

1997

**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 eighth report to the Legislature and covers the calendar year 1997.

**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 issues of compliance 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 will be set out in a Memorandum of Understanding which should soon be finalized.

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

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

The Division, which was initially located within the Department of Environmental Conservation (DEC), is organizationally now found at the Agency level and is directly answerable to the Secretary, Deputy Secretary, and General Counsel. During the 1997 calendar year the Division saw many personnel changes. Our field force of Environmental Enforcement Officers (EEOs) was increased to 8, 5 of which were newly hired this year. Our new EEOs come from technical as well as law enforcement backgrounds and, in total, comprise the largest EEO force the Division has ever had.

During 1997, we lost one of our staff attorneys. After a thorough examination of interested applicants, we have filled the vacancy with an experienced litigator from whom we have every reason to expect high quality work. It is a pleasure to be back at full legal staffing.

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 outline the corrective action required 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, by means of an Assurance of Discontinuance. If settlement does not occur, we 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. Over the last year, Supplemental Environmental Projects have become more frequent as a component of our settlements.

Finally, in 1997 the Enforcement Division experienced a further refinement of its overall operation. We have strengthened the training of our investigative staff and made it an ongoing requirement for everyone. We continued our push for the accelerated movement of cases and the achievement of litigational uniformity. The division expects to work closely with the litigation arm of the Act 250 Board, a collaboration which is designed to ensure consistent enforcement results. And, for the first time, a press policy has been implemented which should provide the Secretary with an opportunity to consider the issuance of a press release at the closure of every formal enforcement action.

## **B. CITIZEN COMPLAINTS**

10 V.S.A. § 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. Table B is drawn from the period January 1, 1997 to December 31, 1997. It summarizes the complaints received by the various programs, the present status of these complaints, and the types of closure for all complaints closed this year. Previous Reports to the Legislature reflected complaints which were received and closed in the same calendar year. Beginning this year to more clearly reflect our work, the figures for closed complaints are for those complaints received this year as well as in previous years. The Pending column reflects those complaints received this year and remain open, as has been reported in the past.

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

The Enforcement Division is funded as follows:

<b>General Funds</b>	\$121,609.00
<b>Federal Funds</b>	63,118.00
<b>Special Funds</b>	620,585.00
<b>Total</b>	<b>\$805,312.00</b>

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

<b>Personal Services</b>	\$696,163.00
<b>Operating</b>	109,149.00

**Total**

**\$805,312.00**

**V. ATTACHMENTS**

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the two attached Tables are provided. Table A provides required information concerning Enforcement Actions and the enforcement program. Table B summarizes Citizen Complaints.

**VI. CONCLUSION**

This year the Enforcement Division experienced a number of absences, for significant periods of time, in our investigative force. Similarly, we struggled for three months without the services of a replacement staff attorney. Despite these very real burdens, this Division again rose to the challenge. The enclosed statistics for both citizen complaints and formal court actions compare very favorably with the same data for 1996. Throughout the year morale was high, leadership was sound and we produced a valuable and consistent enforcement product, overall. The people in this Division are confident about their work and interact well with each other, other programs within the Agency and the public. With our full compliment of enforcement staff, we anticipate a successful 1998 which should include an increase in the number of complaint closings, referrals, penalties and SEPs.

Respectfully Submitted,

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

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

**Table A**  
**FORMAL COURT ACTIONS TAKEN**  
**January 1, 1997 - December 31, 1997**

**Administrative Orders**

<b>PROGRAM</b>	<b># ISSUED</b>	<b>PENALTIES SOUGHT</b>	<b>PENALTIES IMPOSED BY COURT</b>	<b>PENALTIES COLLECTED</b>
Act 250	0	0	0	\$ 5,000.00 from 1992 order
F P & R Department	1	\$ 80,000.00	0	0
Hazardous Materials	3	48,500.00	0	0
Wastewater Mgmt	1	0	0	\$ 2,450.00 from 1996 order
Water Quality	2	21,250.00	\$ 17,500.00	0
Water Supply	1	13,750.00	0	0
<b>TOTALS</b>	<b>8</b>	<b>\$ 163,500.00</b>	<b>\$ 17,500.00</b>	<b>\$ 7,450.00 *</b>

**Assurances of Discontinuance**

<b>PROGRAM</b>	<b># ISSUED</b>	<b>PENALTIES ASSESSED</b>	<b>PENALTIES COLLECTED**</b>
Air Pollution	11	\$ 3,200.00	\$ 2,600.00
Hazardous Materials	8	32,600.00	40,000.00
Solid Waste	8	9,575.00	9,225.00
Wastewater Management	10	28,750.00	49,908.36
Water Quality	10	16,842.42	12,554.92
Water Supply	4	12,500.00	11,000.00
<b>TOTALS</b>	<b>51</b>	<b>\$ 103,467.42</b>	<b>\$ 125,288.28 *</b>

\*\* includes judgments from previous years

## Emergency Orders

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED
Water Quality	1	0	0
Wastewater Management	1	0	0
<b>TOTALS</b>	<b>2</b>	<b>0</b>	<b>0</b>

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## Table A (continued)

### Supplemental Environmental Projects

PROGRAM	# ISSUED	VALUE	CONFIRMED PERFORMANCE
Air Pollution	2	\$ 28,500.00	\$ 16,500.00
Hazardous Materials	2	16,000.00	16,000.00
Wastewater Management	3	66,000.00	66,000.00
Water Quality	2	12,750.00	12,895.00
<b>TOTALS</b>	<b>9</b>	<b>\$ 123,250.00</b>	<b>\$ 111,395.00</b>

\* includes judgments from previous years

### Collection of Delinquent Penalties

\* These totals include delinquent penalties collected this calendar year.

Total delinquent penalties collected this calendar year: **\$15,278.36.**

**Table B**  
**SUMMARY OF CITIZEN COMPLAINTS**  
**January 1, 1997 to December 31, 1997**

<b>PROGRAMS</b>	<b>TOTAL REC'D: 1997</b>	<b>PENDING: of those rec'd 1997</b>	<b>*** CLOSED: No violation</b>	<b>*** CLOSED: Voluntary Correction</b>	<b>*** CLOSED: Enforcement Action Taken*</b>	<b>*** CLOSED: Other**</b>	<b>*** TOTAL CLOSED: 1997</b>
<b>Act 250:</b>							
Permit Violations	47	20	9	7	1	13	30
Unpermitted Activity	87	49	17	2	0	24	43
<b>Air Pollution:</b>							
Air Toxics	8	4	5	1	0	0	6
Direct/Indir. Sources	47	29	52	0	0	3	55
Odors	39	21	32	0	2	2	35
Open Burning	75	29	41	20	20	9	90
<b>Dams:</b>							
Permitted/Unpermitted	0	0	0	0	0	0	0
<b>Hazardous Materials:</b>							
Handling/Disposal	83	43	18	16	1	13	48
Release/Spill	400	95	68	212	2	36	318
Underground Tanks	18	12	2	1	0	3	6
<b>Solid Waste-Illegal Disposal of:</b>							
Const./Demolit. Debris	28	9	10	8	4	5	27
Municipal Refuse	70	33	12	14	7	14	47
Rubbish & Litter	62	31	20	10	4	16	50
Septage/Sludge	46	19	19	7	2	10	38
<b>Wastewater Mgmt:</b>							
Campgrounds	0	0	0	0	0	0	0
Mobil Home Parks	4	3	0	1	0	1	2
Public Buildings	31	20	8	1	6	0	15
Subdivisions	17	9	4	2	3	0	9

<b>Water Quality (WQ):</b>								
Aquatic Nuisance	0	0	0	0	0	0	0	0
Lakes & Ponds Standards Violations	10	2	5	0	1	3	9	
Stream Alterations	6	2	1	2	0	1	4	
Wetlands	28	8	9	6	3	4	22	
	35	18	12	2	1	6	21	
<b>WQ Discharges:</b>								
Agricultural	6	2	2	2	0	2	6	
Erosion	36	9	15	7	3	5	30	
Logging	23	6	6	5	4	4	19	
Permit Violations	6	3	0	2	1	1	4	
Unpermitted	197	63	84	36	13	24	157	
<b>Water Supply:</b>								
Standards Violations	0	0	0	0	0	0	0	
Well Drillers	2	0	0	0	0	0	2	
<b>TOTALS</b>	<b>1411</b>	<b>539</b>	<b>451</b>	<b>364</b>	<b>78</b>	<b>201</b>	<b>1094</b>	

\* Includes only complaints resolved through a Notice of Alleged Violation (NOAV) or formal court action.

\*\* This category reflects additional ways complaints are closed, e.g. lack of evidence, lack of cooperation from complainant, referred to appropriate regulatory program, viol. found/criminal cases filed, or viol. found/enforcement action not pursued due to resources.

\*\*\* Closed this calendar year, yet may have been received in previous years.