

1999

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 tenth report to the Legislature. An explanation of the reporting period can be found in section V.

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).

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 1999 calendar year the Division saw no personnel changes for the second time in as 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 1999, 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 1999 the Enforcement Division capitalized on a second consecutive year of great stability. We continued to strengthen our investigative staff by providing an abundance of training. The legal staff continued to focus on the prompt movement of cases and the achievement of uniform enforcement. Guided by our MOU with the Environmental Board, we have sustained a useful collaboration of investigative and legal resources, particularly with respect to matters which include both Act 250 and ANR issues. We have solidified our working relationship with the Office of the Attorney General and referred a substantially increased number (11) of environmental investigations to that office for both civil and criminal prosecution. This has been a year of continued use of Supplemental Environmental Projects as a component in the administrative settlement of environmental cases. During this year we also drew the attention of a few State Attorneys to whom we referred violations for prosecution (typically smaller criminal cases where a strong local interest is demonstrated).

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 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. (See section V for further explanation).

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Enforcement Division is funded in fiscal year 2000 as follows:

General Funds	\$ 74,104.00
Federal Funds	67,953.00
Special Funds	773,323.00
 Total	 \$ 915,380.00

The following figures are the projected expenditures for the operation of the Enforcement Division for fiscal year 2000:

Personal Services	\$ 760,877.00
Operating	154,503.00
 Total	 \$ 915,380.00

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 received by the various programs, the present status of these complaints, and the types of closure for all complaints closed this year. In the past, these tables have been drawn from the calendar year beginning January 1st. Because it has been impossible to collect, enter, and tabulate all the data from various field locations throughout the state by the statutory January 8 reporting deadline, *we have moved the reporting time frame for only citizen complaints back a month*. Therefore, Table B reflects citizen complaints for the year beginning December 1, 1998 through November 30, 1999. While this results in December 1998 being reported twice (last year and this year), we believe this minor duplication is harmless and, of course, will not recur in future reports. The reporting period for Table A, Formal Court Actions, has not been changed. It will continue to be based on the calendar year since the information is in-house and can be quickly compiled.

VI. CONCLUSION

The calendar year 1999 represents the second consecutive year that the enforcement division has operated with its full compliment of staff. The resulting stability has enabled the division to refine many aspects of our operation. Our relationship with Act 250 is very positive and holds the promise of even further enforcement rewards. We have an effective relationship with the Attorney General as demonstrated by the twelve or so cases we have referred to that office, most for criminal prosecution. We have recently observed a heightened interest by some state's attorneys in prosecuting locally some of our investigated environmental offenses. This incipient relationship also holds promise for further enforcement benefits. Our relationship with our primary institutional client, the Department of Environmental Conservation, has both expanded and matured. Our relationship with the Department of Forests, Parks and Recreation, for whom we handle both Acceptable Management Practices (AMP) and Heavy Cut cases, continues to develop soundly.

Despite having referred the greatest number of cases to date for prosecution outside the Enforcement Division, the statistics found in Table A and B compare favorably with those of the last few years. Compared to the data for 1998, our administrative order filings and assurances of discontinuance, along with their associated penalties, are down only slightly. The number of emergency orders and supplemental environmental projects were both up, while informal case resolution remained steady. The number of citizen complaints received is virtually equal to the number closed. Although we received fewer complaints this year than last, more were closed and fewer are pending.

Again, we can report that the morale in this division is high and despite the demanding nature of our work we are a cohesive working unit which continuously strives for higher levels of excellence. We believe with great confidence that our work meaningfully advances the interests of environmental and public protection and expect to further expand and refine our operation into the next year and beyond.

Respectfully Submitted,

By: _____

John B. Kassel, Secretary
 Agency of Natural Resources

Date: _____

Table A
FORMAL COURT ACTIONS
January 1, 1999 - December 31, 1999

Administrative Orders (AOs)

PROGRAM	# ISSUED	PENALTIES SOUGHT	DISPOSITION	PENALTIES IMPOSED BY COURT	PENALTIES COLLECTED*
Forest, Parks & Recreation Dept.	2	\$31,500.00	1. Resolved with AOD (see below) 2. Dismissal of action pending	N/A	N/A
Hazardous Mat.	1	3,500.00	1. Resolved with AOD (see below)	N/A	N/A
Solid Waste	1	5,500.00	1. Resolved with AOD (see below)	N/A	N/A
Wastewater Mgt.	5	20,750.00	1. No request for hearing: AO final 2. Sent to collections attorney 3. Pending merits hearing & are engaged in settlement negotiations 4. Merits hearing requested 5. Withdrawn - to be filed later	N/A	N/A
Water Quality	4	25,000.00	1&2. Resolved with AOD (see below) 3&4. Pending merits hearing	N/A	N/A
TOTALS	13	\$86,250.00			

* includes penalties collected from previous years' judgments

Assurances of Discontinuance (AODs)

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED*
Air Pollution**	8	\$ 16,350.00	\$ 16,450.00
Forests, Parks & Recreation Dept.	2	11,000.00	11,000.00
Hazardous Materials	9	94,850.00	91,350.00
Solid Waste	6	6,780.00	6,630.00
Wastewater Management	10	28,300.00	23,025.00
Water Quality	7	6,200.00	5,050.00
Water Supply	2	5,800.00	800.00

TOTALS	44	\$ 169,280.00	\$ 154,305.00
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* includes penalties collected from previous years' judgments

** includes one amended AOD

Emergency Orders (EOs)

PROGRAM	# ISSUED	PENALTIES ASSESSED	PENALTIES COLLECTED
Hazardous Materials	2	0	0
Water Supply	1	\$10,000.00 (in escrow account)	\$10,000.00 (in escrow account)
TOTALS	3	\$10,000	\$10,000.00

Table A (continued)

Supplemental Environmental Projects (SEPs)

PROGRAM	NUMBER	VALUE	CONFIRMED PERFORMANCE*
Air Pollution	1	\$ 11,000.00	\$ 13,300.00
Forests, Parks & Recreation Dept.	1	8,000.00	8,000.00
Hazardous Materials	6	56,350.00	19,350.00
Solid Waste	3	20,750.00	20,750.00
Waste Management	1	11,000.00	27,500.00
Water Quality	4	9,500.00	7,000.00
Wastewater Management	4	35,750.00	27,000.00
TOTALS	20	\$152,350.00	\$122,900.00

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

Collection of Delinquent Penalties

Total delinquent penalties collected this calendar year: **\$ 00.00**

INFORMAL CASE RESOLUTIONS

January 1, 1999 - December 31, 1999

There are several reasons cases have been informally resolved. In some, our attorney was able to obtain compliance without the need for formal, legal action. In other situations, further discussions revealed that an

enforcement action was no longer needed or appropriate.

PROGRAM	NUMBER
Air Pollution	1
Solid Waste	1
Water Quality	2
Wastewater Management	7
TOTAL	11

Table B
SUMMARY OF CITIZEN COMPLAINTS
December 1, 1998 through November 30, 1999

PROGRAMS	TOTAL REC'D: 1999	PENDING: of those rec'd 1999	CLOSED: No violation	CLOSED: Voluntary Correction	CLOSED: Enforcement Action Taken*	CLOSED: Other**	TOTAL CLOSED: 1999
Act 250:							
Permit Violations	23	5	7	2	3	14	26
Unpermitted Activity	99	39	44	10	5	32	91
Air Pollution:							
Air Toxics	2	0	3	1	0	1	5
Direct/Indir. Sources	57	21	61	3	6	7	77
Odors	49	22	33	1	17	4	55
Open Burning	100	33	63	24	15	21	123
Dams:							
Permitted/Unpermitted	3	1	2	0	0	1	3
Hazardous Materials:							
Handling/Disposal	98	39	44	12	7	11	75
Release/Spill	411	79	38	266	5	52	361
Underground Tanks	12	7	2	2	2	2	8
Solid Waste-Illegal Disposal of:							
Const./Demolit. Debris	51	13	25	12	4	17	58
Municipal Refuse	49	16	23	12	4	31	71
Rubbish & Litter	72	17	36	19	4	28	87
Septage/Sludge	30	9	18	3	3	9	33
Wastewater Mgmt:							
Campgrounds	3	3	0	0	0	0	0
Mobil Home Parks	2	0	3	1	3	0	7
Public Buildings	30	16	13	5	7	5	32
Subdivisions	21	13	9	2	2	3	16

Water Quality (WQ):								
Aquatic Nuisance	1	0	1	0	0	0	0	1
Lakes & Ponds	9	3	6	2	1	4	4	13
Standards Violations	5	1	2	0	1	3	3	6
Stream Alterations	23	6	18	2	1	2	2	24
Wetlands	83	55	31	13	8	8	8	60
WQ Discharges:								
Agricultural	5	2	2	1	1	0	0	4
Erosion	13	1	10	5	0	3	3	20
Logging	8	0	9	6	2	1	1	18
Permit Violations	3	0	1	0	2	1	1	4
Unpermitted	214	44	125	58	20	41	41	245
Water Supply:								
Bottled Water	1	0	1	0	0	0	0	1
Standards Violations	0	0	0	0	0	1	1	1
Well Drillers	1	0	1	0	0	0	0	1
TOTALS	1478	445	631	462	123	302	302	1526

* 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.