

April 5, 2018 Testimony:
Bill Rowell, Vermont Dairy Producers Alliance

“We are not interested in lawsuits.... We are interested in a long term sustainable funding plan for clean water.”

The entire premise of this citizen suit provision is unnecessary because federal environmental statutes, including the Clean Water Act, already include a citizen suit provision and provide an avenue for recourse if there is a violation of law.

- There is no reason to believe this legislation is needed. Citizen suits are to supplement – not supplant – agency enforcement and oversight. In Vermont, the Agency of Agriculture, Food & Markets (AAFM) and the Agency of Natural Resources (ANR) have aggressively enforced against instances of non-compliance with environmental statutes. Recent stories regarding an alleged lack of agency oversight have been deceptive and, in some cases, slanderous.
- The proposed legislation broadly creates a private right of action that would allow any person to bring a lawsuit against any person for violating any statute, permit, certification, rule, permit condition or order required under 6 V.S.A. 215 or Chapter 37 or 47 or the implementing regulations. The same legislation would also allow any person to bring a lawsuit against the AAFM or the Secretary of Natural Resources for an alleged failure to perform a nondiscretionary act or duty.
- Although the proposed legislation includes a 90-day notice period, the legislation would only prohibit a citizen action if: 1) AAFM or ANR has commenced and is diligently prosecuting a civil or criminal action to requirement compliance with a statute, permit, certification, rule, permit condition or order; or 2) the alleged violator is diligently proceeding with complying with an “assurance of discontinuance, corrective action, cease and desist order, or emergency administrative order.” Nowhere is there a prohibition on a citizen action if AAFM or ANR determines there is no violation of a law, permit or regulation. Therefore, it appears the legislation assumes that if there is a complaint about an alleged non-compliance issue there must be a violation. Of course this is not true and there are numerous examples of interest groups targeting specific types of dairy operations simply because of the farm’s size or location.
- The practical effect of this legislation will be to cause AAFM and ANR to find a reason to put any person/farm/business that has received notice of a citizen right of action under a consent order in order to reduce the Agency’s risk of lawsuit, regardless of the facts. This will substantially increase the cost of doing business in Vermont and puts Vermont dairy farms at a significant

competitive disadvantage compared to neighboring states that do not have a private right of action.

- This legislation ensures a plaintiff's attorney's fees and costs, including expert witness fees, are awarded when the court deems such an award is appropriate. The citizen suit provision in the Clean Water Act provides attorney's fees and costs to the successful party – not just to the plaintiff. As this legislation is drafted, the only way a defendant is able to receive his/her attorney's fees, etc. is if the court determines such an action is frivolous, unreasonable or without foundation.