

**2008 REPORT TO THE LEGISLATURE  
REGARDING ACT 98 (1989)  
-UNIFORM ENVIRONMENTAL ENFORCEMENT ACT-  
Department of Environmental Conservation  
Compliance & Enforcement Program  
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 nineteenth 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 ANR Secretary 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. 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.

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 for enforcement of 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 the Natural Resources Board 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. Environmental Enforcement Division**

The Enforcement Division is now an integral part of the Compliance and Enforcement Program (C&E) which is located within the Department of Environmental Conservation (DEC), and is organizationally answerable to the C&E Director and the DEC Commissioner.

With regard to the Division's investigative staff, we currently have a field investigative staff of seven Environmental Enforcement Officers (EEOs). Our staff of EEOs is committed to the consistent investigation of all environmental violations.

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 actions 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 action may be initiated immediately, without the issuance of a NOAV. Under certain circumstances 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 and corrective action. Supplemental Environmental Projects (SEPs) are also common in settlements in addition to the penalty. If settlement does not occur, we file an Administrative Order and prepare for trial 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 EEO staff by providing appropriate training. The legal staff focus is on the prompt movement of cases and the achievement of uniform enforcement results. The Division also has implemented a new category of expedited cases for those matters that require immediate attention beyond regular caseload expectations. Guided by our MOU with 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 the Office of the Attorney General and this year we referred three (3) cases for either civil or criminal prosecution. In addition, The C&E Director and the Chief of the AG's Environmental Division meet monthly to discuss new case referrals and initiatives. Typically, smaller criminal cases where a strong local interest is demonstrated are referred to State's Attorneys for criminal prosecution. We also work and coordinate with EPA on matters of federal and state interest, including both civil and criminal matters.

EEOs have the authority to issue Vermont Civil Violation Complaints (tickets) in limited circumstances for two environmental violations: minor illegal open burning and minor illegal solid waste disposal. These tickets are the same as those used by game wardens and police officers for fish & wildlife and traffic offenses. If someone wishes to appeal a ticket they go before the Judicial Bureau. Thus far the use of tickets has worked well for these minor violations. The ticket process is much quicker, more efficient and does not necessitate the involvement of the enforcement attorneys. This allows the attorneys to focus on the more serious violations handled through the administrative process. For the calendar year 2008, nine (9) tickets were issued for a total of \$3,100 in fines. The schedule of fines imposed for these offenses, as set by the Judicial Bureau, runs from \$100 to \$500.

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 are included. The site can be accessed through the State of Vermont homepage or at:

<http://www.anr.state.vt.us/enforcement/index.htm> (this address will be changing in the near future to reflect the movement of the Enforcement Division to DEC's C&E Program).

## **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 2008 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 2008 as follows:

General Funds	\$ 63,072
Federal Funds	\$ 0
Special Funds	<u>\$ 1,095,911</u>
<b>Total</b>	<b>\$ 1,158,983</b>

The Enforcement Division's operating expenditures for fiscal year 2008:

Personal Services	\$ 1,073,459
Operating	<u>\$ 85,524</u>
<b>Total</b>	<b>\$ 1,158,983</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 programs. Some of the charts have been modified from past years' in order to simplify the presentation of the information. 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, 2007 and ending November 30, 2008. 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 from DEC programs to this Division.

**VI. CONCLUSION**

For all of 2008, our investigative staff was unchanged, operating at a field force of seven. One EEO retired at the end of 2008. In August of 2008 one of our staff attorneys left the Enforcement Division and became the Director for the C&E Program. That vacancy was filled in October. Our administrative person continues to manage a very heavy work load and its challenges.

Our relationship with the 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. State's Attorneys occasionally show an interest in handling some of our cases. We intend to continue all of these mutually positive associations.

Our affiliations within DEC are 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 success and stability of our enforcement programs. Despite, or perhaps 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.

Respectfully Submitted,

By: \_\_\_\_\_  
Jonathan L. Wood, Secretary  
Agency of Natural Resources

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

**Table A**  
**FORMAL COURT ACTIONS**  
 January 1, 2008 - December 31, 2008

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

REGULATORY PROGRAM	# AODs ISSUED	AOD PENALTIES ASSESSED	AOD PENALTIES COLLECTED by ENFORCEMENT DIVISION*	AOD PENALTIES COLLECTED by COLLECTIONS ATTORNEY*
Act 250	0	\$ 0	\$ 0	\$ 0
Air Pollution	8	16,775	10,525	0
Forests, Parks & Recreation	6	12,200	8,775	0
Hazardous Materials	6	32,000	46,900	0
Solid Waste	6	7,235	5,892	0
Water Quality	6	8,025	10,738	0
Water Supply	3	11,000	6,000	0
Wastewater Management	7	90,500	38,500	0
<b>TOTAL</b>	<b>42</b>	<b>177,735</b>	<b>\$127,330</b>	<b>\$ 0</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)*

REGULATORY PROGRAM	# SEPs	VALUE OF SEPs	SEPs FUNDING CONFIRMED*
Air Pollution	0	\$ 0	\$ 0
Forests, Parks & Recreation	1	6,000	4,600
Hazardous Materials	0	0	15,000
Solid Waste	1	9,200	25,000
Water Quality	2**	**61,000	**67,816
Water Supply	0	0	0
Wastewater Management	3	75,000	***86,764
<b>TOTAL</b>	<b>7</b>	<b>\$151,200</b>	<b>\$199,180</b>

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

*\*\* Includes a \$50,000 SEP tracked by ANR for a case settled by the US Attorney's office*

*\*\*\* Includes a \$17,855 payment made in 2006 that was not reported due to database limitations at that time*

**Emergency Orders (EOs)**

REGULATORY PROGRAM	# EOs ISSUED
Water Quality	1
<b>TOTAL</b>	<b>1</b>

## Administrative Orders (AOs)

*(Most AOs are resolved via AODs and are reported as such on the AOD table)*

REGULATORY PROGRAM	# AOs SERVED by ENFORCEMENT DIVISION	# CASES RESOLVED VIA AO (AO may have been issued in previous years)	FINAL AO PENALTIES	AO PENALTIES COLLECTED by ENFORCEMENT DIVISION*	AO DELINQUENT PENALTIES COLLECTED by COLLECTIONS ATTORNEY
Air Pollution	0	0	\$ 0	\$ 200	\$ 0
Forests, Parks & Recreation	4	0	0	0	0
Hazardous Materials	2	0	0	0	0
Solid Waste	0	0	0	0	0
Water Quality	3	0	0	200	0
Water Supply	5	0	0	0	0
Wastewater Management	0	0	0	0	0
<b>TOTAL</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>\$ 400</b>	<b>0</b>

\* Includes penalties collected from previous years' AOs

### Collection of Delinquent AOD and AO Penalties

The delinquent penalties collected on the Agency's behalf are listed separately and included in the tables above. This was accomplished by our collections attorney whose contract also includes the performance of collections work for the Attorney General's Office and the Natural Resources Board. This year, there were no delinquent penalty collections.

### INFORMAL CASE RESOLUTIONS

January 1, 2008 – December 31, 2008

REGULATORY PROGRAM	NUMBER
Air Pollution	5
Hazardous Materials	1
Solid Waste	3
Water Quality	6
Water Supply	0
Wastewater	3
<b>TOTAL</b>	<b>18</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, 2007 - November 30, 2008**

REGULATORY 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 ActionTaken <sup>1</sup>	CLOSED: Other <sup>2</sup>	
<b>Act 250:</b>							
Permit Violations	10	2	3	2	1	4	10
Unpermitted Activity	16	3	3	1	3	15	22
<b>Air Pollution:</b>							
Air Toxics	2	1	1	0	1	0	2
Burn Barrel	26	2	7	14	4	7	32
Direct/Indirect Sources	11	0	6	2	2	9	19
Odors	4	1	1	1	1	2	5
Open Burning	65	18	12	13	16	21	62
<b>Dams:</b>							
Permitted/Unpermitted	1	0	0	1	0	0	1
<b>Hazardous Materials:</b>							
Handling/Disposal	73	23	25	6	3	24	58
Release/Spill	16	3	4	2	3	3	12
Underground Tanks	4	0	2	0	4	1	7
<b>Solid Waste – Illegal Disposal of:</b>							
Construct./Demo. Debris	26	5	10	3	8	16	37
Municipal Refuse	77	16	24	15	9	41	89
Rubbish & Litter	26	6	10	4	2	24	40
Septage/Sludge	10	2	3	1	1	11	16
<b>Wastewater Management:</b>							
Campgrounds	2	0	1	0	0	1	2
Failed Septic	18	9	5	2	0	1	8
Mobile Home Parks	1	0	1	0	0	0	1
Public Buildings	30	7	16	5	1	4	26
Subdivisions	3	0	2	0	0	3	5
<b>Water Quality:</b>							
Aquatic Nuisance	1	0	1	0	1	0	2
Lakes & Ponds	10	2	5	1	2	3	11
Standards Violations	1	0	3	0	1	1	5
Stormwater Violations	11	4	6	1	0	0	7
Stream Alterations	30	4	20	4	2	4	30
Wetlands	54	9	25	7	9	15	56
<b>Water Quality Discharges:</b>							
Agricultural	20	0	7	1	4	10	22
Erosion	8	2	1	3	1	1	6
Logging	11	4	5	1	2	2	10
Permit Violations	5	1	4	0	2	0	6
Unpermitted	169	28	82	30	18	42	172
<b>Water Supply:</b>							
Bottled Water	0	0	0	0	0	0	0
Public Water System	0	0	0	0	0	0	0
Standards Violations	2	0	1	0	1	1	3
Well Drillers	0	0	0	0	0	0	0
<b>Dept. of Forests, Parks &amp; Recreation</b>							
Heavy Cut	1	1	0	0	0	0	0
<b>TOTALS</b>	<b>744</b>	<b>153</b>	<b>296</b>	<b>120</b>	<b>102</b>	<b>266</b>	<b>784</b>

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

<sup>2</sup> Reflects complaints closed through other means, e.g. lack of evidence, lack of cooperation from complainant, referred to the appropriate regulatory program or Act 250, unable to respond, violation found/enforcement action not pursued, transferred to DEC program or "Clean Slate" (explanation follows): *In 2007 the legislature passed H.296, also known as "Clean Slate." This legislation essentially created amnesty for a number of existing wastewater and subdivision violations. Some of the complaints in this column were closed as a result of the legislation because the reported conduct is no longer considered a violation.*



**Table C**  
**SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY DEC**  
*December 1, 2007 – November 30, 2008*

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)				
			CLOSED (No Violation)	CLOSED (Voluntary Correction) <sup>1</sup>	CLOSED (Other Means) <sup>2</sup>	TRANSFERRED (to Enforcement Division for Investigation)	ALL CLOSED
<b>Act 250:</b>							
Unpermitted Activity	1	0	0	0	0	1	1
Permit Violations	1	0	0	0	0	1	1
<b>Air Pollution:</b>							
Air Toxics	1	0	3	0	0	0	3
Dust, mineral	2	0	3	3	0	0	6
Dust, other	1	0	2	0	0	0	2
Gas Station	5	1	2	4	0	0	6
Incinerator	0	0	5	0	1	0	6
Mobile Source	0	0	2	0	0	0	2
Odors	27	5	20	3	1	5	29
Open Burning	20	2	12	3	1	12	28
Smoke/Soot	14	8	7	6	0	1	14
Visible Emissions	0	0	0	0	0	0	0
Water Stoves	9	6	1	13	0	1	15
<b>Dams:</b>							
Permitted/Unpermitted	0	0	0	0	0	0	0
<b>Hazardous Materials:</b>							
Handling/Disposal	19	9	2	0	0	8	10
Release/Spill	3	0	0	1	0	3	4
Underground/Tanks	0	0	2	1	0	0	3
Junk Cars	5	2	0	0	0	2	2
<b>Solid Waste – Illegal Disposal of:</b>							
C & D Debris	9	5	1	0	0	4	5
Municipal Refuse	4	1	0	0	2	1	3
Rubbish & Litter	13	4	1	1	1	8	11
Septage/Sludge	0	0	0	0	0	0	0
<b>Wastewater Management:</b>							
Public Buildings	0	0	1	0	0	0	1
Sewage	2	1	0	0	1	0	1
<b>Water Quality (WQ):</b>							
Lakes & Ponds	0	0	0	0	0	0	0
Standards Violations	0	0	0	0	0	0	0
Stream Alterations	1	1	0	0	0	0	0
Wetlands	3	0	0	0	0	2	2
<b>WQ Discharges:</b>							
Agricultural	3	0	0	0	1	2	3
Erosion	0	0	0	0	0	0	0
Logging	0	0	0	0	0	0	0
Permit Violations	1	1	0	0	0	0	0
Unpermitted	0	0	0	0	0	0	0
<b>Water Supply:</b>							
Standards Violations	0	0	0	0	0	0	0
<b>Other:</b>							
Various	12	3	2	2	2	4	10
<b>TOTALS</b>	<b>156</b>	<b>49</b>	<b>66</b>	<b>37</b>	<b>10</b>	<b>55</b>	<b>168</b>

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

<sup>2</sup>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).