

1 H.35

2 Representative Conquest of Newbury moves that the report of the
3 Committee on Fish, Wildlife and Water 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 (b)(2) in
8 its entirety and inserting in lieu thereof the following:

9 (2) Order corrective actions to be taken to mitigate or curtail any
10 violation and to protect human health or the environment, including a
11 requirement that the owner or operator of a farm sell or otherwise remove
12 livestock from a farm or production area when the volume of waste produced
13 by livestock on the farm exceeds the infrastructure capacity of the farm or the
14 production area to manage the waste or waste leachate and prevent runoff or
15 leaching of wastes to waters of the State or groundwater, as required by this
16 chapter.

17 and by striking out subdivision (c)(2) in its entirety and inserting in lieu thereof
18 the following:

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

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

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

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

7 § 4996. APPEALS; ENFORCEMENT

8 (a) Any person subject, under this subchapter, to an administrative
9 enforcement order, an administrative penalty, or revocation of a permit or
10 certification who is aggrieved by a final decision of the Secretary may appeal
11 to the Civil Division of the Superior Court within 30 days of the decision. The
12 Chief Superior judge may specially assign an environmental judge to the Civil
13 Division of the Superior Court for the purpose of hearing an appeal.

14 (b) If the Secretary issues an emergency order under this chapter, the
15 Secretary shall inform the person subject to the order of the ability to request a
16 hearing before the Civil Division of the Superior Court and the date by which a
17 request for a hearing must be made. Notice of the request for hearing under
18 this subsection shall be filed with the Civil Division of the Superior Court and
19 the Secretary within five days of receipt of the order. A hearing on the
20 emergency order shall be held at the earliest possible time and shall take
21 precedence over all other hearings. The hearing shall be held within five days

1 of receipt of the notice of the request for hearing. A request for hearing on an
2 emergency order shall not stay the order. The Civil Division of the Superior
3 Court shall issue a decision within five days from the conclusion of the
4 hearing, and not later than 30 days from the date the notice of request for
5 hearing was received by the Court.

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