

**2004 REPORT TO THE LEGISLATURE  
REGARDING ACT 98 (1989)  
-UNIFORM ENVIRONMENTAL ENFORCEMENT ACT-  
Agency of Natural Resources - Enforcement Division**

**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 fifteenth 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 subsequently broadened and Act 250 has 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 at the Agency level and is directly answerable to the Secretary and Deputy Secretary.

With regard to the Division's investigative staff, we filled an Environmental Enforcement Officer (EEO) position this year. We currently have a field investigative staff of 7, just one less than historical full capacity. As always, we remain committed to the consistent investigation of all environmental violations.

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 originate 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 (essentially injunctive relief) 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 continue 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 very productive 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 we referred four environmental investigations, for either civil or criminal prosecution, to that office. Typically, smaller criminal cases where a strong local interest is demonstrated are referred to State's Attorneys for criminal prosecution. However, this year there were no State's Attorney referrals.

Finally, 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, due to a change made in 2002, citizen complaints for 2004 are 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 2004 as follows:

General Funds	\$ 145,579
Federal Funds	45,627
Special Funds	<u>797,425</u>
Total	<b>\$988,631</b>

The Enforcement Division's operating expenditures for fiscal year 2004:

Personal Services	\$922,636
Operating	<u>65,995</u>
Total	<b>\$ 988,631</b>

## **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 involved 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 15<sup>th</sup> 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, 2003 and ending November 30, 2004. 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 of DEC's own complaint database, accounting for citizens' complaints continues to require the creation of two tables. Those complaints investigated by EEOs 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.

## **VI. CONCLUSION**

For nearly one-half of 2004, until this year's hiring of our 7<sup>th</sup> EEO, our investigative staff worked at a 25% resource deficit. 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. In August of 2004 we were able to refill one of our investigative positions. As our new EEO becomes familiar with his duties, workload will be re-distributed, backlogs will be more effectively managed, and overall response time will improve. We are very encouraged by our recent re-hiring and expect to resume our usual high level of production soon. As for the legal staff of this Division, we again have remained stable throughout this past reporting year. Our administrative person manages a very heavy work load and its challenges.

Our relationship with Act 250 is very positive, particularly in matters of enforcement, which has had the commitment of a full time enforcement attorney. We continue to enjoy and benefit from our sound and coordinated enforcement relationship with Act 250. We continue to maintain an effective and stable relationship with the Attorney General. Various State's 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, is broad and mature. Our relationship with the Department of Forests, Parks and Recreation, for whom we handle both

Acceptable Management Practices 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, or maybe because of, the demanding nature of our work we have developed a cohesive working unit which continually strives for the highest levels of fairness, consistency, and overall 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: \_\_\_\_\_  
Elizabeth McLain, Secretary  
Agency of Natural Resources

Date: \_\_\_\_\_

**Table A**  
**FORMAL COURT ACTIONS**  
 January 1, 2004 - December 31, 2004

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

PROGRAM/DIVISION/DEPARTMENT	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED*
Air Pollution	7	\$ 6,435	\$ 4,205
Forests, Parks & Recreation	1	0	1,750
Hazardous Materials	7	25,750	6,500
Solid Waste	11	13,625	11,200
Wastewater Management	3	0	4,000
Water Quality	14	59,710	60,334
Water Supply	1	0	3,500
<b>TOTAL</b>	<b>44</b>	<b>\$ 105,520</b>	<b>\$ 91,489</b>

\* 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/DIVISION/DEPARTMENT	NUMBER	VALUE	PAYMENT CONFIRMED*
Air Pollution	1	\$ 0	\$ 1,500
Forests, Parks & Recreation	1	6,500	6,500
Hazardous Materials	3	16,000	36,513
Solid Waste	7	25,250	20,250
Water Quality	8	77,500	129,000
Water Supply	1	4,000	11,000
Wastewater Management	2	9,000	42,500
<b>TOTAL</b>	<b>23</b>	<b>\$ 138,250</b>	<b>\$ 247,263</b>

\* Includes previous years' projects, since SEP execution may extend beyond the calendar year of its origin. SEPs involving multiple payments are accounted for in total the year of the final payment.

**Emergency Orders (EOs)**

PROGRAM/DIVISION/DEPARTMENT	# ISSUED
Solid Waste	1
Water Quality	1
<b>TOTAL</b>	<b>2</b>

**Table A (continued)  
Administrative Orders (AOs)**

PROGRAM	INITIAL PENALTIES SOUGHT	DISPOSITION	FINAL PENALTIES IMPOSED BY COURT	PENALTIES COLLECTED
Air Pollution [2]	1. 3,000 2. <u>4,500</u> <b>\$7,500</b>	1. AO dismissed: resolved with AOD 2. Pending service	1. Included on AOD table* 2. Not yet applicable	1. Not applicable 2. Not yet applicable  {\$15,000}**
Hazardous Materials [2]	1. 5,250 2. <u>7,000</u> <b>\$12,250</b>	1. AO final: resolved with AOD 2. AO final: filing for default judgment	1. Included on AOD table 2. Not yet applicable	1. Not applicable 2. Not yet applicable
Solid Waste [5]	1. 2,520 2. 3,500 3. 2,500 4. 5,250 5. <u>16,000</u> <b>\$29,770</b>	1. AO dismissed: resolved with AOD 2. AO dismissed: resolved with AOD 3. AO final 4. AO final: default judgment pending 5. Hearing pending: negotiating AOD	1. Included on AOD table* 2. Included on AOD table* 3.....\$2,500 4. Not yet applicable 5. Yet to be decided	1. Not applicable 2. Not applicable 3. Pending collection 4. Not yet applicable 5. Not yet applicable
Wastewater Management [2]	1. 5,250 2. <u>5,250</u> <b>\$10,500</b>	1. Pending merits hearing 2. Pending service	1. Not yet applicable 2. Not yet applicable	1. Not applicable 2. Not yet applicable
Water Supply [1]	1. <b>\$22,095</b>	1. Pending merits hearing	1. Not yet applicable	1. Not applicable
Water Quality [6]	1. 61,000 2. ---- 3. 10,500 4. 5,250 5. 12,500 6. <u>12,250</u> <b>\$101,500</b>	1. AO dismissed: resolved with AOD 2. AO final - seeking permit stay only 3. AO final : negotiating AOD 4. AO final: pending service of complaint 5. AO dismissed: resolved with AOD 6. Pending merits hearing	1. Included on AOD table 2. Not applicable 3. Not yet applicable 4. Yet to be decided 5. Included on AOD table* 6. Yet to be decided	1. Not applicable 2. Not applicable 3. Not applicable 4. Not yet applicable 5. Not applicable 6. Not yet applicable  {\$14,693}**
<b>TOTALS</b> 18	<b>\$183,615</b>		<b>\$2,500</b>	<b>\$29,693</b>

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

\*\* Payment for penalty imposed by the court for AO issued prior to 2004

**Collection of Delinquent Penalties**

Total delinquent penalties collected this calendar year: **\$ 19,843**  
(Also accounted for as penalties collected on AOD and AO tables)

**INFORMAL CASE RESOLUTIONS**

**January 1, 2004 - December 31, 2004**

PROGRAM/DIVISION/DEPARTMENT	NUMBER
Hazardous Materials	1
Water Quality	1
Water Supply	1
<b>TOTAL</b>	<b>3</b>

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.

**Table B**  
**SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY THE ENFORCEMENT DIVISION**  
**December 1, 2003 - November 30, 2004**

PROGRAM	TOTAL RECEIVED	PENDING*	CLOSED: No Violation	CLOSED: Voluntary Correction	CLOSED: Enforcement Action Taken**	CLOSED: Other***	TOTAL CLOSED
<b>Act 250:</b>							
Permit Violations	32	10	10	2	0	4	26
Unpermitted Activity	49	16	26	0	1	6	42
<b>Air Pollution:</b>							
Air Toxics	7	0	3	0	1	2	7
Burn Barrel	33	7	7	9	3	1	34
Direct/Indirect Sources	9	1	7	1	1	1	10
Odors	2	0	2	1	0	0	3
Open Burning	90	26	17	15	19	8	81
<b>Dams:</b>							
Permitted/Unpermitted	5	0	6	0	1	0	7
<b>Hazardous Materials:</b>							
Handling/Disposal	86	24	33	13	4	10	69
Release/Spill	17	1	3	2	6	4	17
Underground Tanks	5	3	1	0	1	0	2
<b>Solid Waste-Illegal Disposal of:</b>							
Construction/Demolition Debris	35	12	9	6	3	6	33
Municipal Refuse	87	28	32	7	6	15	82
Rubbish & Litter	32	6	8	11	5	11	41
Septage/Sludge	8	0	6	0	0	2	12
<b>Wastewater Management:</b>							
Campgrounds	1	0	0	1	0	0	1
Mobile Home Parks	4	1	3	0	0	0	3
Public Buildings	25	8	16	2	0	2	22
Subdivisions	9	2	2	1	0	0	8
<b>Water Quality:</b>							
Aquatic Nuisance	0	0	0	0	0	0	0
Lakes & Ponds	8	2	5	1	1	0	8
Standards Violations	6	1	3	1	0	1	7
Stream Alterations	27	5	12	5	3	3	26
Wetlands	49	13	22	2	6	7	46
<b>Water Quality Discharges:</b>							
Agricultural	1	0	1	0	0	0	1
Erosion	35	13	23	0	0	2	27
Logging	15	8	3	0	2	4	10
Permit Violations	6	2	3	1	1	0	5
Unpermitted	235	47	121	36	16	28	228
<b>Water Supply:</b>							
Bottled Water	0	0	0	0	0	0	0
Standards Violations	5	2	2	1	1	0	4
Well Drillers	0	0	0	0	0	0	0
<b>Dept. of Forests, Parks &amp; Recreation:</b>							
Heavy Cut	3	0	1	0	1	0	3
<b>TOTALS</b>	<b>926</b>	<b>238</b>	<b>387</b>	<b>118</b>	<b>82</b>	<b>117</b>	<b>865</b>

\* Complaints received in 2004 that are not yet resolved and are currently being followed-up by the Enforcement Division's EEOs

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

\*\*\* Reflects complaints closed through other means, 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 the current year include some received in previous years.

**Table C**  
**SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY DEC**  
**December 1, 2003 - November 30, 2004**

PROGRAMS	TOTAL RECEIVED	PENDING*	CLOSED: No Violation	CLOSED: Voluntary Correction*	CLOSED: by other means**	TRANSFERRED to Enforcement Division for Investigation	TOTAL CLOSED
<b>Act 250</b>							
	4	0	1	1	0	2	4
<b>Air Pollution:</b>							
Air Toxics	7	4	0	0	0	3	3
Dust, mineral	5	4	1	0	0	0	1
Dust, other	3	0	0	2	0	1	3
Gas station	5	1	2	3	0	0	5
Incinerator	3	2	0	0	0	1	1
Mobile source	2	2	0	0	0	0	0
Odors	21	15	1	4	0	1	6
Open Burning	40	14	4	1	0	22	27
Smoke/ Soot	3	2	0	0	0	1	1
Visible Emissions	2	1	0	0	0	1	1
Water Stoves	8	7	2	1	0	0	3
<b>Dams:</b>							
Permitted/Unpermitted	0	0	0	0	0	0	0
<b>Hazardous Materials:</b>							
Handling/Disposal	14	6	4	2	0	3	9
Release/Spill	5	1	0	0	1	4	5
Underground Tanks	1	0	0	0	0	1	1
Junk cars	4	2	1	0	0	1	2
<b>Solid Waste-Illegal Disposal of:</b>							
Construction/Demolition Debris	2	0	1	0	0	2	3
Municipal Refuse	2	0	0	1	1	2	4
Rubbish & Litter	12	3	1	3	2	3	9
Septage/Sludge	2	2	0	0	0	0	0
<b>Wastewater Management:</b>							
Public Buildings	1	0	0	1	0	0	1
<b>Water Quality:</b>							
Lakes & Ponds	1	0	0	1	0	0	1
Standards Violations	6	1	0	0	0	5	5
Stream Alterations	2	1	0	0	0	1	1
Wetlands	22	8	11	4	3	4	22
<b>Water Quality Discharges:</b>							
Agricultural	1	0	0	0	1	0	1
Erosion	9	0	0	1	0	9	10
Logging	0	0	0	0	0	0	0
Permit violations	4	0	0	1	0	3	4
Unpermitted	2	1	0	1	0	0	1
<b>Water Supply:</b>							
Standards Violations	1	0	0	0	0	1	1
<b>Other:</b>							
Various	77	18	8	5	5	43	61
<b>TOTALS</b>	<b>271</b>	<b>95</b>	<b>37</b>	<b>32</b>	<b>13</b>	<b>114</b>	<b>196</b>

*C* Complaints received in 2004 that are not yet resolved and are currently being followed-up by DEC staff.

\*\* Includes all complaints resolved voluntarily with or without the issuance of a Notice of Alleged Violation (a compliance tool).

\*\*\* Reflects all complaints closed through other means (e.g. lack of evidence, lack of cooperation from complainant, referred outside of DEC to appropriate regulatory program or Act 250, violation found but decision made not to pursue enforcement action).

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