

**2010 REPORT TO THE LEGISLATURE
REGARDING ACT 98 (1989)
UNIFORM ENVIRONMENTAL ENFORCEMENT ACT
Agency of Natural Resources
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 (Secretary) and the Attorney General's Office (AGO) to submit an annual report regarding the implementation of Act 98, including statistics concerning compliance and enforcement. This is our twenty first report to the Legislature.

II. BACKGROUND

Act 98 was passed in an effort to improve environmental enforcement in Vermont. The Act has four primary purposes: enhancement of administrative enforcement by the Secretary and the Natural Resources Board (NRB), previously known as the Environmental Board; enhancement of civil enforcement in Superior Court; the creation of an Environmental Court* (previously known as the Environmental Law Division) 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 Secretary and the NRB. 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 NRB 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 under the jurisdiction of the Secretary and the NRB. 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.

*As of July 1, 2010 in a restructuring of the state judicial system, the Environmental Court was redesignated as the Environmental Division of the Superior Court. This report will refer to this Division as the "Environmental Court."

The consolidation of enforcement authorities described above further affects Act 250 enforcement actions as follows. 10 V.S.A. Section 8004 specifies that the Secretary may, on his or her own initiative or upon request of the NRB, 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 NRB has been delegated the authority to initiate Administrative Orders for Act 250 enforcement actions. In order to maintain consistency this authority is to be exercised in consultation with the Compliance & Enforcement Division (CED) of the Department of Environmental Conservation (DEC). CED is organizationally answerable to the CED Director and the DEC Commissioner.

III. IMPLEMENTATION OF THE ACT

Environmental Enforcement

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.

In most instances formal enforcement actions include an initial attempt to resolve the violation through settlement by means of an Assurance of Discontinuance (AOD). 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, an Administrative Order (AO) is prepared and served. The filing of an AO can result in a trial before the Environmental Court if a hearing is requested. Most AOs and AODs contain provisions for payment of a civil penalty and corrective actions when appropriate as well as a requirement of future compliance. Generally, enforcement 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.

Our investigative staff (Environmental Enforcement Officers or EEOs) continues to achieve voluntary compliance in the field and/or produce thorough and accurate investigation reports of environmental violations, some of which are referred for prosecution. Our legal staff focuses on the efficient movement of referred cases and the achievement of uniform enforcement outcomes. Guided by our MOU with the NRB, we have a very collaborative and productive relationship sharing both investigative and legal resources in mixed NRB/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 Attorney General's Office (AGO) and this year the AGO accepted seven cases referred by DEC for either civil or criminal prosecution. In addition, the CED Director and the Chief of the AGO Environmental Division meet routinely to discuss new case referrals and initiatives as prescribed in an MOU between ANR and the AGO. The MOU is also reviewed yearly to ensure its effectiveness. 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 our efforts with the Environmental Protection Agency (EPA) on matters of federal and state interest, including both civil and criminal matters. Two potential criminal matters were sent to EPA's Criminal Investigation Division this year. We also work with the U.S. Attorney's office on both civil and criminal matters and one criminal matter was referred to that office this year.

EEOs currently 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 on the same form used for traffic offenses as well as by game wardens and police officers for fish & wildlife violations. 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 same level of involvement of our enforcement attorney's limited resources as a non-ticket prosecution. This allows the attorneys to focus on the more serious violations handled through the administrative process. The schedule of fines imposed for these offenses, as set by the Judicial Bureau, runs from \$100 to \$500. For the calendar year 2010, 19 tickets were issued for a total of \$5,450 in fines.

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. The CED Director has drafted rules to implement this new authority and it is now moving through the rule making process with the expectation that this expanded authority will become effective in the spring of 2011. As presently drafted the rule allows tickets to be issued in all media areas in which ANR has jurisdiction to take enforcement action. In total over 500 violations are listed for possible issuance of a ticket, with penalties ranging up to a maximum of \$3,000.

Finally, information about CED is available to the public via our web page. Staff names and contact information, how to file a complaint, internship information, legislative reports back to 1995, press releases, and a list of many of our SEP projects are posted on this site. Over the past several years CED has endeavored to greatly increase the transparency of its operations. This has been accomplished by posting all Final Draft Assurances of Discontinuance*, Assurances of Discontinuances, Administrative Orders, and Emergency Orders from 1996 to the present on our website. Further, SEP projects have been posted as well. All these documents have been scanned in a format that makes them word searchable. Our website can be accessed from the State of Vermont homepage or at: <http://www.anr.state.vt.us/dec/co/enf/>

*Final Draft AODs are those that have been signed by the parties and filed with the Environmental Court, but have not yet been entered by the Court as a Judicial Order.

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. Originally, citizen complaints were logged into a single database. However, due to a change made in 2002, citizen complaints are divided and maintained on two separate databases: one remains in CED and another is located in DEC. This separation is described in detail in Section V, Attachments. CED continues to work toward re-integrating the two systems into a single complaint database. To make it easier for citizens to file complaints electronically, a new on-line complaint form has been posted on our website. Also, a new link appears on the DEC and ANR webpages to help make filing complaints as simple as possible.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Compliance & Enforcement Division was funded in fiscal year 2010 as follows:

General Funds	\$ 11,005
Federal Funds	85,330
Special Funds	<u>1,084,914</u>
Total	\$ 1,181,249

The Compliance & Enforcement Division’s operating expenditures for fiscal year 2010:

Personal Services	\$1,031,010
Operating	<u>150,239</u>
Total	\$ 1,181,249

V. ATTACHMENTS

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the attached tables are provided. Section A provides required information concerning Enforcement Actions and the involved programs. Section B summarizes Citizen Complaints received by CED, and Section C summarizes citizen complaints received by the various DEC programs.

Delinquent penalties collected on the Agency’s behalf are listed in Section A separately as either AOD or AO Penalties Collected by Collections Attorney. 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.

With the advent of DEC’s own complaint database, accounting for citizen complaints continues to require the creation of two tables. Those complaints investigated by EEOs are logged onto CED’s database and are reported in Section B. Those complaints handled by DEC programs are reported in Section 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 in both sections. To account for this duplication, those transferred complaints that are counted on both sections 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.

Sections B & C reflect that in 2010, CED revised our complaint program codes. The program codes now directly correspond to the DEC organizational chart and reflect the section within each division with jurisdiction over the subject of a complaint. We also revised our closure codes and in Section B, to more specifically reflect ways some complaints are closed, we have added two columns to the Summary of Citizen Complaints Received by CED: Closed - NOAV Issued, and Closed - Ticket Issued. Footnotes on Section B further explain these changes.

Sections B and C also reflect the present status of complaints and the types of closure for all complaints closed this year. As a result of technological improvements as well as better methods of tracking data, we no longer require a one month off set from the calendar year for the report time period. Therefore, Sections B and C now reflect complaints for the 2010 calendar year, as does Section A, Formal Court Actions.

VI. CONCLUSION

2010 was another year in which we, like many other areas of state government, were challenged to do more work with fewer staff than was needed. As discussed below a replacement EEO has been hired which will go a long way to correcting the present imbalance of work to workers. CED's two staff attorneys continue to have very full caseloads with a number of trials taking place this year. Our sole administrative staff person is managing a heavy work load particularly with the increase in the number of complaints received this year.

Our investigative staff currently consists of a Chief EEO and five EEOs in separate geographical districts. This staffing level continues to reflect three staff reductions that were experienced several years ago. As a consequence of budget reductions it has taken several years to rebuild the EEO force close to its long term historical level of seven EEOs plus a Chief EEO. In response to the reduction in the size of the EEO force and increased work level demands, the Chief EEO now covers a district in addition to handling his management duties. This is a significant operational change as in the past the Chief EEO did not cover a district. CED has just completed the hiring process for a sixth EEO who will begin training in early January 2011, and working independently in his district in the spring of 2011.

While there are variations from year to year, the statistics found in the attachments further demonstrate the success and stability of CED. Our goal is the protection of public health and Vermont's environment for present and future generations of Vermonters. We have developed a cohesive, high functioning team which continually strives for the highest levels of fairness, consistency, and overall excellence in order to achieve this goal.

Respectfully Submitted,

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

Date: _____

Section A

**Formal Court Actions
January 1, 2010 – December 31, 2010**

Assurances of Discontinuance (AODs) & Supplemental Environmental Projects (SEPs)

REGULATORY PROGRAMS	# AODs issued	\$ AOD Penalties Assessed	\$ AOD Penalties Collected by CED*	\$ AOD Penalties Collected by Collections Attorney**	# SEPs	\$ Value of SEPs	\$ SEPs Funding Confirmed**
<i>AIR QUALITY DIVISION</i>	3	\$8,200	\$13,000	\$0	2	\$10,500	\$6,000
<i>FOREST, PARKS, & RECREATION DEPARTMENT</i>	1	\$0	\$2,000	\$0	0	\$0	\$1,000
<i>FACILITIES ENGINEERING DIVISION</i>	0	\$0	\$0	\$0	0	\$0	\$0
<i>NATURAL RESOURCES BOARD</i>	0	\$0	\$0	\$0	0	\$0	\$0
<i>WASTE MANAGEMENT DIVISION</i>	12	\$85,840	\$70,603	\$0	2	\$10,000	\$10,000
<i>WATER QUALITY DIVISION</i>	5	\$29,850	\$26,875	\$0	0	\$5,300	\$7,025
<i>WATER SUPPLY DIVISION</i>	0	\$0	\$8,000	\$0	0	\$0	\$0
<i>WASTEWATER MANAGEMENT DIVISION</i>	5	\$21,125	\$26,925	\$0	2	\$31,000	\$47,557
TOTALS	26	\$145,015	\$147,403	\$0	6	\$56,800	\$71,582

*Includes penalties collected from previous years' judgments and SEPs which converted to civil penalties.

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

Administrative Orders (AOs), Emergency Orders (EOs), & Informally Closed Cases

REGULATORY PROGRAMS	# AOs served by CED	# AOs resolved	\$ AO Final Penalty Amount	\$ AO penalties Collected by CED*	\$ AO Penalties Collected by Collections Attorney**	# EOs issued	Closed - Other**
<i>AIR QUALITY DIVISION</i>	1	0	\$0	\$381	\$0	0	3
<i>FOREST, PARKS & RECREATION DEPARTMENT</i>	0	2	\$22,463	\$0	\$0	0	0
<i>FACILITIES ENGINEERING DIVISION</i>	0	0	\$0	\$0	\$0	0	0
<i>NATURAL RESOURCES BOARD</i>	0	0	\$0	\$0	\$0	0	0
<i>WASTE MANAGEMENT DIVISION</i>	1	0	\$0	\$0	\$0	0	6
<i>WATER QUALITY DIVISION</i>	3	1	\$15,467	\$500	\$0	1	3
<i>WATER SUPPLY DIVISION</i>	0	1	\$3,500	\$0	\$0	0	1
<i>WASTEWATER MANAGEMENT DIVISION</i>	1	0	\$0	\$0	\$625	0	1
TOTALS	6	4	\$41,430	\$881	\$625	1	14

*Includes penalties collected from previous years' AOs.

**e.g. 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.

Section B Summary of Citizen Complaints Received by CED January 1, 2010 – December 31, 2010

REGULATORY PROGRAMS	Total Received This Year	Total Pending of Those Received This Year	Closed - No Violation	Closed - NOAV Issued	Closed - Ticket Issued	Closed - Voluntarily Corrected	Closed - Formal Enforcement Action Taken	Closed Informally*	Total Closed
AIR QUALITY DIVISION									
Engineering Services	1	1	0	0	0	0	0	0	0
Field Services	101	24	41	4	14	19	10	8	96
Technical Services	2	2	0	0	0	0	0	0	0
Mobile Source Control	0	0	0	0	0	0	0	0	0
Air Planning	0	0	0	0	0	0	0	0	0
COMPLIANCE & ENFORCEMENT DIV.									
Unpermitted Discharges (1259)	116	22	73	1	1	15	8	12	110
Unpermitted Discharges (AMPs)	34	9	12	3	0	6	5	5	31
Unpermitted Discharges (Erosion)	13	5	6	0	0	0	0	3	9
Unpermitted Discharges (AAPs)	36	5	16	1	0	9	1	7	34
Salvage Yards	33	5	26	0	0	0	2	3	31
FORESTS, PARKS & RECREATION									
Forest Resources	6	2	3	0	0	0	1	1	5
FACILITIES ENGINEERING DIVISION									
Agency Facilities	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0
Financial Management	0	0	0	0	0	0	0	0	0
Design	0	0	0	0	0	0	0	0	0
Dam Safety	1	0	2	0	0	0	0	0	2
NATURAL RESOURCES BOARD									
Unpermitted Activity	0	0	1	0	0	0	0	1	2
Permit Violations	25	6	10	0	0	1	3	6	20
WASTE MANAGEMENT DIVISION									
Hazardous Materials - Releases	49	10	20	1	0	6	3	13	43
Technical Services	0	0	0	0	0	0	0	0	0
Resource Conservation Recovery Act (RCRA)	42	14	25	5	2	3	2	4	41
Underground Storage Tanks (UST)	6	1	1	0	0	0	5	1	7
Sites Management	5	1	1	0	0	0	2	1	4
Solid Waste Mangement Practices	125	32	54	6	7	25	5	21	118
Certification & Technical Assistance	1	0	0	0	0	1	0	0	1
Administration	0	0	0	0	0	0	0	0	0
WATER QUALITY DIVISION									
Wetlands	76	15	48	3	0	9	8	6	74
Stormwater	17	6	5	2	0	2	2	2	13
Lakes & Ponds	22	7	11	0	0	3	0	3	17
River Corridors	27	4	18	0	0	1	3	3	25
Monitoring	0	0	0	0	0	0	0	0	0
WATER SUPPLY DIVISION									
Engineering	1	1	0	0	0	0	0	0	0
Operations & Compliance	1	0	1	1	0	0	0	0	2
Water Resources	0	0	0	0	0	0	0	0	0
Permits & Licensing	0	0	0	0	0	0	0	0	0
WASTEWATER MANAGEMENT DIV.									
Technical Services	125	43	70	6	0	12	9	4	101
Administration & Compliance	1	0	1	0	0	0	0	0	1
Residuals Management	2	0	1	0	1	0	0	0	2
Direct Discharges	3	1	1	0	0	0	2	0	3
Indirect Discharges	1	0	0	1	0	0	1	0	2
TOTALS	872	216	447	34	25	112	72	104	794

*Reflects complaints closed through other means, e.g. lack of evidence, lack of cooperation from complainant, referred to the appropriate regulatory program or NRB, unable to respond, violation found/enforcement action not pursued, or transferred to DEC program.

Section C Summary of Citizen Complaints Received by DEC January 1, 2010 – December 31, 2010

REGULATORY PROGRAMS	Total Received This Year	Total Pending of Those Received This Year	Closed - No Violation	Closed - Voluntarily Corrected	Closed - Transferred to CED	Closed - Other*	Total Closed
AIR QUALITY DIVISION							
Engineering Services	0	0	0	0	0	0	0
Field Services	110	70	11	9	16	7	43
Technical Services	0	0	0	0	0	0	0
Mobile Source Control	0	0	0	0	0	0	0
Air Planning	6	5	0	1	0	0	1
COMPLIANCE & ENFORCEMENT DIV.							
Unpermitted Discharges (1259)	0	0	0	0	0	0	0
Unpermitted Discharges (AMPs)	0	0	0	0	0	0	0
Unpermitted Discharges (Erosion)	0	0	0	0	0	0	0
Unpermitted Discharges (AAPs)	1	0	0	0	1	0	1
Salvage Yards	1	1	0	0	0	0	0
FORESTS, PARKS & RECREATION							
Forest Resources	0	0	0	0	0	0	0
FACILITIES ENGINEERING DIVISION							
Agency Facilities	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0
Financial Management	0	0	0	0	0	0	0
Design	0	0	0	0	0	0	0
Dam Safety	0	0	0	0	0	0	0
NATURAL RESOURCES BOARD							
Unpermitted Activity	0	0	0	0	0	0	0
Permit Violations	0	0	0	0	0	0	0
WASTE MANAGEMENT DIVISION							
Hazardous Materials - Releases	1	0	1	0	0	0	1
Technical Services	0	0	0	0	0	0	0
Resource Conservation Recovery Act (RCRA)	7	2	0	1	4	0	5
Underground Storage Tanks (UST)	0	0	0	0	0	0	0
Sites Management	0	0	0	0	0	0	0
Solid Waste Management Practices	12	6	0	0	6	0	6
Certification & Technical Assistance	0	0	0	0	0	0	0
Administration	0	0	0	0	0	0	0
WATER QUALITY DIVISION							
Wetlands	1	0	0	0	1	0	1
Stormwater	0	0	0	0	0	0	0
Lakes & Ponds	0	0	0	0	0	0	0
River Corridors	0	0	0	0	0	0	0
Monitoring	0	0	0	0	0	0	0
WATER SUPPLY DIVISION							
Engineering	0	0	0	0	0	0	0
Operations & Compliance	0	0	0	0	0	0	0
Water Resources	0	0	0	0	0	0	0
Permits & Licensing	0	0	0	0	0	0	0
WASTEWATER MANAGEMENT DIV.							
Technical Services	2	0	0	0	2	0	2
Administration & Compliance	0	0	0	0	0	0	0
Residuals Management	0	0	0	0	0	0	0
Direct Discharges	0	0	0	0	0	0	0
Indirect Discharges	0	0	0	0	0	0	0
TOTALS	140	83	12	11	30	7	60

*Reflects 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 NRB, violation found but decision made not to pursue enforcement action).