

2000

**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 eleventh 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).

### **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. During the 2000 calendar year the Division saw no personnel changes for the third time in as many years. Our field force of Environmental Enforcement Officers (EEOs) was maintained at its maximum level of 8 for the entire year. As a consequence, our investigative work has been very consistent while the investigators themselves continue to be a very cohesive unit.

During 2000, we saw no changes to our legal staff. All experienced trial lawyers, the Division's legal staff has represented its program clients with energy, consistency and balance while maintaining high levels of professional conduct and courtesy.

While the Department of Forests, Parks and Recreation continued to refer 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 performance.

Throughout 2000 the Enforcement Division capitalized on a third consecutive year of great stability. We continued to strengthen our investigative staff by continuing to provide an abundance of 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 continued to refine our working relationship with the Office of the Attorney General and, again, referred a significant number (5) of environmental investigations to that office for either civil or criminal prosecution. This year we increased the use of SEPs as a component of settled environmental cases. We also referred three cases to various State's Attorneys for criminal prosecution (typically smaller criminal cases where a strong local interest is demonstrated).

Lastly, the public is now able to access information about the Enforcement Division via our new web page. Staff names and phone numbers, how to file a complaint, and internship opportunities are posted. Also included are legislative reports back to 1995, quarterly reports of closed cases (as published in the ANR Bridge newsletter), and press releases issued by this Division. 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 about environmental problems in the state. The Enforcement Division, through its computerized complaint logging and closure reporting system, is able to quantify and report on the complaints received by the various programs and Act 250, and the actions taken. Table B summarizes the complaints received by the various programs, the present status of these complaints, and the types of closure for all complaints closed this year. (See section V for further explanation). It should be noted that while the Enforcement Division collects and tabulates all citizen complaints, those handled by the involved regulatory programs are closed in accordance with program standards rather than those of the Enforcement Division.

## **IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM**

The Enforcement Division is funded in fiscal year 2001 as follows:

|               |              |
|---------------|--------------|
| General Funds | \$ 93,329.00 |
|---------------|--------------|

|               |                     |
|---------------|---------------------|
| Federal Funds | 52,300.00           |
| Special Funds | 769,890.00          |
| <b>Total</b>  | <b>\$942,519.00</b> |

The following figures are the projected expenditures for the operation of the Enforcement Division for fiscal year 2002:

|                   |                       |
|-------------------|-----------------------|
| Personal Services | \$886,380.00          |
| Operating         | 158,441.00            |
| <b>Total</b>      | <b>\$1,044,821.00</b> |

**V. ATTACHMENTS**

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the two attached Tables are provided. Table A provides required information concerning Enforcement Actions and the enforcement program. Table B summarizes Citizen Complaints received by the various programs, the present status of these complaints, and the types of closure for all complaints closed this year. Until last year, these tables were based on the calendar year beginning January 1<sup>st</sup>. Because it was impossible to collect, enter, and tabulate all the data from various field locations throughout the state by the statutory January 15 reporting deadline, we use a slightly adjusted time frame for citizen complaints only. Accordingly, Table B reflects citizen complaints for the year beginning December 1, 1999 through November 30, 2000. 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.

**VI. CONCLUSION**

The calendar year 2000 represents the third consecutive year that the Enforcement Division has operated with a staff that experienced no changes in personnel. The resulting stability has enabled the Division to further refine many aspects of our operation. Our relationship with Act 250 is very positive and has produced sound, coordinated enforcement activity. We have an effective relationship with the Attorney General which has continued to develop during 2000. Various State Attorneys continue to show interest in handling some of our cases. We intend to capitalize further and more fully on these associations in the next year. Our relationship with our primary institutional client, the Department of Environmental Conservation, has both expanded and matured. Our relationship with the Department of Forests, Parks and Recreation, for whom we handle both Acceptable Management Practices (AMP) and Heavy Cut cases, continues to generate sound and consistent enforcement results.

Despite having a number of cases referred for prosecution outside the Enforcement Division, the

statistics found in Table A and B compare favorably with those of last year. Compared to the data for 1999, our Administrative Order filings remained even while the overall penalties sought increased substantially. Settlement penalties, both assessed and collected, and SEP monetary amounts were down for the year. On the other hand, we saw a significant increase in the number of opened cases, settled cases and SEPS. Emergency Orders remained steady; informal case resolutions decreased. The number of citizen complaints is virtually equivalent to the number we received in 1999, while pending citizen complaints decreased and the total closed for 2000 is nearly equal to the number received.

Again, we can report that the morale in the Enforcement Division is high and despite the demanding nature of our work we are a cohesive working unit which continuously strives for higher levels of excellence. We believe with great confidence that our work meaningfully advances the interests of environmental and public protection and 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, 2000 - December 31, 2000

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

| PROGRAM               | # ISSUED  | PENALTIES ASSESSED  | PENALTIES COLLECTED* |
|-----------------------|-----------|---------------------|----------------------|
| Air Pollution         | 12        | \$ 12,630.00        | \$ 12,450.00         |
| Hazardous Materials   | 5         | 11,900.00           | 12,900.00            |
| Solid Waste           | 6         | 6,000.00            | 6,150.00             |
| Wastewater Management | 10        | 5,300.00            | 16,075.00            |
| Water Quality         | 16        | 51,405.00           | 31,200.00            |
| Water Supply          | 12        | 1,000.00            | 8,500.00             |
| <b>TOTALS</b>         | <b>61</b> | <b>\$ 88,235.00</b> | <b>\$ 87,275.00</b>  |

\* includes penalties collected from previous years' judgments

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

| PROGRAM               | NUMBER    | VALUE                | CONFIRMED PERFORMANCE* |
|-----------------------|-----------|----------------------|------------------------|
| Air Pollution         | 1         | \$ 4,000.00          | \$ 0                   |
| Hazardous Materials   | 2         | 28,000.00            | 12,500.00              |
| Solid Waste           | 5         | 16,300.00            | 16,300.00              |
| Water Quality         | 8         | 42,450.00            | 27,650.00              |
| Water Supply          | 12        | 22,445.00            | 13,945.00              |
| Wastewater Management | 4         | 17,500.00            | 19,500.00              |
| <b>TOTALS</b>         | <b>32</b> | <b>\$ 130,695.00</b> | <b>\$ 89,895.00</b>    |

\* includes previous years' projects, since SEP performance may extend over multiple years

**Emergency Orders (EOs)**

| PROGRAM               | # ISSUED |
|-----------------------|----------|
| Wastewater Management | 2        |
| Water Quality         | 1        |
| <b>TOTALS</b>         | <b>3</b> |

## Administrative Orders (AOs)

| PROGRAM         | # ISSUED  | PENALTIES SOUGHT    | DISPOSITION  | PENALTIES IMPOSED BY COURT | PENALTIES COLLECTED* |
|-----------------|-----------|---------------------|--|----------------------------|----------------------|
| Air Pollution   | 2         | \$ 34,050.00        | 1. Pending merits hearing<br>2. AO dismissed: resolved with AOD  | N/A                        | N/A                  |
| Hazardous Mat.  | 4         | 53,725.00           | 1. AO dismissed: resolved with AOD<br>2. AO final: complaint filed<br>3. Pending merits hearing<br>4. Pending merits hearing | N/A                        | N/A                  |
| Solid Waste     | 2         | 10,500.00           | 1. AO final: AOD under negotiation<br>2. Pending merits hearing/are negotiating AOD  | N/A                        | N/A                  |
| Wastewater Mgt. | 1         | 25,000.00           | 1. AO dismissed: resolved with AOD   | N/A                        | N/A                  |
| Water Supply    | 2         | 28,070.00           | 1. AO dismissed: resolved with AOD<br>2. AO final: negotiating AOD   | N/A                        | N/A                  |
| Water Quality   | 1         | 3,500.00            | 1. AO dismissed: resolved with AOD   | \$ 2,500.00 i              | \$ 2,500.00          |
| <b>TOTALS</b>   | <b>12</b> | <b>\$154,845.00</b> |  | <b>\$ 2,500.00</b>         | <b>\$ 2,500.00</b>   |

\* Includes penalties imposed from previous years' judgments

i This case, presented for hearing in 1997, was the subject of considerable appellate review which became final in 2000.

## Collection of Delinquent Penalties

Total delinquent penalties collected this calendar year: **\$ 500.00**

## INFORMAL CASE RESOLUTIONS

**January 1, 2000 - December 31, 2000**

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          | 2        |
| Facilities Engineering | 1        |
| Wastewater Management  | 1        |
| Water Quality          | 1        |
| Water Supply           | 1        |
| <b>TOTAL</b>           | <b>6</b> |

**Table B**  
**SUMMARY OF CITIZEN COMPLAINTS**  
December 1, 1999 - November 30, 2000

| <b>PROGRAMS</b>                             | <b>TOTAL<br/>REC'D:<br/>2000</b> | <b>PENDING:<br/>of those<br/>rec'd 2000</b> | <b>CLOSED:<br/>No<br/>violation</b> | <b>CLOSED:<br/>Voluntary<br/>Correction</b> | <b>CLOSED:<br/>Enforcement<br/>Action Taken*</b> | <b>CLOSED:<br/>Other**</b> | <b>TOTAL<br/>CLOSED:<br/>2000</b> |
|---|----------------------------------|---|-------------------------------------|---|--|----------------------------|-----------------------------------|
| <b>Act 250:</b>                             |                                  |   |                                     |   |  |                            |                                   |
| Permit Violations                           | 29                               | 15  | 6                                   | 6   | 3  | 7                          | 23                                |
| Unpermitted Activity                        | 69                               | 27  | 30                                  | 5   | 8  | 21                         | 67                                |
| <b>Air Pollution:</b>                       |                                  |   |                                     |   |  |                            |                                   |
| Air Toxics                                  | 7                                | 3   | 2                                   | 1   | 1  | 2                          | 6                                 |
| Direct/Indir. Sources                       | 29                               | 7   | 10                                  | 0   | 0  | 4                          | 15                                |
| Odors                                       | 39                               | 21  | 18                                  | 0   | 0  | 10                         | 28                                |
| Open Burning                                | 111                              | 34  | 32                                  | 26  | 8  | 16                         | 84                                |
| <b>Dams:</b>                                |                                  |   |                                     |   |  |                            |                                   |
| Permitted/Unpermitted                       | 6                                | 1   | 4                                   | 0   | 1  | 2                          | 7                                 |
| <b>Hazardous Materials:</b>                 |                                  |   |                                     |   |  |                            |                                   |
| Handling/Disposal                           | 104                              | 40  | 46                                  | 14  | 8  | 25                         | 96                                |
| Release/Spill                               | 451                              | 96  | 53                                  | 296   | 5  | 33                         | 388                               |
| Underground Tanks                           | 9                                | 5   | 2                                   | 1   | 3  | 0                          | 6                                 |
| <b>Solid Waste-Illegal<br/>Disposal of:</b> |                                  |   |                                     |   |  |                            |                                   |
| Const./Demolit. Debris                      | 47                               | 18  | 18                                  | 7   | 4  | 15                         | 47                                |
| Municipal Refuse                            | 69                               | 20  | 26                                  | 14  | 5  | 30                         | 75                                |
| Rubbish & Litter                            | 61                               | 20  | 23                                  | 12  | 3  | 26                         | 65                                |
| Septage/Sludge                              | 13                               | 3   | 13                                  | 2   | 0  | 3                          | 18                                |
| <b>Wastewater Mgmt:</b>                     |                                  |   |                                     |   |  |                            |                                   |
| Campgrounds                                 | 0                                | 0   | 1                                   | 0   | 0  | 0                          | 2                                 |
| Mobil Home Parks                            | 3                                | 2   | 1                                   | 0   | 0  | 0                          | 1                                 |
| Public Buildings                            | 22                               | 11  | 10                                  | 5   | 1  | 2                          | 21                                |
| Subdivisions                                | 13                               | 5   | 10                                  | 5   | 1  | 1                          | 18                                |
| <b>Water Quality (WQ):</b>                  |                                  |   |                                     |   |  |                            |                                   |
| Aquatic Nuisance                            | 1                                | 0   | 0                                   | 0   | 0  | 0                          | 1                                 |
| Lakes & Ponds                               | 6                                | 0   | 6                                   | 2   | 1  | 1                          | 11                                |
| Standards Violations                        | 32                               | 12  | 11                                  | 5   | 1  | 4                          | 21                                |
| Stream Alterations                          | 28                               | 4   | 18                                  | 3   | 4  | 2                          | 28                                |
| Wetlands                                    | 133                              | 41  | 51                                  | 25  | 15   | 13                         | 116                               |
| <b>WQ Discharges:</b>                       |                                  |   |                                     |   |  |                            |                                   |
| Agricultural                                | 15                               | 1   | 6                                   | 5   | 1  | 6                          | 18                                |
| Erosion                                     | 31                               | 2   | 13                                  | 7   | 3  | 4                          | 30                                |
| Logging                                     | 24                               | 3   | 7                                   | 10  | 1  | 3                          | 22                                |
| Permit Violations                           | 5                                | 0   | 2                                   | 1   | 1  | 3                          | 7                                 |
| Unpermitted                                 | 202                              | 53  | 93                                  | 39  | 11   | 32                         | 182                               |
| <b>Water Supply:</b>                        |                                  |   |                                     |   |  |                            |                                   |
| Bottled Water                               | 0                                | 0   | 0                                   | 0   | 0  | 0                          | 0                                 |
| Standards Violations                        | 0                                | 0   | 0                                   | 0   | 0  | 0                          | 0                                 |
| Well Drillers                               | 1                                | 0   | 1                                   | 0   | 0  | 0                          | 1                                 |
| <b>TOTALS</b>                               | <b>1,560</b>                     | <b>444</b>                                  | <b>513</b>                          | <b>491</b>                                  | <b>89</b>  | <b>265</b>                 | <b>1,404</b>                      |

\* 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.