

**2009 REPORT TO THE LEGISLATURE
REGARDING ACT 98 (1989)
-UNIFORM ENVIRONMENTAL ENFORCEMENT ACT-
Department of Environmental Conservation
Compliance & 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 twentieth 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 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's Compliance and Enforcement Division in order to maintain consistency.

III. IMPLEMENTATION OF THE ACT

A. Environmental Enforcement

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

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(s). CED 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. Guided by our MOU with the Natural Resources Board, we have a very collaborative and productive relationship sharing both investigative and legal resources in mixed Act 250/ANR cases. 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. We continue to work with the Office of the Attorney General (AG) and this year the AG accepted three cases for either civil or criminal prosecution. In addition, the CED Director and the Chief of the AG's Environmental Division meet monthly to discuss new case referrals and initiatives as prescribed in an MOU between ANR and the AG which is reviewed yearly. 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 the Environmental Protection Agency (EPA) on matters of federal and state interest, including both civil and criminal matters. We referred several cases to EPA for action this year.

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 efficient and does not necessitate the involvement of our enforcement attorney's limited resources. This allows the attorneys to focus on the more serious violations handled through the administrative process. For the calendar year 2009, 17 tickets were issued for a total of \$5,850 in fines. The schedule of fines imposed for these offenses, as set by the Judicial Bureau, runs from \$100 to \$500. During the 2009 legislative session ANR and the NRB were granted additional authority to issue tickets for other violations of environmental laws, rules and permits. Presently, the Agency is drafting rules to implement this new authority and intends to have this process in place in the Spring of 2010.

Finally, information about the CED 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 CED Division). In an effort to be as transparent as possible all Assurances of Discontinuances 1995 to present have been scanned in a format that makes them searchable. These will be added to our on-line resources so the public can see the outcomes in previous matters.

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 2009 are divided and maintained on two separate databases. One remains at the CED and another is located within the Department of Environmental Conservation (DEC). This separation is described in detail in Section V, Attachments. We are now working to integrate the two systems into a single complaint database.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Enforcement Division was funded in fiscal year 2009 as follows:

General Funds	\$ 0
Federal Funds	\$ 220,539
Special Funds	<u>\$1,118,202</u>
Total	\$1,338,741

The Enforcement Division's operating expenditures for fiscal year 2009:

Personal Services	\$1,222,564
Operating	<u>\$ 116,177</u>
Total	\$1,338,741

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 CED, 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, 2008 and ending November 30, 2009. 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 CED'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 CED 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 CED Investigation." They are noted on only this table because most complaint transfers are from DEC programs to CED.

VI. CONCLUSION

There were many changes this year in CED. The Director of the Enforcement section's position was eliminated at the beginning of the year and the CED Director took over his

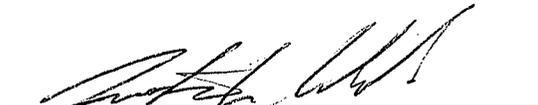
duties. Our two staff attorneys continue to have very full caseloads. Our administrative person continues to manage a challenging and heavy work load.

Our investigative staff was reduced after one EEO left state employment for a position as an investigator with EPA, and our Chief EEO and a senior EEO retired. One of these three positions was refilled this year, so that we now operate with a field force of six, one of whom is the Acting Chief. This is a significant change from our full force of eight EEOs. We are continuing to work for the replacement of at least one of these vacant EEO positions as the budget allows.

While there are variations from year to year, the statistics found in the attachments further demonstrate the success and stability of our enforcement programs. We have developed a cohesive working unit which continually strives for the highest levels of fairness, consistency, and overall excellence with the outcome being the protection of public health and Vermont's environment for us and future generations of Vermonters.

Respectfully Submitted,

By:


Jonathan L. Wood, Secretary
Agency of Natural Resources

Date: January 12, 2010

Table A
FORMAL COURT ACTIONS
 January 1, 2009 - December 31, 2009

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

REGULATORY PROGRAM	# AODs ISSUED	AOD PENALTIES ASSESSED	AOD PENALTIES COLLECTED by GED*	AOD PENALTIES COLLECTED by COLLECTIONS ATTORNEY*
Act 250	0	\$ 0	\$ 0	\$ 0
Air Pollution	7	14,575	13,575	0
Forests, Parks & Recreation	1	1,620	3,370	0
Hazardous Materials	6	20,000	24,600	0
Solid Waste	3	3,875	2,701	0
Water Quality	13	33,619	21,516	0
Water Supply	2	12,000	9,000	0
Wastewater Management	4	11,500	91,000	0
TOTAL	36	\$97,189	\$165,762	\$0

*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	1,978	7,578
Hazardous Materials	0	0	0
Solid Waste	1	2,250	2,450
Water Quality	4	13,400	1,125
Water Supply	0	0	0
Wastewater Management	2	13,300	0
TOTAL	8	\$30,928	\$11,153

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

Emergency Orders (EOs)

REGULATORY PROGRAM	# EOs ISSUED
Water Supply	1*
TOTAL	1

*EO filed; denied by Court; not issued

Administrative Orders (AOs)

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

REGULATORY PROGRAM	# AOs SERVED by GED	# CASES RESOLVED VIA AO (AO may have been issued in previous years)	FINAL AO PENALTIES	AO PENALTIES COLLECTED by GED*	AO DELINQUENT PENALTIES COLLECTED by COLLECTIONS ATTORNEY*
Air Pollution	0	0	\$ 0	\$ 0	\$ 0
Forests, Parks & Recreation	2	0	0	0	0
Hazardous Materials	1	0	0	0	0
Solid Waste	2	0	0	0	0
Water Quality	1	0	0	215	0
Water Supply	1	1	2,000	2,000	0
Wastewater Management	0	0	0	0	1,375
TOTAL	7	1	\$2,000	\$2,215	\$1,375

* Includes penalties collected from previous years' AOs

Collection of Delinquent AOD and AO Penalties

Delinquent penalties collected on the Agency's behalf are listed separately and included in the tables above. Collection of delinquent penalties is 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.

INFORMAL CASE RESOLUTIONS

January 1, 2009 – December 31, 2009

REGULATORY PROGRAM	#
Air Pollution	3
Hazardous Materials	11
Solid Waste	2
Water Quality	7
Water Supply	6
Wastewater	3
TOTAL	32

There are a number of reasons cases have been informally resolved. For example, in some cases our attorney was able to obtain compliance without the need for formal, legal action. Or, further discussions may reveal that an enforcement action was no longer needed or appropriate. Or, one case may be consolidated with another, and will be closed accordingly.

Table B

SUMMARY OF CITIZEN COMPLAINTS RECEIVED BY CED

December 1, 2008 - November 30, 2009

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 Action Taken ¹	CLOSED: Other ²		
Act 250:								
Permit Violations	16	5	4	1	2	6	13	
Unpermitted Activity	24	8	7	0	1	13	21	
Air Pollution:								
Air Toxics	4	2	1	1	1	1	4	
Burn Barrel	23	9	3	2	2	9	16	
Direct/Indirect Sources	16	1	4	3	3	5	15	
Odors	3	0	1	1	1	0	3	
Open Burning	79	23	14	23	3	24	64	
Dams:								
Permitted/Unpermitted	4	2	1	0	0	0	1	
Hazardous Materials:								
Handling/Disposal	59	15	25	6	6	23	60	
Release/Spill	18	3	4	3	2	13	22	
Underground Tanks	6	2	2	0	0	4	6	
Solid Waste - Illegal Disposal of:								
Construct./Demo. Debris	28	7	9	8	2	6	25	
Municipal Refuse	60	17	14	9	3	28	54	
Rubbish & Litter	43	18	8	6	0	18	32	
Salvage Yard	20	19	0	0	0	1	1	
Septage/Sludge	7	1	1	2	3	2	8	
Wastewater Management:								
Campgrounds	0	0	0	0	0	0	0	
Failed Septic	38	17	14	1	4	8	27	
Mobile Home Parks	0	0	0	0	0	0	0	
Public Buildings	20	9	7	2	1	4	14	
Subdivisions	5	2	2	0	0	1	3	
Water Quality:								
Aquatic Nuisance	0	0	0	0	0	0	0	
Lakes & Ponds	15	2	4	2	1	9	16	
Standards Violations	9	1	3	1	0	3	7	
Stormwater Violations	20	7	6	4	3	3	16	
Stream Alterations	17	3	8	2	0	8	18	
Wetlands	63	23	20	7	6	14	47	
Water Quality Discharges:								
Agricultural	8	0	2	0	0	7	9	
Erosion	20	7	9	1	0	5	15	
Logging	14	4	2	5	2	2	11	
Permit Violations	4	1	1	0	1	2	4	
Undergnd Inject Control	1	1	0	1	0	0	1	
Unpermitted	165	43	60	26	11	48	145	
Water Supply:								
Bottled Water	0	0	0	0	0	0	0	
Public Water System	0	0	0	0	0	0	0	
Standards Violations	1	0	1	0	0	1	2	
Well Drillers	0	0	0	0	0	0	0	
Dept. of Forests, Parks & Recreation								
Heavy Cut	3	1	0	0	1	1	2	
TOTALS	813	253	237	117	59	269	682	

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 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, 2008 – November 30, 2009

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) ¹	CLOSED (Other Means) ²	TRANSFERRED (to CED for Investigation)	ALL CLOSED
Act 250:							
Unpermitted Activity	1	0	0	0	0	2	2
Permit Violations	0	0	0	0	0	2	2
Air Pollution:							
Air Toxics	1	1	1	0	1	2	4
Dust, mineral	1	0	0	2	0	0	2
Dust, other	1	0	0	0	1	0	1
Gas Station	4	0	3	1	0	1	5
Incinerator	2	1	2	0	0	1	3
Mobile Source	0	0	1	0	0	0	1
Odors	37	7	21	21	2	3	47
Open Burning	23	3	9	0	7	17	33
Smoke/Soot	11	3	17	3	1	0	21
Visible Emissions	0	0	0	0	0	1	1
Water Stoves	14	5	15	16	1	1	33
Dams:							
Permitted/Unpermitted	0	0	0	0	0	0	0
Hazardous Materials:							
Handling/Disposal	5	0	0	0	0	26	26
Release/Spill	4	0	0	0	0	13	13
Underground/Tanks	1	1	0	0	0	2	2
Junk Cars	3	0	1	0	0	11	12
Solid Waste – Illegal Disposal of:							
C & D Debris	5	0	1	0	0	10	11
Municipal Refuse	10	6	2	3	1	3	9
Rubbish & Litter	11	2	4	1	0	22	27
Septage/Sludge	0	0	0	0	0	1	1
Wastewater Management:							
Public Buildings	0	0	0	0	0	0	0
Sewage	2	1	0	0	0	8	8
Water Quality (WQ):							
Lakes & Ponds	0	0	0	0	0	1	1
Standards Violations	2	0	0	0	0	4	4
Stream Alterations	0	0	0	0	0	3	3
Wetlands	4	0	1	0	0	8	9
WQ Discharges:							
Agricultural	1	0	0	0	0	1	1
Erosion	1	0	0	0	0	4	4
Logging	0	0	0	0	0	0	0
Permit Violations	0	0	0	0	0	1	1
Unpermitted	2	0	0	0	0	6	6
Water Supply:							
Standards Violations	0	0	0	0	0	0	0
Other:							
Various	3	0	2	0	0	6	8
TOTALS	149	30	80	47	14	160	301

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

²Reflects 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).