

1995

**REPORT TO THE LEGISLATURE**

**REGARDING ACT 98 (1989)**

**-UNIFORM ENVIRONMENTAL ENFORCEMENT ACT-**

**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 10 V.S.A. Chapter 201, including statistics concerning compliance and enforcement. This is the sixth report to the Legislature and covers the year 1995. The Attorney General will be submitting a separate report regarding his activities in reviewing the Agency's actions and providing legal support for certain administrative orders.

**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; enhancement of civil enforcement in Superior Court; the creation of an Environmental Law Division (March 15, 1995 changed name to 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 Environmental Board. While there are some exceptions, due to the requirements for federally delegated environmental programs, the regulated community and the public can now look to one uniform process for resolving compliance problems with environmental laws.

Administrative enforcement was enhanced by clarifying the ability of the Secretary and the Board to enter into Assurances of Discontinuance (administrative settlements) and creating the authority for the Secretary to issue Administrative Orders to resolve violations of the majority of the statutes implemented by the Department of Environmental Conservation (DEC) and Act 250. These administrative orders may contain penalties and may be appealed to the Environmental Court. 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 included Act 250. 10 V.S.A. Section 8004 specifies that the Secretary may, on his or her own initiative or through a request by the Environmental Board, initiate proceedings for the enforcement of Act 250 (10 V.S.A. Chapter 151).

The procedures for this cooperative enforcement of Act 250 are set out in a Memorandum of Understanding.

### **III. IMPLEMENTATION OF ACT**

#### **A. DEC ENFORCEMENT DIVISION**

The Division was formed in 1989 and was authorized seven field Environmental Enforcement Officers (EEOs), a Chief EEO, an administrative assistant, a secretary, two attorneys, and a director. Due to budget constraints, there has been only a single attorney until August 1994. Additionally, an attorney is on loan from Act 250 and is used solely for Act 250 enforcement.

The General Assembly authorized in 1994 an additional four positions: two more attorneys for enforcement, a paralegal technician, and a second secretary. Funding was provided to fill these positions in the final quarter of FY1995. Due to budget constraints, the Enforcement Division took advantage of vacancy savings by eliminating one attorney and the secretary positions.

The Department uses a multi step process to encourage compliance with the state's laws and regulations. When a violation occurs, the programs in the Department generally issue a Notice of Alleged Violation (NOAV) to the violator. The NOAVs serve to provide notice of a violation and to provide corrective action to bring the violator back into compliance. When voluntary compliance is not forthcoming, a formal enforcement action may be initiated. An exception to this process occurs when a violation is so egregious or cannot be corrected; then, enforcement may be initiated immediately.

Although the legal staff has been augmented substantially during this fiscal year, it is unlikely that the Department will undertake all requested formal enforcement actions. Generally, enforcement actions will be prioritized in the following order: impact or potential impact on public health, impact or potential impact on the environment, and finally, program integrity (i.e., compliance with laws and regulations).

In 1995 the Division instituted a case tracking system and a penalty tracking system.

## **B. CITIZEN COMPLAINTS**

10 V.S.A. Section 8017 specifies that the ANR shall report on the status of citizen complaints about environmental problems in the state. The DEC instituted a complaint logging and closure reporting system covering all its programs and Act 250 on May 6, 1991. This is the first time a system covering all the programs has been attempted. It involves referring calls to the correct program, receiving standard information on each complaint, uniquely numbering each complaint, requiring the person dealing with the complaint to identify the date and type of closure made on the complaint. The complaint receipt and closure information is computerized. The following tables are based on the period January 1, 1995 to December 31, 1995. Table I summarizes the complaints received by program areas and the closure status of these complaints. Table II summarizes the types of closure for the closed complaints.

**TABLE I**

**SUMMARY OF CITIZEN COMPLAINTS**

**January 1, 1995 to December 31, 1995**

<b>PROGRAM</b>	<b># RECEIVED</b>	<b># CLOSED</b>	<b># PENDING</b>
Act 250:			
Unpermitted Activity	42	21	21
Permit Violations	19	9	10
Wastewater Mgmt:			
Subdivisions	9	6	3
Public Building	18	5	13
Mobile Home Parks	3	1	2
Campgrounds	3	1	2
Stream Alterations	13	6	7
Discharges:			
Agricultural	15	7	8
Erosion	10	4	6
Logging	23	13	10
Unpermitted	87	42	45
Permit Violations	0	0	0
Solid Waste-Illegal Disposal of:			
Septage/Sludge	31	9	22
Municipal Refuse	18	8	10
Demolition Debris	38	17	21
Rubbish & Litter	86	36	50
Water Quality:			
Standards Violations	12	5	7
Well Drillers	0	0	0
Aquatic Nuisance	0	0	0
Wetlands	22	13	9
Lakes & Ponds	8	5	3
Air Pollution:			
Open Burning	81	28	53
Direct/Indirect	65	19	46
Air Toxics	11	2	9
Odors	4	1	3
Hazardous Materials:			
Handling/Disposal	110	81	29
Underground Tanks	56	48	8
Haz. Waste Release	207	189	18
Dams:			
Permitted and Unpermitted	2	0	2
Water Supply:	2	1	1
<b>TOTALS</b>	<b>995</b>	<b>577</b>	<b>418</b>

**TABLE II**

**SUMMARY OF RESOLUTION OF CITIZEN COMPLAINTS**

January 1, 1995 - December 31, 1995

	<b># OF CLOSED COMPLAINTS</b>	
<b><u>Act 250</u></b>		
<b>Unpermitted Activity:</b>		
No Violation Found	19	
Violation Corrected Voluntarily		2
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>21</b>
<b>Permit Violations:</b>		
No Violation Found	5	
Violation Corrected Voluntarily		3
Enforcement Action Taken	1	
<b>Total Closed Complaints</b>		<b>9</b>
<b><u>Wastewater Management</u></b>		
<b>Subdivisions:</b>		
No Violation Found	5	
Violation Corrected Voluntarily		1
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>6</b>
<b>Public Buildings:</b>		
No Violation Found	2	
Violation Corrected Voluntarily		3
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>5</b>
<b>Mobil Home Parks:</b>		
No Violation Found	1	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>1</b>
<b>Campgrounds:</b>		
No Violation Found	1	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>1</b>
<b>Stream Alterations:</b>		
No Violation Found	4	

Violation Corrected Voluntarily		2
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>6</b>
<b><u>Discharges</u></b>		
<b>Agricultural:</b>		
No Violation Found	4	
Violation Corrected Voluntarily		3
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>7</b>
<b>Erosion:</b>		
No Violation Found	3	
Violation Corrected Voluntarily		1
Enforcement Action Taken		0
<b>Total Closed Complaints</b>		<b>4</b>
<b>Logging:</b>		
No Violation Found	5	
Violation Corrected Voluntarily		8
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>13</b>
<b>Unpermitted:</b>		
No Violation Found	24	
Violation Corrected Voluntarily		16
Enforcement Action Taken	2	
<b>Total Closed Complaints</b>		<b>42</b>
<b>Permit Violations:</b>		
No Violation Found	0	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>0</b>
<b><u>Solid Waste-Illegal Disposal Of:</u></b>		
<b>Septage/Sludge:</b>		
No Violation Found	6	
Violation Corrected Voluntarily		2
Enforcement Action Taken	1	
<b>Total Closed Complaints</b>		<b>9</b>
<b>Municipal Refuse:</b>		
No Violation Found	4	
Violation Corrected Voluntarily		4
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>8</b>
<b>Demolition Debris:</b>		

No Violation Found	8	
Violation Corrected Voluntarily		7
Enforcement Action Taken	2	
<b>Total Closed Complaints</b>		<b>17</b>

**Rubbish & Litter:**

No Violation Found	18	
Violation Corrected Voluntarily		11
Enforcement Action Taken	7	
<b>Total Closed Complaints</b>		<b>36</b>

**Water Quality****Standards Violations:**

No Violation Found	4	
Violation Corrected Voluntarily		1
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>5</b>

**Well Drillers:**

No Violation Found	0	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>0</b>

**Aquatic Nuisance:**

No Violation Found	0	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>0</b>

**Wetlands:**

No Violation Found	10	
Violation Corrected Voluntarily		3
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>13</b>

**Lakes & Ponds:**

No Violation Found	3	
Violation Corrected Voluntarily		2
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>5</b>

**Air Pollution****Open Burning:**

No Violation Found	9	
Violation Corrected Voluntarily		17
Enforcement Action Taken	2	
<b>Total Closed Complaints</b>		<b>28</b>

**Direct/Indirect:**

No Violation Found	9	
Violation Corrected Voluntarily		10



Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>19</b>

**Air Toxics:**

No Violation Found	0	
Violation Corrected Voluntarily		2
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>2</b>

**Odors:**

No Violation Found	1	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>1</b>

**Hazardous Materials**

**Handling/Disposal:**

No Violation Found	65	
Violation Corrected Voluntarily		16
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>81</b>

**Underground Tanks:**

No Violation Found	33	
Violation Corrected Voluntarily		15
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>48</b>

**Hazardous Waste Release:**

No Violation Found	85	
Violation Corrected Voluntarily		103
Enforcement Action Taken	1	
<b>Total Closed Complaints</b>		<b>189</b>

**Dams**

**Permitted and Unpermitted:**

No Violation Found	1	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>1</b>

**Water Supply**

No Violation Found	0	
Violation Corrected Voluntarily		0
Enforcement Action Taken	0	
<b>Total Closed Complaints</b>		<b>0</b>

**TOTAL - ALL PROGRAMS**

No Violation Found	329
Violation Corrected Voluntarily	232
Enforcement Action Taken	16
<b>Total Closed Complaints</b>	<b>577</b>

**C. ENFORCEMENT ACTIONS TAKEN**

**Assurances of Discontinuance**

<b>PROGRAM</b>	<b># ISSUED</b>	<b>PENALTIES ASSESSED</b>	<b>PENALTIES RECEIVED</b>
Act 250	5	\$ 36,150	\$ 31,150
Wastewater Mgmt.	8	69,157	42,399
Solid Waste	2	0	0
Water Quality	2	29,025	19,525
Air Pollution	6	16,900	16,900
Hazardous Materials	4	24,950	21,350
<b>TOTALS</b>	<b>27</b>	<b>\$176,182</b>	<b>\$131,324</b>

**Emergency Administrative Orders**

<b>PROGRAM</b>	<b># ISSUED</b>
Wastewater Mgmt	1
Solid Waste	2
<b>TOTAL</b>	<b>3</b>

**Administrative Orders**

**V. CONCLUSION**

The General Assembly’s support for the Enforcement Program, expressed in the increased staffing authorized last year, coupled with the Agency and Department’s increased emphasis on enforcement, has lead to a substantially enhanced enforcement program. There are four attorneys dedicates to enforcement of Act 250 and Agency laws and regulations. Three of the new attorneys were chosen because of their backgrounds in managing a large caseload and bringing them to negotiated solutions. The Enforcement division staff is working closely with legal counsel and program technical staff to help them to better prepare and recommend cases for formal enforcement actions. With these changes, the director of the Enforcement Division can now dedicate more time to management and less to handling enforcement cases directly.

The regulated community, primarily businesses, has made it clear that while environmental regulations are acceptable to doing business in Vermont, they must have a “level playing field” in order to compete

successfully while complying with the regulations. The Enforcement Division is dedicated to leveling the field through the use of formal enforcement actions designed to penalize violations and to discourage future violations. In order to do that, enforcement needs to be swift, sure, and fair; the Division is finally reaching the point where it can succeed at meeting those enforcement goals.