

1998

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 ninth report to the Legislature and covers the calendar year 1998.

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 Environmental 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). 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 contained in a Memorandum of Understanding (MOU) which was finalized this year (1998).

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 1998 calendar year the Division saw no personnel changes for the first time in many years. Our field force of Environmental Enforcement Officers (EEOs) was maintained at its maximum level of 8 for the entire year. As a consequence, our investigative work has been very consistent while the investigators themselves have become a very cohesive unit.

During 1998, we also maintained our legal staff. All experienced trial lawyers, the division's legal staff has represented its program clients with energy, consistency and balance while maintaining high levels of professional conduct and courtesy.

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, if required, before

the Environmental Court. 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.

Finally, throughout 1998 the Enforcement Division capitalized on a year of great stability. We strengthened our investigative staff by providing an abundance of training. The legal staff focused on the accelerated movement of cases and the achievement of litigational uniformity. With the completion of our MOU with the Environmental Board, we have begun a useful collaboration of investigative and legal resources, particularly with respect to matters which include both Act 250 and ANR issues. We have helped craft a sound working relationship with the Office of the Attorney General in response to their heightened interest in the civil and criminal prosecution of deserving environmental offenses. This has been a year when we have also greatly increased our use of Supplemental Environmental Projects in the settlement of environmental cases.

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, 1998 to December 31, 1998. 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.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Enforcement Division is funded in fiscal year 1999 as follows:

General Funds	\$ 79,751.00
Federal Funds	67,953.00
Special Funds	753,712.00
Total	\$901,416.00

The following figures are the projected expenditures for the operation of the Enforcement

Division for fiscal year 1999:

Personal Services	\$756,065.00
Operating	145,351.00
Total	\$901,416.00

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, for the first time in many years, the Enforcement Division maintained a nearly full work force for the entire year. Consequently, 1998 became a year of implementation. We were able to put into practice many enforcement formats and policies developed over the previous two years. We advanced our working relationship with others, specifically the Environmental Board and the Attorney General, who are similarly dedicated to the formal redress of environmental violations. The 1998 statistics for both citizen complaints and formal court actions compare very favorably with those for 1997. This is particularly true where we saw more complaint closures, due largely to our stable investigative force for 1998. Throughout the year morale remained high, leadership was encouraged and evident, and we again produced a valuable and consistent enforcement product, overall. In the face of very demanding work, this division remains cohesive, interactive and professional in the dispatch of its various duties. We believe that through the enforcement work of 1998 we have again helped to advance the interests of both environmental protection and public well being in Vermont.

Respectfully Submitted,

By: _____

John Kassel, Secretary
Agency of Natural Resources

Date: _____

Table A
FORMAL COURT ACTIONS
January 1, 1998 - December 31, 1998

Administrative Orders (AOs)

PROGRAM	# ISSUED	PENALTIES SOUGHT	DISPOSITION	PENALTIES IMPOSED BY COURT	PENALTIES COLLECTED*
Air Pollution	1	\$ 3,500.00	- Decision on default judgement pending	N/A	N/A
Forest, Parks & Recreation Dept.	1	10,000.00	- Resolved with AOD (see below)	N/A	N/A
Hazardous Mat.	1	20,000.00	- Merits hearing pending	N/A	N/A
Solid Waste	5	41,250.00	- No request for hearing; AO final - Merits hearing held; judgement rendered - 3 resolved with AODs (see below)	\$1,250.00	\$1,115.00
Wastewater Mgt.	2	4,500.00	- No request for hearing; AO final; further negotiations ongoing - Complaint filed; hearing pending	N/A	N/A
Water Quality	3	6,500.00	- No request for hearing; AO final - 1 AO withdrawn - Merits hearing pending	N/A	N/A
Water Supply	2	107,000.00	- Merits hearing held; judgement pending - Pending respondents' request for hearing	N/A	N/A
TOTALS	15	\$ 192,750.00		\$ 1,250.00	\$ 1,115.00

* includes penalties collected from previous years' judgements

Assurances of Discontinuance (AODs)

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED**
Air Pollution	8*	\$ 6,650.00	\$ 6,650.00
Forests, Parks & Recreation Dept.	2	5,000.00	2,000.00
Hazardous Materials	13	178,150.00	93,150.00
Solid Waste	8*	5,200.00	6,100.00
Wastewater Management	3*	2,200.00	2,200.00
Water Quality	11	16,600.00	16,590.00
Water Supply	5	2,900.00	3,900.00
TOTALS	50	\$ 216,700.00	\$ 130,590.00

* includes one amended AOD

** includes penalties collected from previous years' judgements

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**Table A (continued)
Emergency Orders (EOs)**

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED
Forests, Parks & Recreation Dept.	1	0	0
TOTALS	1	0	0

Supplemental Environmental Projects (SEPs)

PROGRAM	NUMBER	VALUE	CONFIRMED PERFORMANCE**
Act 250	1	\$ 25,000.00	N/A
Air Pollution	1	2,300.00	\$ 2,000.00
Forests, Parks & Recreation Dept.	1	6,000.00	6,000.00
Hazardous Materials	6	185,000.00	35,000.00
Solid Waste	2	16,500.00	1,500.00
Water Quality	3	8,500.00*	8,500.00*
TOTALS	14	\$ 242,300.00	\$ 53,000.00

* includes one SEP value in kind donation of land and building materials

** includes previous years' projects, since SEP performance may extend over multiple years

Collection of Delinquent Penalties

Total delinquent penalties collected this calendar year: **\$ 4,125.00**

**INFORMAL CASE RESOLUTIONS
January 1, 1998 - December 31, 1998**

PROGRAM	NUMBER	RESOLUTION
Air Pollution	1	- Case returned for further investigation.
Forests, Parks & Recreation Department	1	- After review with respondent of site conditions at time of violations, Program agreed case should not be pursued.
Solid Waste	2	- Case began with 2 respondents: responsible party settled via AOD, the other was dropped. - Respondent fled jurisdiction.
Water Quality	1	- Program assured of compliance via Conditional Use Determination.
Water Supply	2	- Two systems were decertified as public water systems due to reduced connections.
Wastewater Management	3	- Program failed to properly deny permit application. Court dismissed contempt petition. - Regional Engineer working with respondent to resolve problems. - Respondent complied with subdivision permit and connected to the municipal water system.
TOTAL	10	

Table B
SUMMARY OF CITIZEN COMPLAINTS
January 1, 1998 to December 31, 1998

PROGRAMS	<u>TOTAL REC'D:</u> 1998	<u>PENDING:</u> of those rec'd 1998	<u>CLOSED:</u> No violation	<u>CLOSED:</u> Voluntary Correction	<u>CLOSED:</u> Enforcement Action Taken*	<u>CLOSED:</u> Other**	<u>TOTAL CLOSED:</u> 1998
Act 250:							
Permit Violations	41	13	15	3	4	27	49
Unpermitted Activity	115	40	42	7	16	53	117
Air Pollution:							
Air Toxics	3	2	5	0	0	0	6
Direct/Indir. Sources	43	28	24	3	2	2	31
Odors	37	25	13	3	0	1	20
Open Burning	108	47	36	29	9	14	88
Dams:							
Permitted/Unpermitted	1	0	1	0	0	0	1
Hazardous Materials:							
Handling/Disposal	101	40	45	17	3	19	84
Release/Spill	426	77	67	274	4	42	389
Underground Tanks	18	9	4	1	1	2	9
Solid Waste-Illegal Disposal of:							
Const./Demolit. Debris	62	32	17	12	6	14	48
Municipal Refuse	53	24	24	13	2	30	67
Rubbish & Litter	69	25	29	21	2	28	79
Septage/Sludge	43	21	24	1	4	5	34

Wastewater Mgmt:								
Campgrounds	0	0	1	0	0	0	0	1
Mobil Home Parks	7	2	3	0	4	0	0	7
Public Buildings	45	27	19	6	4	5	5	34
Subdivisions	20	12	8	1	4	6	6	19
Water Quality (WQ):								
Aquatic Nuisance	2	0	2	0	0	0	0	2
Lakes & Ponds	13	4	4	3	1	4	4	12
Standards Violations	6	0	5	2	1	3	3	11
Stream Alterations	28	12	12	0	4	4	4	20
Wetlands	88	49	32	13	6	18	18	67
WQ Discharges:								
Agricultural	10	3	7	0	0	2	2	9
Erosion	22	6	13	1	1	8	8	23
Logging	29	10	7	5	0	8	8	20
Permit Violations	4	1	1	2	0	2	2	5
Unpermitted	257	87	121	36	19	38	38	215
Water Supply:								
Standards Violations	1	0	1	0	0	2	2	3
Well Drillers	0	0	1	0	0	0	0	1
TOTALS	1652	596	583	453	97	337	337	1471

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

** This reflects additional ways complaints are closed, e.g. lack of evidence, lack of cooperation from complainant, referred to appropriate regulatory program, violation found/enforcement action not pursued due to resources or unable to respond.

Note: Complaints closed in current year include some received in previous years