

**2005 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 sixteenth 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 (it should be noted that pursuant to recently enacted legislation, the Environmental Board was supplanted by the new Natural Resources Board. However, the enforcement function under Act 250 remains unaffected by this change. Hereinafter reference will be made to the Natural Resources 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 Natural Resources 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 Natural Resources 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 Natural Resources 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 General Counsel and the Secretary.

With regard to the Division's investigative staff, we currently have a field investigative staff of seven, just one less than historical full capacity. As always, we remain committed to the consistent investigation of all environmental violations.

The Division recently hired and welcomed Laura Pelosi, an attorney with experience both at the Environmental Protection Agency (EPA) and in civil practice. She replaced Catherine Gjessing who moved to a position with the Environmental Litigation Group in the Agency. The Division's legal staff 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 into 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 continues to focus on the prompt movement of cases and the achievement of uniform enforcement. To that end, we have reduced the expected time for cases to be filed once the case is assigned. The Division also has implemented a new category of expedited cases for those matters that require immediate attention in prosecution, beyond regular caseload expectations. Guided by our MOU with the Environmental Board, which will be updated to reference the Natural Resources 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 continue to work with and improve our relationship with the Office of the Attorney General and this year we referred three 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. We also met with the EPA's Criminal Investigation Division Special Agent in Charge and will work and coordinate with EPA on matters of federal and state interest.

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 2005 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 2005 as follows:

General Funds	\$ 90,007
Federal Funds	59,581
Special Funds	<u>863,112</u>
Total	\$1,012,700

The Enforcement Division's operating expenditures for fiscal year 2005:

Personal Services	\$ 938,437
Operating	<u>74,263</u>
Total	\$1,012,700

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 programs. 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, 2004 and ending November 30, 2005. 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 all of 2005, our investigative staff was unchanged, operating at a field force of seven, one less than our historic maximum. With the transfer within the Agency of one of our staff attorneys, we advertised for and hired Laura Pelosi. Laura has good experience both as an EPA staff attorney (Atlanta office) and as an associate in a local civil firm. Laura is a very good fit for this division and demonstrates a high level of competency, knowledge, and interest in our work. Our administrative person continues to manage a very heavy work load and its challenges.

As it was with the prior Environmental Board, our relationship with the new Natural Resources Board continues to be very positive, particularly in matters of enforcement. Their commitment of a full time enforcement attorney has fostered a sound and coordinated enforcement relationship. We continue to work with and improve our relationship with the Attorney General. Likewise, we will cooperate and coordinate enforcement activities with EPA where federal and state jurisdiction overlap. 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. We will continue to strive to ensure that the relationship works well. 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.

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.

Table A
FORMAL COURT ACTIONS
 January 1, 2005 - December 31, 2005

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

PROGRAM/DIVISION/DEPARTMENT	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED*
Air Pollution	4	\$6,125	\$ 4,575
Hazardous Materials	2	6,050	29,300
Solid Waste	9	16,705	18,325
Wastewater Management	7	6,500	5,000
Water Quality	11	24,750	22,626
Water Supply	3	6,300	5,300
TOTAL	36	\$66,430	\$85,126

* 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	Volunteer work	10,000
Hazardous Materials	0	0	55,000
Solid Waste	2	\$7,500	17,500
Water Quality	8	26,900	45,400
Water Supply	1	10,000	0
Wastewater Management	2	59,500	8,750
TOTAL	14	\$103,900	\$136,660

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

Emergency Orders (EOs)

PROGRAM/DIVISION/DEPARTMENT	# ISSUED
Hazardous Materials	1
Water Quality	2
Wastewater Management	1
TOTAL	4

Administrative Orders (AOs)

PROGRAM	[#]	INITIAL PENALTIES		DISPOSITION	FINAL PENALTIES IMPOSED BY COURT	PENALTIES COLLECTED
		SOUGHT				
Air Pollution	[3]	1. 1,500 2. 1,000 3. <u>1,000</u> 3,500		1. AO final 2. AO final: Decision & Order issued 3. Pending service	1. \$1,500 2. \$1,000 3. Not yet applicable	1. Not yet applicable 2. Attempting to collect through tax set-off program. 3. Not yet applicable
Hazardous Materials	[2]	1. 17,500 2. <u>5,250</u> 22,750		1. AO final 2. AO served: negotiating AOD	1. \$17,500 2. Not applicable	1. Not yet applicable 2. Not applicable
Solid Waste	[1]	1. <u>5,250</u> 5,250		1. Pending service	1. Not yet applicable	1. Not applicable
Wastewater Management	[2]	1. 17,500 2. <u>10,000</u> \$27,500		1. AO signed: has not yet been served 2. AO served: negotiating AOD	1. Not yet applicable 2. Not yet applicable	1. Not applicable 2. Not yet applicable
Water Quality	[5]	1. 3,500 2. 9,250 3. 5,250 4. 6,000 5. <u>3,500</u> 27,500		1. AO final 2. AO served: hearing requested 3. AO served: negotiating AOD 4. AO final 5. AO served: negotiating settlement	1. 3,500 2. Not yet applicable 3. Not applicable 4. \$6,000 5. Not yet applicable	1. Not yet applicable 2. Not yet applicable 3. Not applicable 4. Not yet applicable 5. Not yet applicable 200*
TOTALS	13	\$86,500			\$29,500	\$200

* Payment for penalty imposed by the court for AO issued prior to 2005

Collection of Delinquent Penalties

Total delinquent penalties collected this calendar year: **\$ 00**

INFORMAL CASE RESOLUTIONS

January 1, 2005 - December 31, 2005

PROGRAM/DIVISION DEPARTMENT	NUMBER
Air Pollution	4
Hazardous Materials	4
Solid Waste	1
Water Quality	15
Water Supply	2
Wastewater	1
TOTAL	27

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, 2004 - November 30, 2005**

PROGRAM	TOTAL RECEIVED in reporting period	PENDING: of those received in reporting period	ALL COMPLAINTS CLOSED IN REPORTING PERIOD (includes complaints received in previous years)				TOTAL COMPLAINTS CLOSED
			CLOSED: No Violation	CLOSED: Voluntary Correction	CLOSED: Enforcement Action Taken ¹	CLOSED: Other ²	
Act 250:							
Permit Violations	27	7	5	1	2	16	24
Unpermitted Activity	29	7	14	1	2	13	30
Air Pollution:							
Air Toxics	0	0	0	0	0	1	1
Burn Barrel	25	4	7	4	20	4	35
Direct/Indirect Sources	4	2	3	0	0	0	3
Odors	3	1	2	0	1	0	3
Open Burning	77	15	19	19	36	23	97
Dams:							
Permitted/Unpermitted	3	0	1	1	1	0	3
Hazardous Materials:							
Handling/Disposal	70	16	38	8	3	23	72
Release/Spill	20	3	7	6	1	9	23
Underground Tanks	10	3	2	2	3	2	9
Solid Waste-Illegal Disposal of:							
Construct./Demo. Debris	34	9	11	9	8	11	39
Municipal Refuse	104	22	34	14	26	39	113
Rubbish & Litter	37	10	9	3	19	23	54
Septage/Sludge	9	3	2	0	1	8	11
Wastewater Management:							
Campgrounds	1	0	0	0	1	0	1
Mobile Home Parks	3	0	1	0	1	2	4
Public Buildings	37	12	17	2	2	9	30
Subdivisions	14	5	2	1	0	6	9
Water Quality:							
Aquatic Nuisance	0	0	0	0	0	0	0
Lakes & Ponds	8	1	4	0	1	4	9
Standards Violations	15	2	5	2	6	6	19
Stream Alterations	43	7	23	3	6	7	39
Wetlands	69	11	31	7	8	24	70
Water Quality Discharges:							
Agricultural	15	2	3	0	2	9	14
Erosion	46	10	26	7	2	7	42
Logging	5	0	3	0	2	3	8
Permit Violations	5	2	0	0	2	4	6
Unpermitted	222	37	114	35	28	61	238
Water Supply:							
Bottled Water	0	0	0	0	0	0	0
Standards Violations	3	0	2	1	0	1	4
Well Drillers	1	0	1	0	0	0	1
Dept. of Forests, Parks & Recreation:							
Heavy Cut	0	0	0	0	0	0	0
TOTALS	939	191	386	126	184	315	1,011

¹ Includes only complaints resolved through a Notice of Alleged Violation (NOAV) or formal court action.

² Reflects complaints closed through other means, e.g. lack of evidence, lack of cooperation from complainant, referred to appropriate regulatory program or Act 250, unable to respond, or violation found/enforcement action not pursued.

Table C
SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY DEC

December 1, 2004 – November 30, 2005

PROGRAMS	TOTAL RECEIVED in reporting period	PENDING of those received in reporting period	All Complaints Closed in Reporting Period (includes complaints received in previous years)					ALL CLOSED
			CLOSED (No Violation)	CLOSED (Voluntary Correction) ¹	CLOSED (Other Means) ²	TRANSFERRED (to Enforcement Division for Investigation)		
Act 250:								
Unpermitted Activity	0	0	0	0	0	0	0	
Permit Violations	2	2	0	0	0	0	0	
Air Pollution:								
Air Toxics	4	2	3	0	0	1	4	
Dust, mineral	5	3	4	0	0	0	4	
Dust, other	0	0	1	0	0	0	1	
Gas Station	2	0	0	2	0	0	2	
Incinerator	10	9	0	1	0	0	1	
Mobile Source	4	3	1	0	0	0	1	
Odors	17	9	12	4	1	0	17	
Open Burning	40	11	7	3	2	22	34	
Smoke/Soot	9	6	2	0	0	1	3	
Visible Emissions	2	0	3	0	0	0	3	
Water Stoves	11	10	3	3	1	0	7	
Dams:								
Permitted/Unpermitted	0	0	0	0	0	0	0	
Hazardous Materials:								
Handling/Disposal	19	2	3	2	0	9	14	
Release/Spill	11	4	2	2	0	3	7	
Underground/Tanks	1	0	0	0	0	0	0	
Junk Cars	17	4	6	0	0	6	12	
Solid Waste – Illegal Disposal of:								
C & D Debris	9	1	0	2	0	4	6	
Municipal Refuse	10	1	3	4	1	2	10	
Rubbish & Litter	24	4	4	5	0	11	20	
Septage/Sludge	2	0	1	0	0	1	2	
Wastewater Management:								
Public Buildings	1	0	1	1	0	0	2	
Sewage	6	1	0	0	0	5	5	
Water Quality (WQ):								
Lakes & Ponds	0	0	1	0	0	0	1	
Standards Violations	4	2	0	0	0	2	2	
Stream Alterations	2	1	0	0	0	1	1	
Wetlands	11	4	5	5	2	1	13	
WQ Discharges:								
Agricultural	1	0	0	0	0	1	1	
Erosion	18	2	0	0	0	15	15	
Logging	0	0	0	0	0	0	0	
Permit Violations	4	0	0	0	0	3	3	
Unpermitted	18	3	1	1	0	14	16	
Water Supply:								
Standards Violations	2	0	2	0	0	0	2	
Other:								
Various	2	0	0	0	0	2	2	
TOTALS	268	84	65	35	7	104	211	

¹ Includes all complaints resolved voluntarily with or without the issuance of a Notice of Alleged Violation (a compliance tool).

² 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).