

1996

**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 the Act, including statistics concerning compliance and enforcement. This is the seventh report to the Legislature and covers the year 1996. 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 (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.

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 and regulations implemented by ANR, its Departments, and Act 250, (10 V.S.A. Chapter 151). 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 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 Environmental Board, initiate proceedings for the enforcement of Act 250. The procedures for this cooperative enforcement of Act 250 are set out in a Memorandum of Understanding.

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

#### **A. THE ENFORCEMENT DIVISION**

The Division, which was initially located within the Department of Environmental Conservation (DEC), was formed in 1989 and consisted of seven field Environmental Enforcement Officers (EEOs), a Chief EEO, an administrative assistant, a secretary, two attorneys, and a director. Later, one Act 250 funded attorney was added to this staff to do only Act 250 enforcement. In 1995, a paralegal position was also authorized and filled.

During fiscal 1996 an authorized but unfilled attorney and secretary position, as well as the paralegal post, were lost to government down-sizing. During the summer of 1996 the Act 250 enforcement attorney resigned and no replacement was provided. The existing Act 250 cases were subsequently transferred to the Environmental Board. Also, our three most senior EEOs, including the Chief, availed themselves of the legislature's early retirement package. Our administrative assistant, a valued employee of long standing in DEC, resigned due to the need to relocate to another state.

The Fall of 1996 was a time of rebuilding and change. We hired a new administrative assistant and after a vigorous interview process, selected a new Chief EEO from among the ranks of the remaining EEOs. Organizationally, the Division was moved out of DEC and into Agency where we are now directly answerable to the Agency General Counsel and subsequently the Secretary. Through the turn of the year and the Winter of 1997, we will be interviewing and hiring for all vacant EEO positions and re-organizing the investigation staff and operation.

The Departments of the Agency use a multi step process to encourage compliance with the state's laws and regulations. When a violation occurs, the programs within these Departments 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, 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 may be initiated immediately, without the issuance of a NOAV. We are also authorized to seek Emergency Orders, with approval of the

Environmental Court, where necessary.

Almost without exception formal enforcement actions include an initial attempt to resolve the violation through settlement, the Assurance of Discontinuance. If settlement does not occur, we will file our action through an Administrative Order and prepare for trial before the Environmental Court if required. 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 any penalties and ensures their payment.

## **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 Enforcement Division, through its computerized complaint logging and closure reporting system, is able to quantify and report on the complaints received by the various programs and Act 250, and the actions taken. The following complaint table is drawn from the period January 1, 1996 to December 31, 1996. It summarizes the complaints received by the various programs, the present status of these complaints, and the types of closure for the closed complaints.

## SUMMARY OF CITIZEN COMPLAINTS

January 1, 1996 to December 31, 1996

PROGRAM	RECEIVED	NO VIOLATION	VOLUNTARY CORRECTION	ENF. ACTION TAKEN*	OTHER**	# CLOSED	# PENDING
<b>Wastewater Mgmt:</b>							
Subdivisions	14	3	1	1	3	8	6
Public Building	12	3	3	1	1	8	4
Mobile Home Parks	5	0	0	0	0	1	4
Campgrounds	0	0	0	0	0	0	0
Stream Alterations	26	8	3	1	8	20	6
<b>Discharges:</b>							
Agricultural	21	4	2	1	8	15	6
Erosion	37	8	13	2	3	26	11
Logging	20	6	4	4	1	15	5
Unpermitted	159	51	24	4	19	98	60
Permit Violations	9	1	0	2	3	6	3
<b>Solid Waste-Illegal Disposal of:</b>							
Septage/Sludge	55	14	4	1	7	26	29
Municipal Refuse	28	2	0	2	8	12	16
Demolition Debris	44	5	7	0	8	20	24
Rubbish & Litter	98	10	16	2	18	46	52
<b>Water Quality:</b>							
Standards Vio.	13	2	3	3	0	8	5
Well Drillers	0	0	0	0	0	0	0
Aquatic Nuisance	0	0	0	0	0	0	0
Wetlands	26	7	3	2	0	12	13
Lakes & Ponds	11	4	1	2	0	7	4
<b>Air Pollution:</b>							
Open Burning	111	24	8	2	13	47	63
Direct/Indirect	34	9	2	0	1	12	22
Air Toxics	7	3	1	0	2	6	1
Odors	22	7	1	0	0	8	14
<b>Hazardous Materials:</b>							
Handling/Disposal	87	17	12	2	37	68	18
Underground Tanks	20	0	1	0	17	18	2
Haz. Waste Release	308	67	161	0	34	262	46
<b>Dams:</b>							
Permitted and Unpermitted	4	1	2	0	0	3	1
<b>Water Supply:</b>	5	1	0	0	3	4	1
<b>Act 250:</b>							
Unpermitted	53	13	2	3	4	22	31
Permit Violations	30	3	4	4	4	15	15
<b>TOTALS</b>	<b>1,259</b>	<b>273</b>	<b>278</b>	<b>39</b>	<b>202</b>	<b>793</b>	<b>466</b>



\* Each case is a logging case, referred by the Department of Forests, Parks & Recreation, with predominant water quality issues.

\*\*The total "penalties received" exceeds the total of "penalties assessed" because a portion of those penalties received in 1996 is a result of penalties assessed in calendar years prior to 1996.

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

The Enforcement Division is funded as follows:

<b>General Funds</b>	\$101,337
<b>Federal Funds</b>	63,118
<b>Special Funds</b>	608,059
<b>Total</b>	<b>\$772,514</b>

The following figures are the projected expenditures for the operation of the Enforcement Division for fiscal year 1997:

<b>Personal Services</b>	\$654,914
<b>Operating</b>	117,600
<b>Total</b>	<b>\$772,514</b>

#### **V. CONCLUSION**

The Enforcement Division totals reflected in the Summary of Citizens Complaints table are comparable to those same totals for 1995. These comparable totals have been attained despite the many changes in 1996 to the makeup, operation, and organizational location of the Enforcement Division. Our 1996 level of production is reflective of our positive attitude, one that permits each change to be viewed as an opportunity to advance the work of this Division and thereby the work of this Agency. As we view it, the departure of staff will open the way for new personnel which will in turn enhance the prospect of further change. With new leadership, specifically at the post of Chief EEO, we can expect creative and effective investigative changes. Positioned within Agency, the Division is better able to extend its enforcement commitment toward all three Departments and outside the Agency to Act 250. Rather than daunted by the events of 1996, the Division is more optimistic than ever about the future of environmental enforcement in this state.

Respectfully Submitted,

By: \_\_\_\_\_

Barbara G. Ripley, Secretary  
Agency of Natural Resources

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