

2002 REPORT TO THE LEGISLATURE

REGARDING ACT 98 (1989)

-UNIFORM ENVIRONMENTAL ENFORCEMENT ACT-

I. PURPOSE

In 1989, the Legislature passed the Uniform Environmental Law Enforcement Act, also known as Act 98. Included in the Act was a provision, now codified as 10 V.S.A. Section 8017, which requires the Secretary of the Agency of Natural Resources (ANR) and the Attorney General to submit an annual report regarding the implementation of the Act, including statistics concerning compliance and enforcement. This is the thirteenth report to the Legislature. An explanation of the reporting period can be found in section V.

II. BACKGROUND

Act 98 was passed to address certain areas of environmental enforcement identified by the Legislature. There are four primary purposes of the Act: enhancement of administrative enforcement by the Secretary of the ANR and the Environmental Board; enhancement of civil enforcement in Superior Court; the creation of an Environmental Law Division (as of March 15, 1995 the "Environmental Court") within the judiciary; and the standardization of the environmental enforcement process to help assure consistent and fair enforcement.

First and foremost, Act 98 consolidated the civil and administrative enforcement provisions of 17 different statutes and 20 regulatory programs administered by the ANR and the Environmental Board. While there are some exceptions due to the requirements for federally delegated environmental programs, the regulated community and the public generally can now look to one uniform process to enforce Vermont's environmental laws.

Administrative enforcement was enhanced by clarifying the ability of the Secretary and the Environmental Board to enter into Assurances of Discontinuance (administrative settlements) and creating the authority of the Secretary to issue Administrative Orders to address violations of the majority of the statutes and regulations implemented by ANR, its Departments, and Act 250 (10 V.S.A. Chapter 151). Administrative Orders typically contain penalties and may be appealed to the Environmental Court for hearing. In addition, the remedies available in Superior Court for violations of the statutes specified in Act 98 were enhanced and standardized.

The consolidation of enforcement authorities described above affected Act 250 actions as well. 10 V.S.A. Section 8004 specifies that the Secretary may, on his or her own initiative or through a request by the Environmental Board, initiate proceedings for the enforcement of Act 250. The procedures which guide the cooperative enforcement of Act 250 are contained in a Memorandum of Understanding (MOU). This MOU was broadened this past year and Act 250 has now been delegated the authority to initiate Administrative Orders for Act 250 enforcement actions. This authority is to be exercised in consultation

with the Agency enforcement division in order to maintain the required consistency.

III. IMPLEMENTATION OF THE ACT

A. THE ENFORCEMENT DIVISION

The Division, which was initially located within the Department of Environmental Conservation (DEC), is organizationally now found at the Agency level and is directly answerable to the Secretary, Deputy Secretary and General Counsel.

After four years of no personnel changes, the Division lost two Environmental Enforcement Offices (EEOs) this past year. Consequently, our field force of EEOs has been and currently is at six officers who serve the entire state. We are hopeful that both positions will be filled in the near future. Despite the disadvantage of a 25% reduction in our investigative staff and consequential additional triage of some of their work, we are determined to maintain a consistent approach to investigations at all levels. The Division's legal staff, which remained unchanged this past year, are all experienced trial lawyers who represent their program clients with energy, consistency, and balance while maintaining high levels of professional conduct and courtesy.

While the Department of Forests, Parks and Recreation refers logging related cases to us, most program-referred enforcement actions originated within the various regulatory programs of DEC. DEC employs a multi step process to encourage compliance with the state's environmental laws and regulations. When a violation occurs, the programs within DEC generally issue a Notice of Alleged Violation (NOAV) to the violator. The NOAVs serve not only to provide notice of a violation but also to outline the corrective action required to bring the violator to compliance. When voluntary compliance is not forthcoming, and sometimes even when it is, a formal enforcement action may be initiated. An exception to this process occurs when a violation is particularly egregious or cannot be corrected; then, enforcement may be initiated immediately, without the issuance of a NOAV. Under certain circumstances and when necessary we are authorized to seek Emergency Orders from the Environmental Court.

Almost without exception formal enforcement actions include an initial attempt to resolve the violation through settlement, by means of an Assurance of Discontinuance. Settlements usually include, among other provisions, an agreed penalty. Supplemental Environmental Projects (SEPs) are also common in settlements, either in lieu of or in addition to the penalty. If settlement does not occur, we file our action through an Administrative Order and prepare for trial, if required, before the Environmental Court. In either event, our actions most often include a civil penalty, corrective orders, and an order of future compliance. Generally, our actions are prioritized in the following order: impact or potential impact on public health; impact or potential impact on the environment; and program integrity (e.g. adherence to permit requirements).

Final orders, those acknowledged and signed by the Environmental Court, are tracked for compliance by the involved program. The Enforcement Division tracks penalties to ensure

payment and SEPs to ensure payment and performance.

We continued to strengthen our investigative staff by providing appropriate training. The legal staff continued to focus on the prompt movement of cases and the achievement of uniform enforcement. Guided by our MOU with the Environmental Board, we have sustained a useful collaboration of investigative and legal resources, particularly with respect to matters which include both Act 250 and ANR issues. We have maintained a healthy working relationship with the Office of the Attorney General and to that office we referred two environmental investigations, for either civil or criminal prosecution, and three case appeals. Typically, smaller criminal cases where a strong local interest is demonstrated are referred to States Attorneys for criminal prosecution. However, this year there were no State's Attorney referrals.

Lastly, information about the Enforcement Division is available to the public via our web page. Staff names and phone numbers, how to file a complaint, internship information, legislative reports back to 1995, reports of closed cases, and press releases issued by this Division are included. The site can be accessed through the State of Vermont homepage or at <http://www.anr.state.vt.us/anrenf/>.

B. CITIZEN COMPLAINTS

10 V.S.A. § 8017 specifies that the ANR shall report on the status of citizen complaints concerning environmental violations in the state. In the past, all citizen complaints have been logged into the Enforcement Division's database. However, this year some changes were made and since April 2002, citizen complaints are now divided and maintained on two separate databases. One remains at the Enforcement Division and another is located within the Department of Environmental Conservation (DEC). This separation is described in detail in Section V, Attachments.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Enforcement Division was funded in fiscal year 2002 as follows:

General Funds	179,831.90
Federal Funds	55,600.00
Special Funds	798,820.03
Total	\$1,034,251.93

The Enforcement Divisions operating expenditures for fiscal year 2002:

Personal Services	882,217.24
Operating	152,035.09
Total	\$1,034,252.33

V. ATTACHMENTS

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the attached Tables are provided. Table A provides required information concerning Enforcement Actions and the enforcement program. Table B summarizes Citizen Complaints received by the Enforcement Division and Table C summarizes those received by the various DEC programs. Tables B and C reflect the present status of these complaints and the types of closure for all complaints closed this year. Because it is impossible to collect, enter, and tabulate all the data from various field locations throughout the state by the statutory January 15th reporting deadline, we use a slightly adjusted time frame for citizen complaints only: Tables B and C reflect citizen complaints for the year beginning December 1, 2001 and ending November 30, 2002. The reporting period for Table A, Formal Court Actions, continues to be based on the calendar year since the information is in-house and can be quickly compiled.

With the advent this year of DEC's own complaint database, accounting for citizens' complaints this year required the creation of two tables. Those complaints investigated by environmental enforcement officers are logged onto the Enforcement Division's database and are reported on Table B. Those complaints handled by DEC programs are reported on Table C. It should be noted that when complaints are transferred to this Division from a DEC program for investigation, and vice versa, those complaints will be accounted for on both tables. To account for this duplication, those transferred complaints that are counted on both tables are broken out and noted separately on the DEC table under the column entitled "Transferred for Enforcement Division Investigation." They are noted on only this table because most complaint transfers are to this Division.

Another change that was made by DEC this year concerned the manner in which reports of hazardous materials spills are recorded. In the past, these 400 or so annual spill reports have been consolidated with citizen complaints. Beginning in 2002 this consolidation no longer occurs. Most spill reports are self reported by those businesses which are required to do so. In those instances where no further investigation is required, the spill report is not reflected in this report. Spill reports which do require further investigation are placed in the same category as citizen complaints and included on the appropriate table. The number of spill reports received each fiscal year is reported in DEC's Environmental Contingency Fund Report.

VI. CONCLUSION

Unlike in recent years, this year saw the loss of two members of our investigative staff. As expected, however, the balance of our EEOs stepped up with their usual high level of commitment and managed the excess workload as time and resources allowed. Despite those good efforts, we have seen an increase in the backlog of citizen's complaints and pending investigations. The refilling of those vacant positions is critical to our operation and we are currently working toward that goal. As for the legal staff of this division, we again have remained stable throughout this past reporting year.

Our relationship with Act 250 is very positive, particularly in matters of enforcement, which has received an infusion of dedicated Act 250 staff time and effort. We have enjoyed and benefitted from the initial period of what promises to be sound and coordinated enforcement relationship with Act 250. We have

had an effective and stable relationship with the Attorney General. Various State Attorneys continue to show interest in handling some of our cases. We intend to continue these mutually positive associations.

Our relationship with our primary institutional client, the Department of Environmental Conservation, continues to expand and mature. Our relationship with the Department of Forests, Parks and Recreation, for whom we handle both Acceptable Management Practices (AMP) and Heavy Cut cases, is strong and cooperative. While there are variations from year to year, the statistics found in the attachments further demonstrate the stability of this division and the overall consistency of our work.

Again, we can report that the morale in the Enforcement Division is high. Despite the demanding nature of our work we actively work toward being a cohesive working unit which continuously strives for the highest levels of excellence. We believe with great confidence that our work meaningfully advances the interests of environmental and public protection, and, with the public support necessary to do so, we expect to expand and refine our operation into the next year and beyond.

Respectfully Submitted,

By: _____
Scott Johnstone, Secretary
Agency of Natural Resources

Date: _____

Table A

FORMAL COURT ACTIONS
January 1, 2002 - December 31, 2002

Assurances of Discontinuance (AODs)
(Note associated SEPs below)

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED*
Air Pollution	15	\$10,250	\$10,000
Hazardous Materials	2	47,500	47,800
Solid Waste	4	3,500	3,250
Waste Management	1	0	0
Wastewater Management	8	6,000	2,000
Water Quality	11	23,950	21,825
Water Supply	14	22,850	18,600
TOTAL	53	\$114,050	\$103,475

* includes penalties collected from previous years' judgments and SEPs which converted to civil penalties

Supplemental Environmental Projects (SEPs)
(SEPs are components of some AODs)

PROGRAM	NUMBER	VALUE	PAYMENT CONFIRMED*
Air Pollution	5	\$18,100	\$ 6,600
Hazardous Materials	0	0	5,000
Solid Waste	1	1,050	2,250
Water Quality	5	10,775	12,325
Water Supply	7	22,000	12,000
Wastewater Management	4	18,625	10,325
TOTAL	22	\$70,550	\$48,500

* includes previous years' projects, since SEP execution may extend beyond the calendar year of its origin

Emergency Orders (EOs)

PROGRAM	# ISSUED
Hazardous Materials	1
TOTAL	1

Table A (continued)

FORMAL COURT ACTIONS
January 1, 2002 - December 31, 2002

Administrative Orders (AOs)

PROGRAM	#	INITIAL PENALTIES SOUGHT	DISPOSITION	FINAL PENALTIES IMPOSED BY COURT	PENALTIES COLLECTED
Air Pollution	6	1. 2,750 2. 1,000 3. 3,000 4. 63,500 5. 1,000 6. <u>6,500</u> \$77,750	1. AO final 2. AO dismissed: resolved with AOD 3. AO final: complaint filed 4. Pending merits hearing 5. AO dismissed: resolved with AOD 6. Pending merits hearing	1. \$2,750 2. Included on AOD table* 3. \$3,000 4. Yet to be decided 5. Included on AOD table* 6. Yet to be decided	1. Pending collection 2. Not applicable 3. Hearing on complaint 4. Not yet applicable 5. Not applicable 6. Not yet applicable
Hazardous Materials	2	1. 27,500 2. <u>59,900</u> \$87,400	1. Pending merits hearing 2. Pending merits hearing	1. Yet to be decided 2. Yet to be decided	1. Not yet applicable 2. Not yet applicable
Solid Waste	3	1. 1,000 2. 7,000 3. <u>2,000</u> \$10,000	1. Pending service 2. AO dismissed: resolved with AOD 3. Decision & Order issued: on appeal	1. Not yet applicable 2. Included on AOD table* 3. \$14,640	1. Not yet applicable 2. Not applicable 3. Pending appeal
Wastewater Management	5	1. 75,000 2. 7,000 3. 5,250 4. 500 5. <u>1,500</u> \$98,250	1. Pending merits hearing 2. AO final: complaint filed 3. Pending merits hearing 4. AO final 5. AO dismissed: resolved with AOD	1. Yet to be decided 2. \$7,000 3. Yet to be decided 4. \$500 5. Included on AOD table*	1. Not yet applicable 2. Hearing on complaint 3. Not yet applicable 4. \$500 5. Not applicable
Water Supply	3	1. 10,375 2. 6,000 3. <u>9,000</u> \$25,375	1. AO dismissed: resolved with AOD 2. AO dismissed: resolved with AOD 3. AO final	1. Included on AOD table* 2. Included on AOD table* 3. \$9,000	1. Not applicable 2. Not applicable 3. Pending collection
Water Quality	4	1. 0 2. 25,000 3. 85,000 4. <u>30,000</u> \$140,000	1. AO final 2. Hearing concluded: awaiting decision 3. Hearing concluded: awaiting decision 4. Pending merits hearing	1. Not applicable 2. Yet to be decided 3. Yet to be decided 4. Yet to be decided	1. Not applicable 2. Not yet applicable 3. Not yet applicable 4. Not yet applicable
TOTALS	23	\$429,775		\$36,890	\$500

* In order to avoid duplication, the penalty figures are contained on the AOD table on page 6

Collection of Delinquent Penalties

Total delinquent penalties collected this calendar year: **\$ 0.00**

Table A (continued)

INFORMAL CASE RESOLUTIONS

January 1, 2002 - December 31, 2002

There are several reasons cases have been informally resolved. In some, our attorney was able to obtain compliance without the need for formal, legal action. In other situations, further discussions revealed that an enforcement action was no longer needed or appropriate.

PROGRAM	NUMBER
Air Pollution	1
Hazardous Materials	1
Solid Waste	1
Wastewater Management	2
Water Quality	3
Water Supply	7
TOTAL	15

Table B
SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY
THE ENFORCEMENT DIVISION

December 1, 2001 - November 30, 2002

PROGRAMS	TOTAL REC'D: 2002	PENDING: of those rec'd 2002*	CLOSED: No violation	CLOSED: Voluntary Correction	CLOSED: Enforcement Action Taken**	CLOSED: Other***	TOTAL CLOSED: 2002
Act 250:							
Permit Violations	22	10	6	2	2	1	16
Unpermitted Activity	51	23	24	0	2	1	43
Air Pollution:							
Air Toxics	3	0	2	0	0	0	3
Burn Barrel	48	15	5	4	1	0	37
Direct/Indirect Sources	12	2	31	4	1	0	39
Odors	6	0	29	4	0	2	36
Open Burning	75	25	41	15	7	10	87
Dams:							
Permitted/Unpermitted	1	1	0	0	0	0	0
Hazardous Materials:							
Handling/Disposal	82	25	40	17	5	7	74
Release/Spill	14	6	5	5	0	2	12
Underground Tanks	2	2	1	0	0	0	1
Solid Waste-Illegal Disposal of:							
Const./Demolition Debris	41	15	14	3	3	4	30
Municipal Refuse	80	33	30	7	8	11	62
Rubbish & Litter	48	24	16	7	0	5	34
Septage/Sludge	10	2	7	1	0	0	10
Wastewater Mgmt:							
Campgrounds	1	0	2	0	0	0	2
Mobil Home Parks	4	2	2	1	0	0	4
Public Buildings	9	4	6	2	1	0	10
Subdivisions	6	3	2	1	1	0	6
Water Quality (WQ):							
Aquatic Nuisance	0	0	0	0	0	0	0
Lakes & Ponds	17	5	9	1	2	0	14
Standards Violations	10	2	6	1	0	1	11
Stream Alterations	26	7	17	1	1	0	22
Wetlands	94	28	53	13	2	4	83
WQ Discharges:							
Agricultural	3	1	1	0	0	0	2
Erosion	44	6	22	10	0	2	44
Logging	16	3	5	3	3	0	14
Permit Violations	2	0	1	0	0	0	2
Unpermitted	199	58	95	24	7	14	162
Water Supply:							
Bottled Water	0	0	0	0	0	0	0
Standards Violations	1	0	0	0	0	0	1
Well Drillers	0	0	0	0	0	0	0
Dept of FP&R:							
Heavy Cut	1	0		0	0	0	1
TOTALS	928	302	473	126	46	64	862

* Complaints received during this period which are not yet resolved and are still being followed-up by the Enforcement Division's EEOs

** This includes only complaints resolved through a Notice of Alleged Violation (NOAV) or formal court action.

*** This reflects additional ways complaints are closed, e.g. lack of evidence, lack of cooperation from complainant, referred to appropriate regulatory program or Act 250, violation found/enforcement action not pursued.

Note: Complaints closed in current year include some received in previous years.

Table C
SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY
THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)
April 1, 2001 - November 30, 2002

Note: The DEC Complaint tracking system was put into use on April 1, 2002. Starting on that date, complaints received by DEC staff were logged into the DEC tracking system. Complaints received by DEC staff before April 1 are included in the Enforcement Division's compilation in Table A.

PROGRAMS	TOTAL REC'D 2002	PENDING*	CLOSED: No Violation	CLOSED: Voluntary Correction**	CLOSED: By Other Means ***	TRANSFERRED to Enforcement Division for Investigation	TOTAL CLOSED: 2002
Air Pollution:							
Air Toxics	2	0	1	1	0	0	2
Dust, mineral	8	0	6	2	0	0	8
Dust, other	2	0	1	0	0	1	2
Gas Station	1	0	1	0	0	0	1
Incinerator	1	0	0	0	0	1	1
Mobile source	1	0	1	0	0	0	1
Odors	12	0	5	2	5	0	12
Open Burning	41	0	11	2	1	27	41
Smoke	4	0	3	0	1	0	4
Visible emissions	1	0	1	0	0	0	1
Other	1	0	1	0	0	0	1
Hazardous Materials:							
Handling/Disposal	14	0	1	2	1	10	14
Release/Spill	6	0	1	1	0	4	6
Underground Tanks	1	0	0	0	0	1	1
Solid Waste, Illegal Disposal of:							
Const./Demolition Debris	6	0	1	0	0	5	6
Municipal Refuse	1	0	0	1	0	0	1
Rubbish & Litter	26	2	0	4	0	20	24
Septage/Sludge	3	0	1	0	0	2	3
Wastewater Mgmt:							
Mobile Home Parks	1	0	0	1	0	0	1
Water Quality (WQ):							
Lakes & Ponds	1	0	0	0	0	1	1
Standards Violations	2	0	0	0	0	2	2
Stream Alterations	2	0	0	0	0	2	2
Wetlands	20	1	5	3	6	6	19
WQ Discharges:							
Erosion	14	0	3	2	1	8	14
Logging	2	0	0	0	0	2	2
Permit Violations	1	0	0	0	0	1	1
Unpermitted	4	1	1	0	0	2	3
Water Supply:							
Standards Violations	1	0	1	0	0	0	1
TOTALS	179	4	45	21	15	95	175

* Complaints received during this period which are not yet resolved and are still being followed-up by DEC staff.

** This includes those complaints resolved voluntarily (with or without the issuance of a Notice of Alleged Violation, a compliance tool).

*** This reflects those complaints closed through other means (e.g. not pursued due to lack of evidence or lack of cooperation from complainant; referred outside of DEC to the appropriate regulatory program or Act 250; violation found but decision made not to pursue enforcement action).