

1 Sec. X. 10 V.S.A. chapter 205 is added to read:

2 § 8055. CITIZEN RIGHT OF ACTION

3 (a) Suit authorized. Except as provided in subsection (c) of this section, a
4 person may commence a civil action for equitable or declaratory relief on the
5 person's own behalf against one or more of the following persons:

6 (1) any person who is alleged to be in violation of any statute, permit,
7 certification, rule, permit condition, prohibition, or order set forth, issued, or
8 required under 6 V.S.A. chapter 215, provided that a civil action is also
9 commenced against the Secretary of Agriculture Food and Markets under
10 subdivision (a)(3) of this section;

11 (2) any person subject to regulation under this chapter who is alleged to
12 be in violation of any statute, permit, certification, rule, permit condition,
13 prohibition, or order set forth, issued, or required under chapter 47 of this title,
14 provided that a civil action is also commenced against the Natural Resources
15 under subdivision (a)(4) of this section;

16 (3) the Secretary of Agriculture, Food and Markets when there is an
17 alleged failure of the Agency of Agriculture, Food and Markets to perform any
18 act or duty under 6 V.S.A. chapter 215 that is not discretionary for the
19 Secretary of Agriculture, Food and Markets or the Agency of Agriculture,
20 Food and Markets; and

1 (4) the Secretary of Natural Resources when there is an alleged
2 failure of the Agency of Natural Resources to perform any act or duty under
3 10 V.S.A. chapter 37 or chapter 47 that is not discretionary for the Secretary of
4 Natural Resources or the Agency of Natural Resources.

5 (b) Prerequisite to commencement of action. A person shall not commence
6 an action under subsection (a) of this section prior to 60 days after the plaintiff
7 has given notice of the violation to:

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

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

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

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

17 (1) if the Secretary of Agriculture, Food and Markets, the Secretary of
18 Natural Resources, or the Attorney General has commenced and is diligently
19 prosecuting a civil or criminal action to require compliance with a statute,
20 permit, certification, rule, permit condition, prohibition, or order set forth,

1 issued, or required under 6 V.S.A. chapter 215 or under chapter 47 of this title;

2 or

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

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

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

10 (1) Any person may intervene as a matter of right when the person
11 seeking intervention claims an interest relating to the subject of the action and
12 he or she is so situated that the disposition of the action may, as a practical
13 matter, impair or impede his or her ability to protect that interest, unless the
14 Secretary of Agriculture, Food and Markets or the Secretary of Natural
15 Resources shows that the applicant's interest is adequately represented by
16 existing parties.

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

20 (f) Notice of action. A person bringing an action under subsection (a) of
21 this section shall provide the notice required under subsection (b) of this

1 section in writing. The notice shall be served on the alleged violator in person
2 or by certified mail, return receipt requested. The notice to the Secretary shall
3 be served by certified mail, return receipt requested. The notice shall include a
4 brief description of the alleged violation and identification of the statute,
5 permit, certification, rule, permit condition, prohibition, or order that is the
6 subject of the violation.

7 (g) Attorney's fees; costs. The Environmental Division of the Superior
8 Court may award costs, including reasonable attorney's fees and fees for
9 expert witnesses, to a person bringing an action under subsection (a) of this
10 section when the court determines that the award is appropriate.

11 (h) Rights preserved. Nothing in this section shall be construed to impair
12 or diminish any common law or statutory right or remedy that may be available
13 to any person. Rights and remedies created by this section shall be in addition
14 to any other right or remedy, including the authority of the State to bring an
15 enforcement action separate from an action brought under this section. No
16 determination made by a court in an action maintained under this section, to
17 which the State has not been a party, shall be binding upon the State in any
18 enforcement action.

19 Sec. Y. EFFECTIVE DATE

20 This act shall take effect on passage.