

1 chapter 37 or 47 of this title that is not discretionary for the Secretary of
2 Natural Resources or the Agency of Natural Resources.

3 (b) Prerequisite to commencement of action. A person shall not commence
4 an action under subsection (a) of this section prior to 90 days after the plaintiff
5 has given notice of the violation to:

6 (1) the Secretary of Agriculture, Food and Markets for an action
7 initiated under subdivision (a)(1) or (3) of this section;

8 (2) the Secretary of Natural Resources for an action initiated under
9 subdivision (a)(2) or (4) of this section; and

10 (3) any person who is alleged to be in violation of a statute, permit,
11 certification, rule, permit condition, prohibition, or order set forth, issued, or
12 required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this title.

13 (c) Action prohibited. A person shall not commence an action under
14 subsection (a) of this section under either of the following circumstances:

15 (1) if the Secretary of Agriculture, Food and Markets, the Secretary of
16 Natural Resources, or the Attorney General has commenced and is diligently
17 prosecuting a civil or criminal action to require compliance with a statute,
18 permit, certification, rule, permit condition, prohibition, or order set forth,
19 issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this
20 title; or

1 (2) if the alleged violator is diligently proceeding with complying with
2 an assurance of discontinuance, corrective action, cease and desist order, or
3 emergency administrative order issued under 6 V.S.A. chapter 215 or under
4 chapter 201 of this title.

5 (d) Venue. A person shall bring an action under subsection (a) of this
6 section in the Environmental Division of the Superior Court.

7 (e) Intervention. In any action under subsection (a) of this section:

8 (1) Any person may intervene as a matter of right when the person
9 seeking intervention claims an interest relating to the subject of the action and
10 he or she is so situated that the disposition of the action may, as a practical
11 matter, impair or impede his or her ability to protect that interest unless:

12 (A) for an action initiated under subdivision (a)(1) or (3) of this
13 section, the Secretary of Agriculture, Food and Markets or the Secretary of
14 Natural Resources demonstrates that the applicant's interest is adequately
15 represented by existing parties; or

16 (B) for an action initiated under subdivision (a)(2) or (4) of this
17 section, the Secretary of Natural Resources demonstrates that the applicant's
18 interest is adequately represented by existing parties.

19 (2) The Secretary of Agriculture, Food and Markets, the Secretary of
20 Natural Resources, or the Attorney General may intervene as a matter of right
21 as a party to represent its interests.

1 (f) Notice of action. A person bringing an action under subsection (a) of
2 this section shall provide the notice required under subsection (b) of this
3 section in writing. The notice shall be served on the alleged violator in person
4 or by certified mail, return receipt requested. The notice to the Secretary shall
5 be served by certified mail, return receipt requested. The notice shall include a
6 brief description of the alleged violation and identification of the statute,
7 permit, certification, rule, permit condition, prohibition, or order that is the
8 subject of the violation.

9 (g) Attorney’s fees; costs. The Environmental Division of the Superior
10 Court may award costs, including reasonable attorney’s fees and fees for
11 expert witnesses, to a person bringing an action under subsection (a) of this
12 section when the court determines that the award is appropriate. The
13 Environmental Division of the Superior Court may award costs, including
14 reasonable attorney’s fees and fees for expert witnesses, to the State or to a
15 person subject to an action under this section if the court determines that the
16 action was frivolous, unreasonable, or without foundation.

17 (h) Rights preserved. Nothing in this section shall be construed to impair
18 or diminish any common law or statutory right or remedy that may be available
19 to any person. Rights and remedies created by this section shall be in addition
20 to any other right or remedy, including the authority of the State to bring an
21 enforcement action separate from an action brought under this section. No

1 determination made by a court in an action maintained under this section, to
2 which the State has not been a party, shall be binding upon the State in any
3 enforcement action.