V.S.A. § 4854, the Administrative Judge may assign an Environmental Judge to the appeal. • AAFM does not have emergency orders or a process for appeals of emergency orders. • ANR does have emergency orders and appeals of emergency orders. • The process for emergency order appeals in 6 V.S.A. § 4996 is the same process for ANR emergency appeals under 10 V.S.A. § 8009. • Appeals of LFO and MFO permitting fo to environmental division.