

1 H.35

2 Rep. ?, moves that the report of the Committee on Fish, Wildlife and Water  
3 Resources be amended as follows:

4 First: In Sec. 17, in 6 V.S.A. § 4992, by striking out the title of the section  
5 in its entirety and inserting in lieu thereof the following:

6 § 4992. WARNINGS OF VIOLATIONS; CORRECTIVE ACTIONS;

7 ADMINISTRATIVE ENFORCEMENT

8 and by adding a subsection (d) to read:

9 (d) A person who receives a warning under this subsection may, within five  
10 days of receipt of the warning, request that the Secretary hold a hearing on the  
11 corrective action required under this section. Upon receipt of a request for a  
12 hearing, the Secretary promptly shall set a date and time for a hearing.

13 Second: In Sec. 17, in 6 V.S.A. § 4993, in subdivision (a)(3), after  
14 “Institute appropriate proceedings” and before “to enforce the requirements of”  
15 by striking out “on behalf of the Agency of Agriculture, Food and Markets”  
16 and by striking out subdivision (a)(4) in its entirety and inserting in lieu thereof  
17 the following:

18 (4) Order mandatory corrective actions, including a requirement that the  
19 owner or operator of a farm sell or otherwise remove livestock from a farm or  
20 production area when the volume of waste produced by livestock on the farm  
21 exceeds the infrastructure capacity of the farm or the production area to

1 manage the waste or waste leachate and prevent runoff or leaching of wastes to  
2 waters of the State or groundwater, as required by this chapter. **When the**  
3 **Secretary issues a corrective action order under this subdivision, the Secretary**  
4 **shall inform the owner or operator of the farm of the opportunity to request a**  
5 **hearing under subsection (b) of this section within five days of receipt of the**  
6 **corrective action order.**

7 Third: In Sec. 17, in 6 V.S.A. § 4995, by striking out subdivision (c)(2) in  
8 its entirety and inserting in lieu thereof the following:

9 (2) **When the Attorney General brings a civil action under this section**  
10 **seeking a temporary restraining order or preliminary injunction,** the Secretary  
11 need not demonstrate immediate and irreparable injury, loss, or damage.

12 and by striking out subdivision (e)(2) in its entirety and inserting in lieu thereof  
13 the following:

14 (2) the presence of mitigating circumstances, including the unreasonable  
15 delay by the Secretary **in seeking enforcement after discovery of the violation;**

16 Fourth: In Sec. 17, by striking out 6 V.S.A. § 4996 in its entirety inserting  
17 in lieu thereof the following:

18 § 4996. APPEALS; ENFORCEMENT

19 (a) Any person subject, under this subchapter, to an administrative  
20 enforcement order, an administrative penalty, or revocation of a permit or  
21 certification who is aggrieved by a final decision of the Secretary may appeal

1 to the Civil Division of the Superior Court within 30 days of the decision. The  
2 Chief Superior Judge may specially assign an environmental judge to Superior  
3 Court for the purpose of hearing an appeal.

4 (b) If the Secretary issues an emergency order under this chapter, the  
5 Secretary shall inform the person subject to the order of the ability to request a  
6 hearing before the Superior Court and the date by which a request for a hearing  
7 must be made. Notice of the request for hearing under this subsection shall be  
8 filed with the Superior Court and the Secretary within five days of receipt of  
9 the order. A hearing on the emergency order shall be held at the earliest  
10 possible time and shall take precedence over all other hearings. The hearing  
11 shall be held within five days of receipt of the notice of the request for hearing.  
12 A request for hearing on an emergency order shall not stay the order. The  
13 Superior Court shall issue a decision within five days from the conclusion of  
14 the hearing, and not later than 30 days from the date the notice of request for  
15 hearing was received by the Court.

16 (c) The Civil Division of the Superior Court shall review appeals under this  
17 section on the record pursuant to Rule 74 of the Vermont Rules of Civil  
18 Procedure.