

**2013 REPORT TO THE LEGISLATURE
REGARDING ACT 98 (1989)
UNIFORM ENVIRONMENTAL ENFORCEMENT ACT
Agency of Natural Resources
Department of Environmental Conservation
Compliance & Enforcement Division**

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 (Secretary) and the Attorney General's Office (AGO) to submit an annual report regarding the implementation of Act 98, including statistics concerning compliance and enforcement.

II. BACKGROUND

Act 98 was passed in an effort to improve environmental enforcement in Vermont. The Act has four primary purposes: enhancement of administrative enforcement by the Secretary and the Natural Resources Board (NRB), enhancement of civil enforcement in Superior Court; the creation of an 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 Secretary and the NRB. While there are some exceptions due to the requirements for federally delegated environmental programs, the regulated community and the public generally can now look to one uniform process for enforcement of Vermont's environmental laws.

Administrative enforcement was enhanced by clarifying the ability of the Secretary and the NRB to enter into Assurances of Discontinuance (administrative settlements) and creating the authority for the Secretary to issue Administrative Orders to address violations of the majority of the statutes and regulations under the jurisdiction of the Secretary and the NRB. Administrative Orders typically contain penalties and may be appealed to the Environmental Division of the Superior Court for hearing. In addition, the remedies available in Civil Division of the Superior Court for violations of the statutes specified in Act 98 were enhanced and standardized.

The consolidation of enforcement authorities described above further affects Act 250 enforcement actions as follows. 10 V.S.A. Section 8004 specifies that the Secretary may, on his or her own initiative or upon request of the NRB, initiate proceedings for the enforcement of Act 250. The procedures which guide the cooperative enforcement of Act 250 are contained in a Memorandum of Understanding (MOU). This MOU was subsequently broadened and the NRB has been delegated the authority to initiate Administrative Orders for Act 250 enforcement

actions. In order to maintain consistency this authority is to be exercised in consultation with the Compliance & Enforcement Division (CED) of the Department of Environmental Conservation (DEC). CED is organizationally answerable to the CED Director and the DEC Commissioner.

III. IMPLEMENTATION OF THE ACT

Most program-referred enforcement actions originate within the various regulatory programs of DEC. DEC employs a multi-step process to encourage compliance with the state's environmental laws and regulations. When a violation occurs, the programs within DEC may issue a Notice of Alleged Violation (NOAV) to the violator. The NOAVs serve not only to provide notice of a violation but also to outline the corrective actions required to bring the violator 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, repeated, or cannot be corrected; then, enforcement action may be initiated immediately, without the issuance of a NOAV. Under certain circumstances DEC is authorized to seek Emergency Orders (essentially injunctive relief) from the Environmental Division.

In most instances formal enforcement actions include an initial attempt to resolve the violation through settlement by means of an Assurance of Discontinuance (AOD). Settlements usually include, among other provisions, an agreed penalty and corrective action. Supplemental Environmental Projects (SEPs) are also used in settlements in addition to the penalty. If settlement does not occur, an Administrative Order (AO) is prepared and served. The filing of an AO can result in a trial before the Environmental Division if a hearing is requested. Most AOs and AODs contain provisions for payment of a civil penalty and corrective actions when appropriate as well as a requirement of future compliance. Generally, enforcement 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 Division, are tracked for compliance by the involved program(s). CED tracks penalties to ensure payment, and SEPs to ensure payment and performance.

Our investigative staff (Environmental Enforcement Officers or EEOs) continues to achieve voluntary compliance in the field in a significant number of complaints. The EEOs also produce thorough and accurate investigation reports of environmental violations, some of which are referred for prosecution. legal staff focuses on the efficient advancement of referred cases and the achievement of consistent and fair enforcement outcomes. Both the legal and EEO staff work with the programs to help them to maintain consistency and to develop strong enforcement referrals. Guided by our MOU with the NRB, we have a very collaborative and productive relationship sharing both investigative and legal resources in mixed NRB/ANR cases. During 2013 the NRB resolved twenty cases and of that number one matter contained significant ANR violations, while a number of other matters contained minor ANR violations. The NRB and ANR jointly referred two cases to the Attorney General for prosecution. Our relationship with the Department of Forests, Parks and Recreation, for whom we handle both Acceptable

Management Practices and Heavy Cut cases, remains strong and cooperative. CED prosecuted a number of AMP cases and also sent a significant heavy cut case to the Attorney General for prosecution.

We continue to work closely with the Attorney General's Office (AGO). During 2013, the AGO closed four environmental enforcement actions. The AGO also resolved other litigation with collection of funds reimbursing the clean-up of contaminated properties of \$1,125,000. The office generally has a total of approximately nine environmental enforcement related matters, in addition to a number of non-enforcement matters, from ANR. In addition, the CED Director and the Chief of the AGO Environmental Division meet monthly to discuss new case referrals and initiatives as prescribed in an MOU between ANR and the AGO. The MOU is also reviewed yearly to ensure its continued effectiveness. Typically, smaller criminal cases where a strong local interest is demonstrated are referred to State's Attorneys for criminal prosecution. We also work and coordinate our efforts with the Environmental Protection Agency (EPA) on matters of federal and state interest, including both civil and criminal matters. Finally, where appropriate we coordinate with the U.S. Attorney's office on both civil and criminal matters.

In November 2011, new rules to implement expanded civil citation authority went into effect. The rules allow civil citations to be issued in all media areas in which ANR has jurisdiction to bring an enforcement action. In total over 500 violations are listed for possible issuance of a civil citation, with penalties ranging up to a maximum of \$3,000. In 2012 the legislature changed the venue where these citations would be heard from the Judicial Bureau to the Environmental Division of the Superior Court. During the summer of 2013 the CED Director worked with the Court to put a process in place for processing and adjudicating these citations. A significant effort was made during the fall of 2013 to expand the use of this enforcement tool. As a result, 25 citations were issued during the final quarter of 2013. Now that a working process is in place it is expected that the number of citations issued will increase during 2014. As we gather additional experience with the civil citations process we are seeing areas of the law that are in need of clarification and improvement. CED will address some of these areas via the rule making process during 2014, and is considering returning to the legislature during the 2015 session for modifications to the statute.

During 2013 CED staff worked with EPA Region I staff on completion of the State Review Framework III. This comprehensive review is conducted by EPA every three years on three major delegated programs (Hazardous Waste, Wastewater Treatment Plant Discharges & Air). CED took the lead in coordinating this review with EPA.

An important area of focus during 2013 has been on the strategic use of our limited enforcement resources. CED has been reaching out and coordinating within DEC and with other state Departments and Agencies to identify areas of concern and to most effectively deploy our resources to best protect human health and the environment. As part of this effort a compliance & enforcement advisory group was started with DEC. The group includes section chiefs and program staff from the DEC regulatory programs. The Commissioner has played an active role in these bi-monthly meetings. In addition to assisting CED in planning and targeting these meetings have provide an excellent opportunity for cross division and program information sharing which has benefitted all participants.

Finally, information about CED is available to the public via our web page. Staff names and contact information, how to file a complaint, press releases, and a list of our SEP projects are posted on this site. Over the past several years under Director Gary Kessler CED has endeavored to greatly increase the transparency of its operations. This has been accomplished by posting all Final Draft Assurances of Discontinuance¹, Assurances of Discontinuances, Administrative Orders, and Emergency Orders from 1996 to the present. Further, detailed SEP project descriptions have been posted. Our website can be accessed from the State of Vermont homepage or at: <http://www.anr.state.vt.us/dec/co/enf/>. In conformance with legislation passed in 2012 CED is posting proposed settlements, orders, and citations for public comment. All public comments received are considered prior to sending any order to the Environmental Division. CED is continuing to look for additional opportunities to improve transparency and to communicate with the citizens of Vermont. CED is exploring the use of social media as a tool to inform citizens of pending environmental enforcement actions. CED continues to make use of media releases in enforcement actions to inform the public and to maintain a level of general deterrence amongst the regulated community.

Citizen Complaints

10 V.S.A. § 8017 specifies that the ANR shall report on the status of citizen complaints concerning environmental violations in the state. In 2012 a new database which had been in development for over a year was rolled out to DEC staff. During 2013 additional features were added to the database to increase usage and improve functionality. We expect additional enhancements to be made during 2014.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Compliance & Enforcement Division was funded in fiscal year 2013 as follows:

General Funds	\$ 74,994
Federal Funds	\$ 258,615
Special Funds	\$ <u>989,598</u>
Total	\$1,323,207

The Compliance & Enforcement Division's operating expenditures for fiscal year 2013:

Personal Services	\$1,175,353
Operating	\$ <u>147,854</u>
Total	\$1,323,207

1. *Final Draft AODs are those that have been signed by the parties and filed with the Environmental Court, but have not yet been entered by the Court as a Judicial Order and are open for public comment.*

V. ATTACHMENTS

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the following tables are provided. Table A, summarizes Assurances of Discontinuances and Supplanted Environmental Projects agreed to in 2013. Table B reflects formal actions as well as informal resolutions from 2013. Table C summarizes citizen complaints received by DEC as well as the present status of complaints and the types of closure for all complaints received and/or closed in 2013. Table D summarizes the total of complaints received and closed for the last 5 years. Table E summarizes the Civil Citations issued and the programs for which they were issued.

VI. CONCLUSION

During 2013 CED finally moved into permanent work space on the National Life Campus in Montpelier after a series of moves as a result of Tropical Storm Irene. Presently there is one environmental enforcement attorney vacancy. The CED Director and DEC General Council are working to quickly rehire for this vital position.

Our investigative staff consists of a Chief EEO with six EEOs in separate geographical districts. The staffing level continues to reflect the staff reductions that were put into effect several years ago. In response to the reduction in the size of the EEO force and the increased work level demands from citizen complaints and strategic enforcement initiatives, the Chief EEO now covers a district in addition to his management duties. This is a significant operational change as in the past the Chief EEO did not cover a district. CED's two staff attorneys continue to have very full caseloads with a number of matters going to trial this year.

While 2013 was a challenging year the statistics found in the attachment demonstrate the success of our efforts. Our goal is the protection of the public health and Vermont's environment for present and future generations of Vermonters. We have developed a cohesive, high functioning team which continually strives for the highest levels of fairness, consistency, and overall excellence in order to achieve this goal.

Respectfully Submitted,

By: 

David Mears, DEC Commissioner
On behalf of Deb Markowitz, Secretary
Agency of Natural Resources

Date: 2/13/14

Attachments

**Formal Court Actions (Table A)
January 1, 2013 – December 31, 2013**

Assurances of Discontinuance (AODs) & Supplemental Environmental Projects (SEPs)

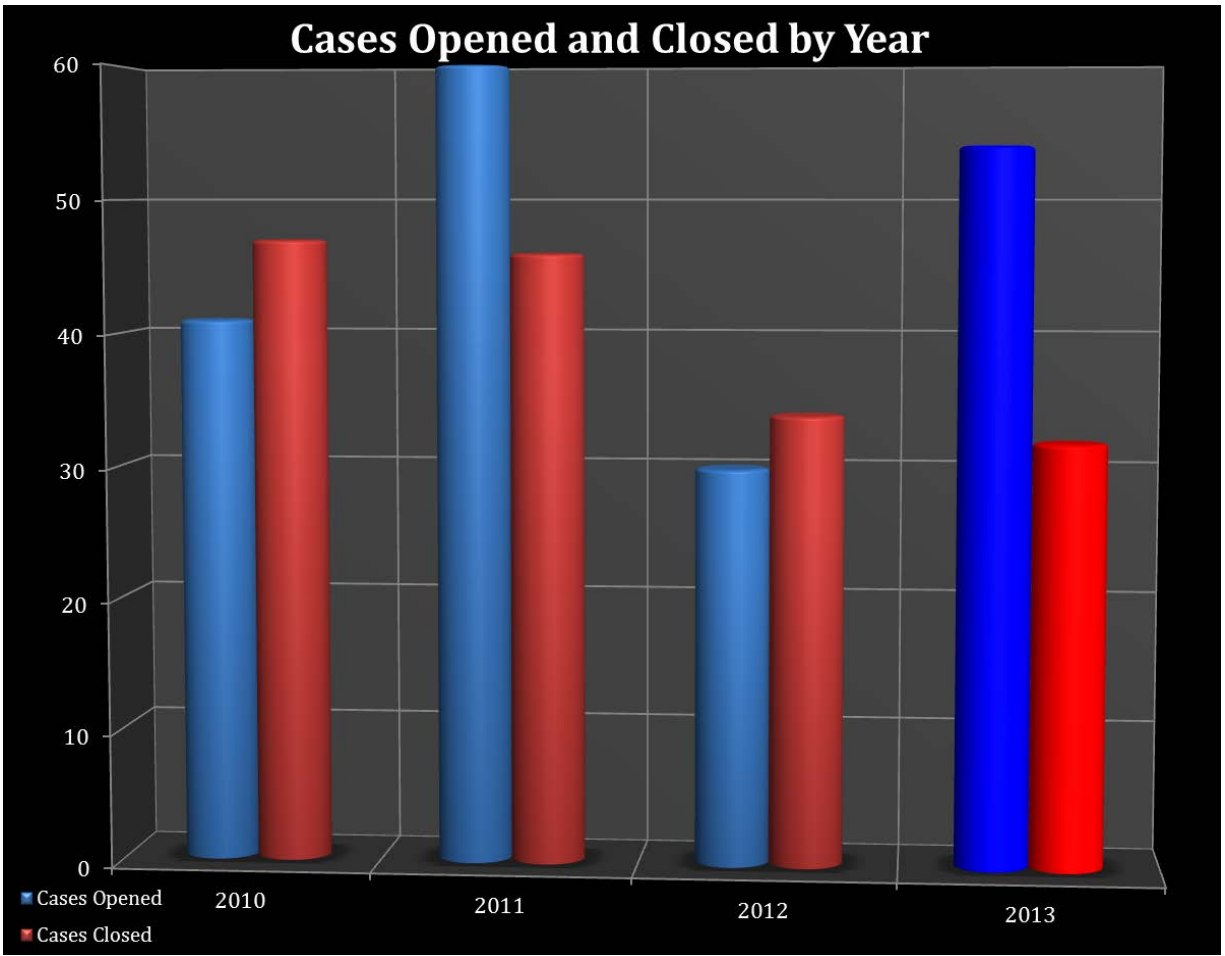
Regulatory Programs	# AODs Issued	\$ AOD Penalties Assessed	\$ AOD Penalties Collected by CED	# SEPs	\$ Value of SEPS	\$ SEPs Funding Confirmed
<i>Air Quality & Climate Division</i>	1	\$1,500.00	\$1,500.00	0	\$0	\$0
<i>Department of Forests, Parks & Recreation</i>	2	\$23,100.00	\$15,137.50	0	\$0	\$0
<i>Drinking Water & Groundwater Protection Division</i>	3	\$14,500.00	\$13,500.00	0	\$0	\$0
<i>Waste Management & Prevention Division</i>	11	\$54,666.06	\$40,114.48	1	\$2,625.00	\$2,625.00
<i>Watershed Management Division</i>	4	\$39,509.00	\$33,509.00	1	\$20,000.00	\$20,000.00
TOTALS	21	\$133,275.06	\$103,760.98	2	\$22,625.00	\$22,625.00

The Compliance and Enforcement Division collected a total of \$164,566.78 in penalty payments between January 1, 2013 and December 31, 2013. Of this total, \$32,504.80 was payment resulting from Formal Court Actions from previous years. The table reflects SEP and Penalty data for Formal Court Actions from 2013 only, totaling collections of \$132,061.98 in penalty payments, and \$22,625.00 in SEP funds.

**Administrative Orders (AOs), Emergency Orders (EOs), & Informally Closed Cases
Table B**

Regulatory Programs	# AOs Served by CED	\$ AO Final Penalty Amount	\$ AO Penalties collected by CED	#EOs issued	Referred to Attorney General's Office	Closed Informally*
<i>Air Quality & Climate Division</i>	1	\$9,000.00	\$0	0	2	2
<i>Compliance & Enforcement Division</i>	1	\$9,500.00	\$0	0	0	0
<i>Drinking Water & Groundwater Protection Division</i>	1	\$11,235.00	\$0	0	0	0
<i>Waste Management & Prevention Division</i>	3	\$28,301.00	\$26,301.00	0	0	1
<i>Watershed Management Division</i>	1	\$4,385.00	\$2,000.00	0	1	2
TOTALS	7	\$62,421.00	\$28,301.00	0	3	5

*e.g. an enforcement attorney was able to obtain compliance without the need for formal, legal action, or further discussions may reveal that an enforcement action was no longer needed or appropriate, or one case may be consolidated with another and will be closed accordingly



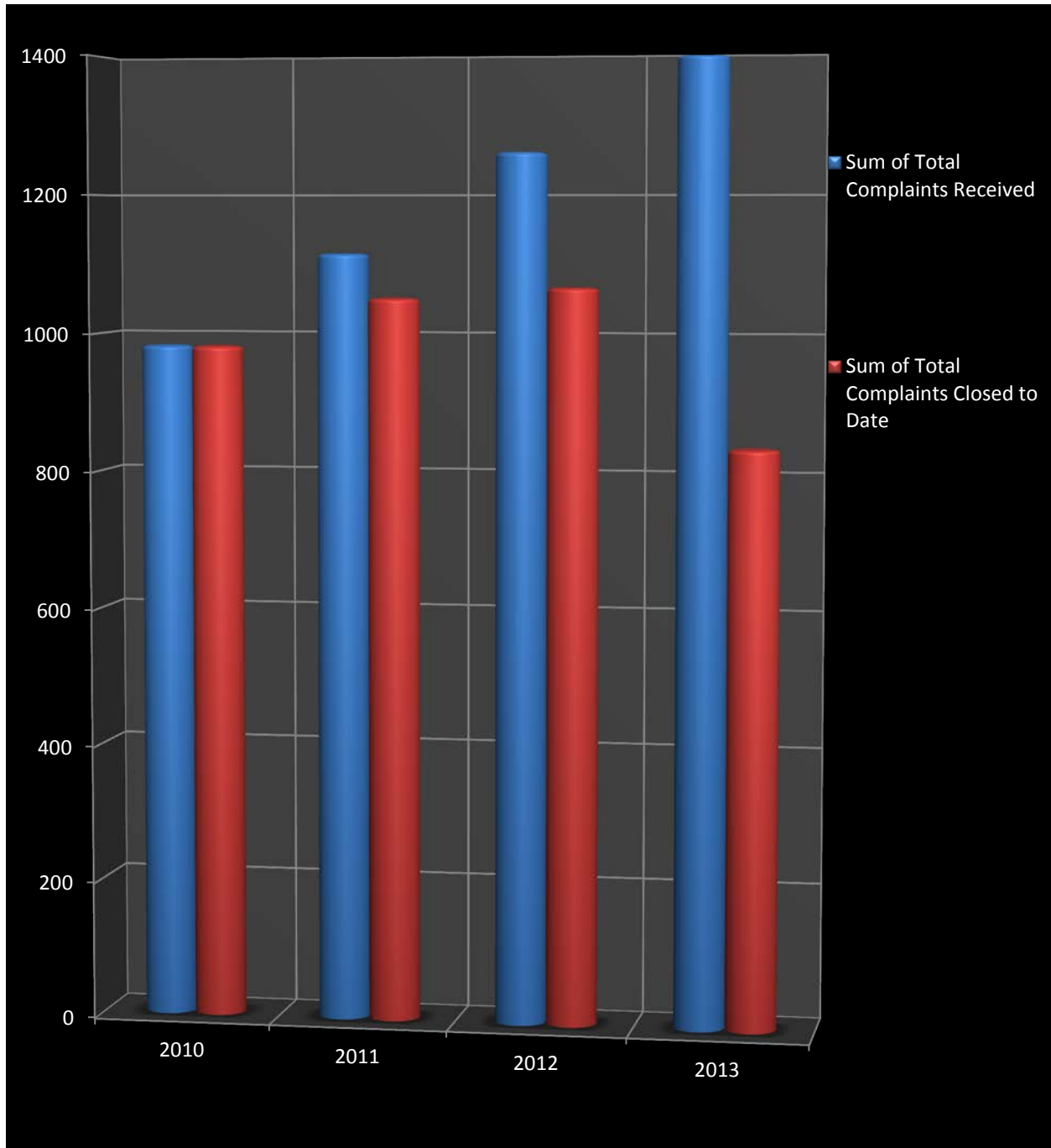
Summary of Complaints Received and/or Resolved by CED
January 1, 2013 – December 31, 2013
Table C

Regulatory Programs	Total Received This Year	Total Pending Of Those Received This Year	Closed - No Violation	Closed - NOAV Issued	Closed - Ticket Issued	Closed - Voluntarily Corrected	Closed - Formal Enforcement Action Taken	Closed Informally *	Total Closed
<i>Air Quality & Climate Division</i>									
<i>Engineering Services</i>	2	0	2	0	0	0	0	1	3
<i>Field Services</i>	151	3	64	8	7	19	19	8	125
<i>Technical Services</i>	4	0	3	0	0	0	0	2	5
<i>Mobile Source Control</i>	1	0	0	0	0	1	0	0	1
<i>Compliance & Enforcement Division</i>									
<i>Investigations</i>	5	0	3	0	0	0	0	1	4
<i>Unpermitted Discharges (1259)</i>	200	10	130	4	2	25	1	16	178
<i>Unpermitted Discharges (AMPs)</i>	11	1	5	0	0	1	4	1	11
<i>Unpermitted Discharges (Erosion)</i>	6	0	4	0	0	1	3	0	8
<i>Unpermitted Discharges (AAPs)</i>	26	1	17	0	0	2	1	4	24
<i>Department of Forests, Parks, & Recreation</i>									
<i>Forest Resources</i>	6	0	4	0	0	1	2	0	7
<i>Drinking Water & Groundwater Protection</i>									
<i>Technical Services</i>	168	2	90	7	2	14	6	8	127
<i>Engineering and Financial Services</i>	3	0	0	0	0	0	1	0	1
<i>Permit and Licensing</i>	17	0	1	4	0	2	0	0	7
<i>Indirect Discharge Permits</i>	3	0	3	0	0	0	1	1	5
<i>Facilities Engineering Division</i>									
<i>Dam Safety</i>	4	0	2	0	0	0	0	1	3
<i>Natural Resources Board</i>									
<i>Natural Resources Board</i>	7	0	1	0	0	0	0	1	2
<i>A250 Districts</i>	48	4	17	0	0	1	0	14	32
<i>Waste Management & Prevention Division</i>									
<i>Waste Management Division</i>	1	0	1	0	0	0	0	0	1
<i>Hazardous Materials - Releases</i>	89	0	38	0	0	14	3	17	72

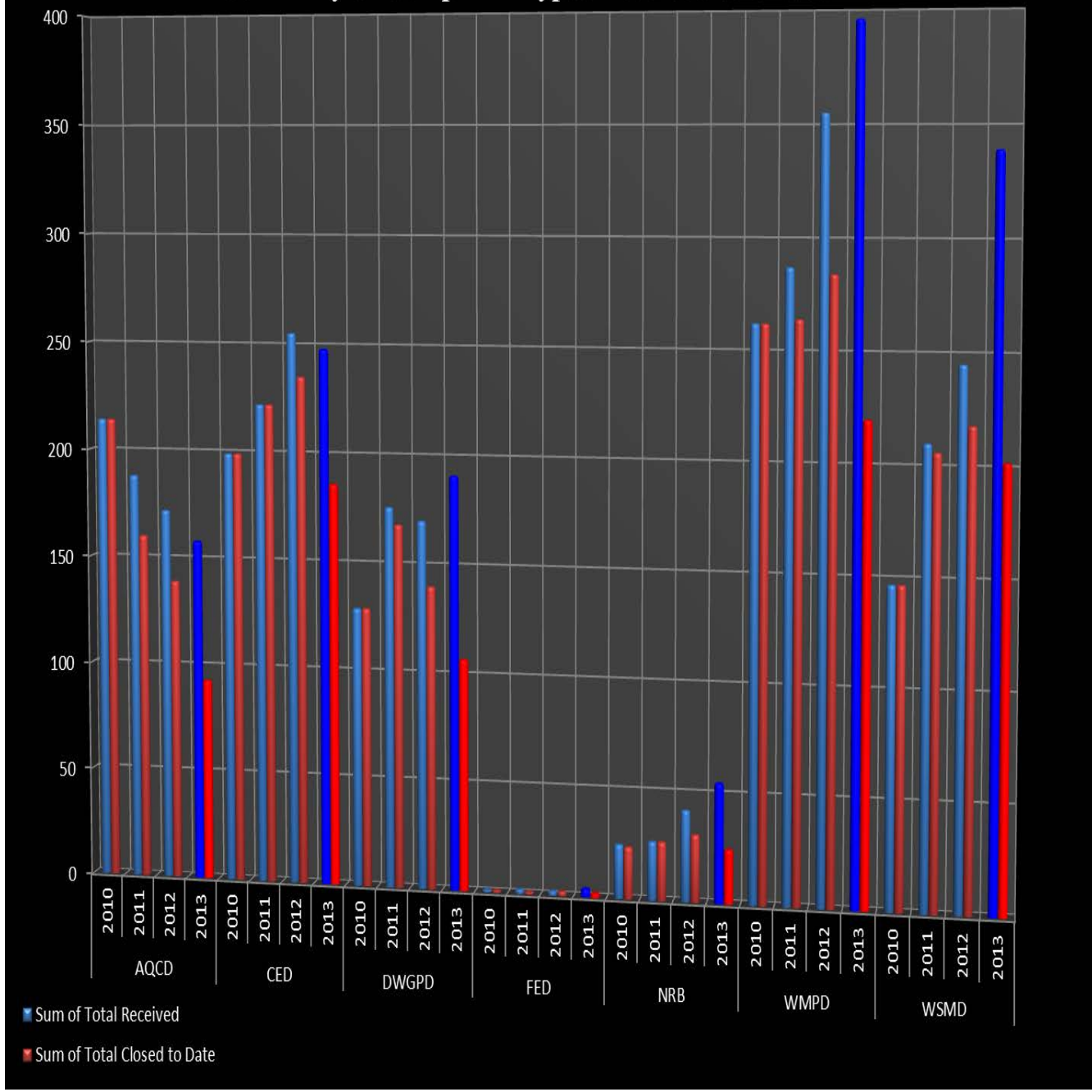
<i>Technical Services</i>	2	0	0	0	0	0	0	0	0
<i>Resource Conservation Recovery Act (RCRA)</i>	9	1	5	0	0	3	0	0	8
<i>Underground Storage Tanks (UST)</i>	8	0	6	1	0	0	2	1	10
<i>Sites Management</i>	12	0	1	0	0	0	2	2	5
<i>Solid Waste Management Practices</i>	167	5	85	2	1	24	4	31	147
<i>Certification & Technical Assistance</i>	77	0	17	1	0	5	0	3	26
<i>Salvage Yards</i>	31	0	4	0	0	2	3	2	11
Watershed Management Division									
<i>Lakes & Ponds</i>	36	1	13	0	0	9	1	0	23
<i>Stormwater</i>	92	2	38	1	1	3	5	6	54
<i>River Corridor Management</i>	71	5	44	5	0	3	1	4	57
<i>Wetlands</i>	122	3	72	2	1	13	5	3	96
<i>Administration & Compliance</i>	1	0	0	0	0	0	0	0	0
<i>Residuals Management</i>	2	0	1	0	0	0	0	0	1
<i>Discharge Permits</i>	15	0	3	0	0	0	5	1	9
TOTALS	1397	38	674	35	14	143	69	128	1063

*Reflects complaints closed through other means, e.g. lack of evidence, lack of cooperation from complainant, referred to the appropriate regulatory program or NRB, unable to respond, violation found/enforcement action not pursued, or transferred to DEC program

Summary of Complaints Received and Complaints Closed to Date by Year
Table D



Summary of Complaint Types Received & Closed



Summary of Citations Issued between 8/1/2013 and 12/31/2013
Table E

Regulatory Programs	# Citations Issued	# Pending	#Resolved
<i>Air Quality & Climate Division</i>	7	2	5
<i>Compliance & Enforcement Division</i>	3	1	2
<i>Drinking Water & Groundwater Protection Division</i>	9	3	6
<i>Waste Management & Prevention Division</i>	2	1	1
<i>Watershed Management Division</i>	4	0	4
TOTALS	25	7	18

The Compliance and Enforcement Division began issuing Environmental Citations in August 2013. The above table displays summary data of all Environmental Citations issued between August 1st, 2013 and December 31st, 2013. A total of 25 citations have been issued during this period. Of these, 7 are pending, meaning they have been drafted and posted online for the required 30 day public notice and comment period, or they have been filed with the Environmental Court and are awaiting final judgment orders. The remaining 18 citations have been resolved with final judgment orders. The resolved citations have resulted in the collection of penalties totaling \$5,750.00.