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By Mike Faher
Oct 2 2017 13 Comments



Doug Hoffer, Vermont State Auditor. File photo by Anne Galloway/VTDigger

The Vermont Department of Environmental Conservation is tightening enforcement procedures after a state auditor's report found that that the department had failed to follow up on certain violations.

The report, released Monday, said the department's files "did not include evidence that violations had been addressed" in 18 of the 100 environmental cases selected for review by the state auditor's office.

The audit also found that some inspections of underground storage tanks and wastewater facilities had not been completed on time.

In response, department commissioner Emily Boedecker said officials have stepped up inspections and are examining ways to improve consistency in enforcing the state's environmental laws.

"The auditor has identified strategic opportunities for my department to improve our performance and to assist regulated entities with compliance in a cost-effective manner," Boedecker said.

The Department of Environmental Conservation oversees the state's air and water quality and regulates solid and hazardous waste. It is a busy department with far-reaching authority. Officials said they issue more than 12,000 permit decisions annually via the divisions of air quality; watershed management; drinking and groundwater; and waste management and prevention.

State Auditor Doug Hoffer said his office chose to audit the department's monitoring and enforcement activities "because of their importance to ensuring that Vermonters enjoy clean air, clean water and healthy and safe communities."

The audit focused on a one-year period from Oct. 1, 2015, to Sept. 30, 2016. During that time, the department completed 8,061 environmental monitoring cases, with 13 percent of those cases resulting in violations.

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“Without such information, (the department) cannot be certain whether environmental violations remain ongoing or have been addressed,” Hoffer wrote.

In one case, more than a year after a wetlands complaint, the department “had not required that the violator correct the environmental noncompliance caused by excessive rutting and removal of vegetation.”

In two-thirds of the wetlands cases evidence of follow-up was lacking. “We attribute the lack of follow-up in the wetlands program to the ineffective use of its tracking system, which was only recently implemented,” the auditor’s office wrote.

The wetlands program also was singled out for not pursuing investigations in some cases – seven out of 94 instances – where violations were possible. Auditors noted that “the wetlands program has not provided its ecologists with guidance as to when it is, and is not, appropriate to investigate a case.”

State Rep. David Deen, D-Westminster, chair of the House Natural Resources, Fish and Wildlife Committee, took a positive view of the department’s audit “given the breadth and scope of the permitting/enforcement responsibility.”

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Environmental Conservation Commissioner Emily Boedecker. Photo by Mark Johnson/VTDigger

Other audit findings included:

- While Boedecker said her department’s “most effective strategy is to ensure compliance before enforcement action is needed,” auditors nevertheless noted that enforcement steps were “not often taken.”

Only 28 of the reviewed cases, or about 3 percent, resulted in enforcement actions.

- The auditor’s office looked at a longer time frame – from January 2011 to March 2017 – to see how well the department was doing in collecting fines.

The department collected \$1.28 million, about 71 percent of what was owed.

“In general, (the department) has utilized the collection tools available to it, although it has only recently implemented a process to establish a debarment list that would stop violators who are past due in paying penalties from obtaining or renewing permits,” auditors wrote.

- The department’s environmental compliance division, which follows up on complaints pertaining to its regulatory programs, had a backlog of such cases.

Of 1,516 complaint investigations assigned to the division between October 2015 and September 2016, a quarter of those cases were still open at the beginning of 2017.

The division’s director told auditors that officials “have been working on this backlog.”

- The department’s underground storage tank and wastewater programs “did not conduct all the activities required to be performed” during the audit – though these issues appeared to be relatively small



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The department also announced several other improvements that are in the works, including a plan to “create consistency in enforcement and compliance activities” by updating internal procedures.

Additionally, officials pledged to improve the department’s annual reports to the Legislature, which the audit said were incomplete.

And department officials said they would improve the consistency of their wetlands enforcement activities -- addressing a key issue identified in the audit.

In a letter to Hoffer, Boedecker acknowledged that “there is currently no formally adopted written guidance on when it is appropriate to investigate a wetlands complaint.” Officials are “committed to developing formal written guidance this coming year,” Boedecker wrote.

But she also defended her department’s performance on wetland issues, writing that cold weather and reliance on other governmental agencies can extend some cases.

“Wetlands compliance follow-up can take longer than some other (department) programs,” Boedecker wrote.

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About Mike

Mike Faher reports on health care and Vermont Yankee for VTDigger. Faher has worked as a daily newspaper journalist for 19 years, most recently as lead reporter at the Brattleboro Reformer where he covered several towns and schools as well as the Vermont Legislature and Windham Superior Court. He previously worked for 13 years in his native Pennsylvania at The Johnstown Tribune-Democrat.

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