

2001 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 twelfth 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 2001 calendar year the Division saw no personnel changes for the fourth time in as

many years. Our field force of Environmental Enforcement Officers (EEOs) was also maintained at its maximum level of eight. As a consequence, our investigative work has been very consistent while the investigators themselves continue to be a very cohesive unit. 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 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 performance.

Throughout 2001 the Enforcement Division capitalized on a fourth consecutive year of great stability. We further strengthened our investigative staff by continuing to provide 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 three environmental investigations, for either civil or criminal prosecution, and one appeal case. We continued to use SEPs as a component of settled environmental cases. Typically smaller criminal cases where a strong local interest is demonstrated are referred to States Attorneys. This year we referred one case to a State's Attorney for criminal prosecution.

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/>. Work is currently in progress to provide additional information about the Enforcement Division and its accomplishments.

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 within the Agency, and actions taken to resolve them. 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 was funded in fiscal year 2001 as follows:

General Funds	\$ 256,434.00
Federal Funds	45,262.00
Special Funds	696,889.00
Total	\$ 998,585.00

The Enforcement Divisions operating expenditures for fiscal year 2001:

Personal Services	\$ 853,252.00
Operating	145,333.00
Total	\$ 998,585.00

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 1998 these tables were based on the calendar year beginning January 1st. 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, 2000 through November 30, 2001. 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

As previously mentioned, this year represents the fourth 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 maintain the many refinements our operation has experienced over the years and work effectively to cultivate further advancements. Our relationship with Act 250 is very positive and has produced sound, coordinated enforcement activity. 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 and we intend to continue these associations in the next year. 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 Table A and B 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 higher 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, 2001 - December 31, 2001

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

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED*
Air Pollution	7	\$ 2,250.00	\$ 1,230.00
Hazardous Materials	10	27,350.00	28,550.00
Solid Waste	7	13,500.00	11,500.00
Wastewater Management	9	3,900.00	3,900.00
Water Quality	8	4,200.00	9,630.00
Water Supply	5	500.00	0
TOTAL	46	\$ 51,700.00	\$ 54,810.00

* 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	CONFIRMED PERFORMANCE*
Air Pollution	3	\$ 14,100.00	\$ 10,500.00
Hazardous Materials	6	44,500.00	64,500.00
Solid Waste	4	3,500.00	14,300.00
Water Quality	4	8,750.00	29,300.00
Water Supply	3	3,500.00	11,000.00
Wastewater Management	7	33,200.00	39,200.00
TOTAL	27	\$ 107,550.00	\$ 168,800.00

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

Emergency Orders (EOs)

PROGRAM	# ISSUED
Solid Waste	1
TOTAL	1

Table A (continued)

Administrative Orders (AOs)

PROGRAM	# ISSUED IN 2001	PENALTIES SOUGHT IN 2001	DISPOSITION OF AO'S ISSUED IN 2001	PENALTIES IMPOSED BY COURT*	PENALTIES COLLECTED**
Air Pollution	1	\$ 1,500.00	1. AO dismissed: resolved with AOD	\$100,000.00	N/A
Hazardous Mat.	1	65,000.00	1. Pending merits hearing	N/A	N/A
Solid Waste	1	500.00	1. Pending service	N/A	N/A
Wastewater Mgt.	N/A	N/A	1. Decision & Order re AO issued in 1999	2,303.00	
Water Supply	2	30,500.00	1. AO dismissed: resolved with AOD 2. AOD under negotiation	N/A	N/A
Water Quality	2	14,000.00	1. AO dismissed: resolved with AOD 2. Pending merits hearing	N/A	N/A
Department of Forests & Parks	N/A	N/A	1. Supreme Court affirmed penalty of AO issued in 1997		\$62,760.80
TOTAL	7	\$111,500.00		\$102,303.00	\$ 62,760.80

* Totals also include penalties imposed by the court for AO's which were issued prior to 2001

** Totals also include penalties collected for judgments rendered by the court prior to 2001

Collection of Delinquent Penalties

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

INFORMAL CASE RESOLUTIONS

January 1, 2001 - December 31, 2001

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	6
Hazardous Materials	1
Solid Waste	1
Wastewater Management	1
Water Quality	3
Water Supply	1
TOTAL	13

Table B
SUMMARY OF CITIZEN COMPLAINTS
December 1, 2000 - November 30, 2001

PROGRAMS	TOTAL REC'D: 2001	PENDING: of those rec'd 2001	CLOSED: No violation	CLOSED: Voluntary Correction	CLOSED: Enforcement Action Taken*	CLOSED: Other**	TOTAL CLOSED: 2001
Act 250:							
Permit Violations	18	8	16	1	0	1	33
Unpermitted Activity	52	20	32	7	3	5	77
Air Pollution:							
Air Toxics	1	0	0	1	0	0	1
Burn Barrel	14	8	2	1	0	0	5
Direct/Indir. Sources	44	23	39	7	0	1	53
Odors	18	13	10	4	0	1	17
Open Burning	93	34	26	26	9	7	92
Dams:							
Permitted/Unpermitted	1	0	1	0	0	0	1
Hazardous Materials:							
Handling/Disposal	66	22	38	11	7	10	70
Release/Spill	459	133	41	302	2	27	376
Underground Tanks	11	6	1	2	2	0	5
Solid Waste-Illegal Disposal of:							
Const./Demolit. Debris	26	9	11	8	1	4	29
Municipal Refuse	58	31	19	10	4	11	48
Rubbish & Litter	41	13	17	6	8	11	47
Septage/Sludge	13	5	7	1	0	2	12
Wastewater Mgmt:							
Campgrounds	1	0	0	1	0	0	1
Mobil Home Parks	4	2	0	3	1	1	5
Public Buildings	17	8	3	6	3	0	16
Subdivisions	6	4	3	2	0	2	9
Water Quality (WQ):							
Aquatic Nuisance	0	0	0	0	0	0	0
Lakes & Ponds	14	3	6	4	0	1	11
Standards Violations	14	4	7	4	1	4	19
Stream Alterations	14	5	6	2	1	2	12
Wetlands	47	16	25	7	6	4	48
WQ Discharges:							
Agricultural	5	1	3	1	0	0	4
Erosion	26	8	5	7	1	2	16
Logging	9	3	4	4	1	1	10
Permit Violations	4	1	2	1	1	0	4
Unpermitted	168	41	97	28	14	14	158
Water Supply:							
Bottled Water	0	0	0	0	0	0	0
Standards Violations	0	0	0	0	0	0	0
Well Drillers	5	0	3	0	1	0	5
Department of Forests, Parks & Recreation:							
Heavy Cut	0	0	0	0	0	0	0
TOTALS	1,249	421	424	457	66	111	1,184

* 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.