

**2015 REPORT TO THE LEGISLATURE
REGARDING ACT 98 (1989)
UNIFORM ENVIRONMENTAL ENFORCEMENT ACT**

**Submitted to the
House Committee on Fish, Wildlife and Water Resources
Senate Committee on Natural Resources and Energy**

**Agency of Natural Resources
Department of Environmental Conservation
Environmental Compliance Division**

February 16, 2016

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 about compliance and enforcement efforts during the reporting year.

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 a dedicated Environmental Division within the judiciary; and the standardization of the environmental enforcement process to help assure fair and consistent enforcement of Vermont's environmental laws and rules.

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 their respective jurisdiction. 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 the 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). In 2015 the NRB sought and obtained amendments to Chapter 201 which resulted in the NRB having the authority to initiate enforcement actions by its own authority without need to coordinate with the Secretary.

In August of 2015 the former Compliance and Enforcement Division (CED) was reorganized and a new division was formed and named the Environmental Compliance Division (ECD). The ECD is comprised of the Environmental Enforcement Office (EEO) and the Environmental Assistance Office (EAO). The reorganization joined the staff from the Environmental Assistance Division and the Environmental Enforcement Officers from CED into a single entity. The EAO focuses on confidential, supportive and enabling compliance efforts for municipalities,

businesses, the general public and sector-specific efforts (e.g. auto repair; breweries). It houses the Governor's Awards for Environmental Excellence and the green business recognition programs such as Green Hotels and Green Marinas.

This consolidation and the formation of the new division was initiated to better allow the Agency to use all of its compliance tools (motivational to punitive) in a more strategic fashion. By identifying focus areas with deficient compliance rates, using education and outreach, working with program staff and taking targeted enforcement actions, the Agency now is better organized to utilize its tools to address specific areas of non-compliance.

The EEO staff consists of a Chief EEO with seven EEOs in separate geographical districts. The EEO staffing level was increased by one EEO in the spring of 2015. The goal of this staffing increase is to allow EEO staff to more expeditiously respond to citizen complaints and better assist DEC programs with investigations. Even with the addition of an EEO it is still necessary for the Chief EEO to cover a small district to maintain the desired level of response.

During this transition, the two litigation attorneys formally housed within CED were merged into a newly created litigation section within the office of the ANR General Council. The goals of this reorganization are to better integrate assistance and enforcement and to create greater capacity in ANR to prosecute environmental violations.

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 rules. 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, 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 immediate injunctive relief) from the Environmental Division.

In most instances, formal enforcement actions include an initial attempt to resolve the violation through a negotiated 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 infrequently used in settlements in addition to the penalty. If a settlement cannot be reached, an Administrative Order (AO) is prepared and served. The filing of an AO can result in a trial before the Environmental Division when 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 and rule requirements). The Division, in light of its new suite of tools available, is further refining its priorities.

Final orders signed by the Environmental Division of the Vermont Judiciary's Superior Court are tracked for compliance by the involved regulatory program(s). The ECD tracks penalties to ensure payment, and Supplemental Environmental Projects (SEP) to ensure payment and performance.

ECD's investigative staff (EEOs) continues to achieve a high level of voluntary compliance in the field. The EEOs produce thorough and accurate investigation reports of environmental violations, the more significant of which are referred to the ANR litigation section for prosecution. Once a case is referred and accepted the litigation staff focuses on the efficient advancement of the cases and the achievement of fair and consistent enforcement outcomes. Both the litigation and EEO staff work with the programs to help them to maintain consistency and to develop strong enforcement referrals.

As shown in Table C, after investigation, 72% of complaints investigated were closed either through voluntary compliance by the violator or by a lack of violation being found.

Collaboration

Guided by our MOU with the NRB, we have a collaborative and productive relationship sharing both investigative and legal resources in mixed NRB/ANR cases. During 2015 the NRB filed one AO and resolved nine cases via an AOD. Several matters involved ANR violations or permit conditions directly related to ANR programs. The NRB also issued nine civil citations.

The Attorney General resolved one joint ANR/NRB case via a stipulated settlement agreement.

Our relationship with the Department of Forests, Parks and Recreation (DFPR), for whom we handle both Acceptable Management Practices and Heavy Cut cases, remains strong and cooperative. The new Division is actively working with DFPR to increase our collaborative effectiveness. Thirty-eight AMP cases were investigated and one case was prosecuted.

We continue to work closely with the Attorney General's Office (AGO). During 2015, the AGO closed six environmental enforcement actions. The AGO also resolved two other cases with collection of funds reimbursing the clean-up of contaminated properties. In addition, the ECD 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. During the review in 2015 both parties felt the MOU was effective and did not need to be modified. The AGO also prosecutes criminal cases which are developed and investigated by ECD. This year one criminal matter was sent to the AGO for prosecution. The criminal matter resulted in three felony convictions and a fine.

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.

During 2015, ECD staff worked extensively with the Agency of Agriculture, Food and Markets (AAFM). This built a much stronger relationship with AAFM. Increased collaboration remains a priority for ECD. DEC staff met regularly with AAFM staff. Lines of communication were both clarified and strengthened during 2015. This resulted in a number of agricultural discharge matters being referred and prosecuted by both DEC and the Attorney General's office. In addition to regular meetings, ECD staff provided training for AAFM staff on a number of topics including identifying direct discharges and drafting good enforcement referrals. It is expected that this greatly improved collaborative relationship will continue to blossom in 2016 as both entities focus on improving water quality in Lake Champlain.

Training and LEAN

ECD staff identified a need for additional investigative training for DEC field staff. In response to this need ECD staff designed a sixteen hour training program that covered investigations and the enforcement process in an effort to demystify what happens when a matter is prosecuted by the Litigation Section. These trainings were conducted over four half days and each block included 10-15 DEC staff members. In all over 70 DEC field staff members were trained. ECD will continue to offer and expand this training to new field staff and is planning to offer both a more advanced investigative course as well as training on our improved complaint tracking system.

During 2015, DEC began to use Lean business tools to examine how to improve our business processes. ECD staff participated extensively in this new initiative receiving training on Lean and helping to facilitate a number of Lean events within the department. ECD also employed Lean tools in two separate events. These events included looking at how DEC presently tracks complaints and how we could improve on this. A second mini event looked at how matters are referred from the DEC programs for formal enforcement action. The outcomes identified in both Lean projects will continue to be implemented in 2016.

Civil Citations

In November 2011, a rule to implement expanded civil citation authority went into effect. The rule allows 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 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 2015, a total of 28 citations were issued. A number of other violations were referred for citations, but were either converted to formal cases or were withdrawn. With additional DEC staff training an increase in the number of citations issued is expected during 2016. As we gather additional experience with the civil citations process we have identified areas of the law that are

in need of clarification and improvement. ECD plans to address these areas via the rule making process during 2016.

Strategic Employment of Resources

An important area of focus during 2015 has been on the strategic use of our limited enforcement resources. ECD 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. In furtherance of this objective a Strategic Enforcement and Compliance Team (SECT) and the Compliance Advisory Group (CAG) was created in the department. The group includes section chiefs and program staff from the DEC regulatory programs. In addition to assisting ECD in planning and targeting, these meetings have provided an excellent opportunity for cross division and program information sharing which has benefitted all participants. A critical outcome of the formation of these groups is the identification of areas where process improvement opportunities exist to ensure increased fair and consistent enforcement actions.

Finally, information about ECD is available to the public via our updated web page. Staff contact information, how to file a complaint (anonymous, if desired), press releases, and a list of our SEP projects are posted on this site. Over the past several years, ECD 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 on the ECD website. 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/>. A major update of DEC's (and thus, ECDs) websites will be implemented in 2016.

In conformance with legislation passed in 2012, ECD 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. ECD is continuing to identify additional opportunities to improve transparency and to communicate with the citizens of Vermont. ECD is exploring the use of social media as a tool to inform citizens of pending environmental enforcement actions. ECD 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 and general public.

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 2015, additional features were added to the database to increase usage and improve functionality. We expect additional enhancements to be made during 2016 as we improve this tool as a result of a Lean event.

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.*

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Compliance & Enforcement Division was funded in fiscal year 2015 as follows:

Interdepartmental Funds \$1,676,110

The Compliance & Enforcement Division's operating expenditures for fiscal year 2015:

Personal Services	\$1,375,651
Operating	<u>\$ 300,459</u>
Total	\$1,676,110

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 Discontinuance agreed to in 2015. There were no Supplemental Environmental Projects implemented in 2015.

Table B reflects formal actions as well as informal resolutions from 2015.

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 2015.

VI. CONCLUSION

As the statistics found in the attachment demonstrate, ECD continued to advance its goals during 2015. These goals are 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 these goals. With new compliance tools available for the newly formed ECD, we expect increased effectiveness at not just addressing environmental violations, but at preventing these violations from occurring in the first place.

Respectfully Submitted,



By: _____
Alyssa B. Schuren, DEC Commissioner
On behalf of Deborah Markowitz, Secretary
Agency of Natural Resources

**Formal Court Actions (Table A)
January 1, 2015 – December 31, 2015**

Assurances of Discontinuance (AODs)

Regulatory Programs	# AODs Issued	\$ AOD Penalties Assessed	\$ AOD Penalties Collected by CED	# Citations Issued	\$ Value of Citation	\$ Citation Collected
<i>Air Quality & Climate Division</i>	2	\$15,200.00	\$15,838.00	7	\$1,700	\$1,700
<i>Compliance & Enforcement</i>	4	\$68,875.00	\$55,750.00	1	\$1,500	\$0
<i>Department of Forests, Parks & Recreation</i>	0	\$0.00	\$0.00	0	\$0	\$0
<i>Drinking Water & Groundwater Protection Division</i>	10	\$52,750.00	\$47,205.25	0	\$0	\$0
<i>Facilities Engineering Division</i>	1	\$750.00	\$0.00	0	\$0.00	\$0
<i>Waste Management & Prevention Division</i>	9	\$87,024.75	\$53,938.14	9	\$5,550	\$5,500
<i>Watershed Management Division</i>	6	\$91,650.00	\$73,750.00	11	\$4,800	\$4,800
TOTALS	32	\$316,249.75	\$246,481.39	28	\$13,500	\$12,000

The Environmental Compliance Division collected a total of \$246,481.39 in penalty payments between January 1, 2015 and December 31, 2015. Of this total, \$29,398.29 were payments resulting from formal court actions from previous years.

From January 1st, 2015 to December 31st, 2015, a total of 28 citations were issued. All the issued citations have been resolved with final judgment orders. The resolved citations have resulted in \$13,550 in assessed penalties with \$12,050 in penalties collected.

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

Regulatory Programs	# AOs issued by CED	\$ AO Final Penalty Amount	\$ AO Penalties collected by CED	#EOs issued	Closed Informally*
<i>Air Quality & Climate Division</i>	0	\$0.00	\$0.00	0	0
<i>Compliance & Enforcement Division</i>	1	\$2,946.85	\$0.00	1	0
<i>Department of Forests, Parks & Recreation</i>	1	\$34,800.00	\$0.00	0	0
<i>Drinking Water & Groundwater Protection Division</i>	2	\$21,000.00	\$1,047.00	0	0
<i>Facilities Engineering Division</i>	0	\$0.00	\$0.00	0	0
<i>Waste Management & Prevention Division</i>	2	\$29,001.88	\$0.00	0	0
<i>Watershed Management Division</i>	0	\$0.00	\$2,788.00	0	0
TOTALS	6	\$87,748.73	\$3,835.00	1	0

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

Of the \$3,835.00 penalty amount collected, all were from AOs issued prior to 2015. The \$87,748.73 AO penalties assessed in 2015 are either waiting for a court hearing or are in the process of being collected.

Summary of Complaints Received and/or Resolved by ECD
January 1, 2015 – December 31, 2015
Table C

Regulatory Programs	Total Received This Year	Pending Of Those Received in 2015	Closed No Violation	Closed NOAV Issued	Closed Citation Issued	Closed Voluntarily Corrected	Closed Formal Action Taken	Closed No Formal Action Taken*	Total Closed
<i>Air Quality & Climate Division - 117 Closed</i>									
<i>Engineering Services</i>	7	4	2	0	0	0	0	0	2
<i>Field Services</i>	186	84	57	4	7	21	12	12	113
<i>Technical Services</i>	3	1	0	0	0	2	0	0	2
<i>Mobile Source Control</i>	1	0	0	0	0	0	0	0	0
<i>Compliance & Enforcement Division - 326 Closed</i>									
<i>Investigations</i>	5	1	3	0	0	0		0	3
<i>Unpermitted Discharges (1259)</i>	303	90	173	1	3	20	14	29	240
<i>Unpermitted Discharges (AMPs)</i>	38	7	23	0	0	4	1	4	32
<i>Unpermitted Discharges (Erosion)</i>	3	1	2	0	0	0		0	2
<i>Unpermitted Discharges (AAPs)</i>	61	14	33	0	0	5	5	6	49
<i>Department of Forests, Parks, & Recreation - 4 Closed</i>									
<i>Forest Resources</i>	19	2	4	0	0			0	4
<i>Drinking Water & Groundwater Protection - 170 Closed</i>									
<i>Technical Services</i>	213	86	104	11	0	17	2	8	142
<i>Engineering & Financial Services</i>	7	5	1	0	0	1		0	2
<i>Operations</i>	15	10	0	0	0	0	15	0	15
<i>Permit & Licensing</i>	7	0	3	4	0	0		0	7
<i>Indirect Discharge Permits</i>	7	3	1	0	0	1	2	0	4
<i>Facilities Engineering Division - 8 Closed</i>									
<i>Dam Safety</i>	5	1	2	2	0	2	2	0	8

Natural Resources Board - 27 Closed									
<i>A250</i>	51	32	12	0	0	1	13	1	27
Waste Management & Prevention Division - 402 Closed									
<i>Hazardous Materials - Releases</i>	148	49	55	0	4	26	11	22	118
<i>Salvage Yards</i>	88	69	10	4	0	3	22	16	55
<i>Resource Conservation Recovery Act (RCRA)</i>	39	17	17	0	0	1	5	2	25
<i>Underground Storage Tanks (UST)</i>	4	0	3	0	2	0	4	0	9
<i>Sites Management</i>	3	1	1	0	0	0	1	0	2
<i>Solid Waste Management Practices</i>	240	86	92	8	3	34	8	25	170
<i>Certification & Technical Assistance</i>	41	22	14	2	0	3	4	0	23
Watershed Management Division - 308 Closed									
<i>Lakes & Ponds</i>	76	35	33	0	0	7	5	7	52
<i>Stormwater</i>	124	65	38	0	6	8	14	7	73
<i>River Corridor Management</i>	82	37	39	0	3	4	0	3	49
<i>Wetlands</i>	172	80	84	0	0	9	0	15	108
<i>Administration & Compliance</i>	1	1	0	0	0	0	14	0	14
<i>Residuals Management</i>	1	1	0	0	0	0	0	0	0
<i>Discharge Permits</i>	20	10	2	0	2	0	7	1	12
TOTALS	1970	814	808	36	27	169	161	158	1362

*Reflects complaints closed for various reasons, 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