

**JANUARY, 2013 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. § 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.

**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), enhancement of civil enforcement in Superior Court; the creation of an 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 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 for 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 Division of the Superior Court for hearing. In addition, the remedies available in Civil Division of the Superior Court for violations of the statutes specified in Act 98 were enhanced and standardized.

The consolidation of enforcement authorities described above further affects Act 250 enforcement actions as follows. 10 V.S.A. § 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**

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 Division.

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 used 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 Division 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 Division, 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 resolved several cases which had been referred by DEC for either civil or criminal prosecution. In addition, the CED Director and the Chief of the AGO Environmental Division meet monthly 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 continued 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. 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.

Beginning in 2012, EEOs had the authority to issue Vermont Civil Violation Complaints 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 schedule of fines imposed for these offenses, as set by the Judicial Bureau, runs from \$100 to \$500.

In November, 2011, new rules to implement expanded civil citation authority went into effect. The rules allow civil citations to now be issued in all media areas in which ANR has jurisdiction to bring an enforcement action. In total over 500 violations are listed for possible issuance of a civil citation, with penalties ranging up to a maximum of \$3,000. In 2012 the legislature changed the venue where these citations would be heard from the Judicial Bureau to the Environmental Division of the Superior Court. We have worked with the Court to put a process in place for adjudicating these citations and are working with DEC programs to use this tool as appropriate in 2013.

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, press releases, and a list of our SEP projects are posted on this site. Over the past several years under Director Gary Kessler, CED has endeavored to greatly increase the transparency of its operations. This has been accomplished by posting all Final Draft Assurances of Discontinuance<sup>1</sup>, Assurances of Discontinuances, Administrative Orders, and Emergency Orders from 1996 to the present. Further, detailed SEP project descriptions 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/>. In conformance with legislation passed in 2012 CED is posting settlements and orders for public comment prior to sending them to the Environmental Division. CED is continuing to look for additional opportunities to improve transparency and to communicate with the citizens of Vermont. CED is exploring the use of social media as a tool to inform citizens of pending environmental enforcement actions. CED continues to make use of media releases in enforcement actions to inform the public and to maintain a level of general deterrence amongst the regulated community.

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<sup>1</sup>. 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 must report on the status of citizen complaints concerning environmental violations in the state. In 2012, a new database which had been in development for over a year was rolled out to DEC staff. This major new database is in use and is working well. Additional features are being added to the database to increase usage and improve functionality.

## **IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM**

The Compliance & Enforcement Division was funded in fiscal year 2012/13 as follows:

General Funds	\$ 0
Federal Funds	\$ 216,489
Special Funds	<u>\$1,264,486</u>
<b>Total</b>	<b>\$1,480,975</b>

The Compliance & Enforcement Division's operating expenditures for fiscal year 2012/13:

Personal Services	\$1,357,282
Operating	\$ 23,693
<b>Total</b>	<b>\$1,480,975</b>

## **V. ATTACHMENTS**

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the following tables are attached to this report:

- Section A – summarizing Assurances of Discontinuances and Supplanted Environmental Projects agreed to in 2012.
- Section B – reflecting formal actions as well as informal resolutions from 2012.
- Section C – summarizing citizen complaints received by DEC, as well as the present status of complaints and the types of closure for all complaints received and/or closed in 2012.

## **VI. CONCLUSION**

2012 was an eventful year for CED. We worked to determine the extent of the files that were lost as a result of our offices being flooded from Irene. We relocated our offices from temporary space in Winooski to temporary space in Waitsfield. We had staff turnover in a number of sections. We have successfully rehired nearly all staff that left state service during 2012.

Our investigative staff consists of a Chief EEO with six EEOs in separate geographical districts. This staffing level continues to reflect the staff reductions that were experienced several years

ago. 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's two staff attorneys continue to have very full caseloads with several trials taking place this year

While 2012 was also another challenging year the statistics found in the attachment demonstrate the success of our efforts. 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: Gary Kessler  
Gary Kessler, CED Division Director  
On behalf of Deb Markowitz,  
Secretary of the Agency of Natural Resources

Date: January 28<sup>th</sup>, 2013

*(Please see Attachments beginning on the next page)*

The Compliance and Enforcement Division collected a total of \$198,375.01 in penalty payments between January 1, 2012, and December 31, 2012. Of this total, \$29,617.50 in payments resulted from Formal Court Actions from previous years. The tables below reflect SEP and Penalty data for Formal Court Actions from 2012 only, totaling collections of \$168,757.51 in penalty payments, and \$15,000.00 in SEP funds. Some penalty payments assessed in 2012 are not due until 2013. We continue to aggressively pursue violators who fail to make payment as ordered by the Court.

**Section A**  
**Formal Court Actions**  
**January 1, 2012 – December 31, 2012**  
**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	\$20,750.00	\$16,550.00	\$0	0	\$0	\$0
<i>Department of Forests, Parks and Recreation</i>	2	\$28,397.51	\$28,397.51	\$0	0	\$0	\$0
<i>Drinking Water and Groundwater Protection Division</i>	1	\$0	\$0	\$0	0	\$0	\$0
<i>Waste Management Division</i>	6	\$79,793.60	\$50,560.00	\$0	0	\$0	\$0
<i>Watershed Management Division</i>	13	\$75,950.00	\$73,250.00	\$0	2	\$15,000.00	\$15,000.00
<b>TOTALS</b>	<b>25</b>	<b>\$204,891.11</b>	<b>\$168,757.51</b>	<b>\$0</b>	<b>2</b>	<b>\$15,000.00</b>	<b>\$15,000.00</b>

## Section B

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

Regulatory Programs	# AOs Served by CED	# AO s 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>	0	0	\$0	\$0	\$0	0	0
<i>Compliance &amp; Enforcement Division</i>	1	0	\$0	\$0	\$0	0	2
<i>Drinking Water and Groundwater Protection Division</i>	0	1	\$18,000.00	\$0	\$0	0	1
<i>Forest, Parks, &amp; Recreation Department</i>	0	0	\$0	\$0	\$0	0	0
<i>Facilities Engineering Division</i>	0	0	\$0	\$0	\$0	0	0
<i>Natural Resource Board</i>	0	0	\$0	\$0	\$0	0	0
<i>Waste Management Division</i>	6	0	\$9,000.00	\$0	\$0	0	1
<i>Watershed Management Division</i>	1	1	\$12,250.00	\$0	\$0	0	2
<b>TOTALS</b>	<b>8</b>	<b>2</b>	<b>\$39,250.00</b>	<b>\$0</b>	<b>\$0</b>	<b>0</b>	<b>6</b>
*i.e. our legal staff 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 C**  
**Summary of Complaints Received and/or Resolved by CED**  
**January 1, 2012 – December 31, 2012**

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
<b><i>Air Quality Division</i></b>									
Engineering Services	4	0	0	1	0	1	1	2	5
Field Services	161	9	54	10	7	33	5	25	134
Technical Services	7	0	2	1	0	0	0	2	5
<b><i>Compliance &amp; Enforcement Division</i></b>									
Investigations	2	0	2	0	0	0	0	0	2
Unpermitted Discharges (1259)	188	7	115	3	2	25	1	28	174
Unpermitted Discharges (AMPs)	19	1	9	1	0	4	2	1	17
Unpermitted Discharges (Erosion)	24	0	15	0	0	1	0	2	18
Unpermitted Discharges (AAPs)	22	0	4	0	0	2	2	7	15
Salvage Yards	36	1	2	0	0	1	2	7	12
<b><i>Forests, Parks, &amp; Recreation</i></b>									
Forest Resources	20	0	8	0	0	1	6	4	19
<b><i>Drinking Water and Groundwater Protection</i></b>									
Technical Services	155	5	83	10	0	20	5	15	133
Engineering and Financial Services	3	0	0	0	0	2	0	0	2
Permit and Licensing	2	0	0	0	0	4	0	0	4

<i>Indirect Discharge Permits</i>	10	1	2	0	0	0	4	0	6
<b><i>Facilities Engineering Division</i></b>									
<i>Dam Safety</i>	2	0	1	0	0	0	0	0	1
<b><i>Natural Resources Board</i></b>									
<i>Natural Resources Board</i>	4	2	0	0	0	0	0	2	2
<i>A250 Districts</i>	38	3	5	0	0	0	1	21	27
<b><i>Waste Management Division</i></b>									
<i>Waste Management Division</i>	2	0	0	0	0	0	0	2	2
<i>Hazardous Materials - Releases</i>	98	0	36	0	0	14	2	15	67
<i>Resource Conservation Recovery Act (RCRA)</i>	20	1	7	0	0	2	4	7	20
<i>Underground Storage Tanks (UST)</i>	17	0	5	0	0	0	6	2	13
<i>Sites Management</i>	1	0	0	0	0	0	0	1	1
<i>Solid Waste Management Practices</i>	178	10	51	8	2	27	6	22	116
<i>Certification &amp; Technical Assistance</i>	5	0	0	0	0	0	0	0	0
<b><i>Watershed Management Division</i></b>									
<i>Lakes &amp; Ponds</i>	35	2	18	2	0	3	0	5	28
<i>Stormwater</i>	25	1	16	0	0	0	2	5	23
<i>River Corridor Management</i>	58	6	40	4	0	3	0	17	64
<i>Wetlands</i>	103	7	45	7	0	11	3	22	88
<i>Administration &amp; Compliance</i>	1	0	0	0	0	0	0	0	0
<i>Residuals</i>	3	0	2	0	0	1	1	0	4

<i>Management</i>									
<i>Discharge Permits</i>	20	1	3	0	0	2	1	1	7
<b>TOTALS</b>	<b>1263</b>	<b>57</b>	<b>525</b>	<b>47</b>	<b>11</b>	<b>157</b>	<b>54</b>	<b>215</b>	<b>1009</b>

\*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.