

Progress Report on the Outcomes of the State Auditor of Account's  
Performance Audit of Vermont Department of Environmental  
Conservation's Compliance and Enforcement Activities

Act 108 of 2014 §3

February 1, 2018

Submitted to:

House Committee on Appropriations and Senate Committee on  
Appropriations

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## Statutory Reference:

2007 Act 65 Sec 42(a), as amended by [2014 Act 108 Sec. 3](#) states: “By February 15 of each calendar year, those agencies and departments that have outstanding audit recommendations shall submit plans to the House and Senate Committees on Appropriations for addressing these issues.”

## Introduction

During the period 2016 to 2017 the Department of Environmental Conservation (Department, or DEC) engaged with the Office of State Auditor to assess the performance of the Department’s Environmental Compliance efforts. The resulting performance audit report (report) was issued on September 29, 2017 and is entitled *Environmental Compliance: The Department of Environmental Conservation Conducts a Wide Variety of Activities to Identify Violations But Could Improve Resolution Follow-Up*. The auditor’s report presented a series of findings and recommendations designed to improve DEC’s performance in the area of environmental compliance and enforcement.

## Recommendations of the Audit Report, DEC’s Response, and Current Status and Plan.

The report issued a series of findings that were addressed by DEC in the Department’s Management Response. The seven recommendations in the auditor’s report, along with DEC’s response, are replicated below. The current status of DEC’s efforts are noted, as are DEC’s plans to address unresolved recommendations in fulfillment of the statutory requirement of this report.

### Recommendation 1 – Underground Storage Tank Inspections

1. *Direct Waste Management and Prevention Division (WMPD) to require the Underground Storage Tank (UST) Program to immediately inspect all facilities with underground storage tanks that have not been inspected in the last three years and amend their process to ensure that the inspection mandate is followed.*

#### Response

The Department notes the very high rate of UST inspections conducted in a timely manner (~99%) and acknowledges the need for follow-up on the outstanding eight UST inspections. As of this writing, these inspections have been completed and documented by the Program. The Department inspects approximately 350 UST facilities per year and will continue to pursue timely completion of all UST inspections.

#### Current Status

The eight outstanding UST inspections were completed prior to October 1, 2017. The Department continues to pursue timely implementation of all UST inspections.

## Recommendation 2 – Wastewater Treatment Facility Inspections

2. *Direct Watershed Management Division (WSMD) to require the Wastewater Program to immediately inspect all facilities approved for inspection by the Environmental Protection Agency that were not inspected and to develop a process to ensure that the agreed-upon type of inspection is conducted.*

### Response and Plan

The Department notes that three of the 41 scheduled facility inspections were not completed in a timely manner, which is a direct result of uncommonly high staff turnover (50% of the program staff) during the compliance period. The Wastewater Program works annually with the EPA to select facilities to be inspected, and the type of inspection. This coordination is a requirement for eligibility of the Department's federal funding for the wastewater program. In its Management Response to the Auditor, the Department committed to inspecting the three outstanding facilities before the end of this calendar year.

### Current Status

The three outstanding facilities were inspected prior to December 31, 2017.

## Recommendation 3 – Wetlands Program Complaint Investigation Guidance

3. *Direct WSMD to require the Wetlands Program to develop guidance as to when it is, and is not, appropriate to investigate a complaint.*

### Response and Plan

The Commissioner has directed the Watershed Management Division to require the Wetlands Program to develop a guidance on when, and when not, it is appropriate to investigate a complaint.

### Current Status

Written guidance has been drafted and is under review. The guidance is expected to be finalized spring 2018.

## Recommendation 4 – Return to Compliance

4. *Require each division to have management controls in place to ensure that follow-up on violations occur and that return to compliance is confirmed.*

### Response and Plan

DEC is taking action to address management of complaints, enforcement of violations, and return to compliance.

- **Complaints:** Prior to the commencement of the Audit, DEC recognized a backlog of open complaints, and since October of 2016 has closed over 1000 open complaints. Programs have seen a reduction in the number of open complaints of 35% - 55% during that time frame. A systematic process has been instituted to work towards closing these open investigations. Also prior to the commencement of the audit, the Environmental Compliance Division (ECD) had implemented a monthly check-in process across all

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programs to evaluate open complaints, identify opportunities to advance investigations towards closure and to discuss open investigations. Collectively these efforts are helping to clean up the database so that complaints identified as “open” reflect only those investigations that are currently underway.

- **Enforcement of Violations:** Monitoring open complaints and closing complaints on a regular schedule enables DEC to track what violations were found and to confirm that the violations were addressed.
- **Return to Compliance:** In conjunction with the review of compliance procedures identified in recommendation #6, DEC will develop procedural controls that ensure that the return to compliance is timely and documented.

#### Current Status

DEC has invested extensive program staff and management time to (a) systematize a review of open complaints; (b) identify barriers to closing specific complaints and (c) ensure that the backlog of open complaints is not repeated by instituting monthly check-ins with each program.

#### Recommendation 5 – Usage of Wetlands Program Tracking Database

5. *Direct WSMD to have the Wetlands Program develop a protocol that ensures the use of its tracking database.*

#### Response and Plan

The Wetlands Program tracking system was developed in 2016, at which time an updated database usage document was issued, and a protocol established for usage of the wetlands tracking database. However, this recommendation also speaks to a larger systematic need underscored by the Audit: to incorporate individual program tracking databases into the DEC-wide Compliance and Enforcement database (now known as BEAR) currently used by ECD, or an alternative shared system. Prior to the commencement of the Audit, DEC drafted a DEC Compliance Procedure that, in concurrence with the recommendation in the Audit report, directs the use of BEAR by ECD and all DEC divisions. This endeavor will require comprehensive business analysis to tie numerous program-level tracking systems to BEAR. This will be a high-value but complex information technology (IT) undertaking that will need to be staged along with the ongoing work within DEC’s compliance and enforcement efforts and account for available staff and IT resources. For the wetlands database specifically, this work has already been initiated.

#### Current Status

The Department has initiated an information technology project to integrate the wetlands enforcement database with DEC’s Environmental Compliance Division’s database. DEC has conducted user requirements evaluation and business analysis to support the integration of these databases. Required new data attributes and field needs have been identified and IT staff have invested approximately 200 hours into this project as of this writing.

## Recommendation 6 – Department-wide Compliance Procedure

6. *Ensure that (1) all programs have compliance procedures that include all attributes in the 2001 DEC procedures document or any requirements that supersedes this document and (2) ECD's [Environmental Compliance Division] enforcement section have a process or procedure in place so that violations are handled in a manner consistent with that of the programs.*

### Response and Plan

The Department agrees with this recommendation and had already initiated a suite of supporting actions prior to the report. The Enforcement Workgroup (a group of DEC directors, managers and staff who conduct or interact with enforcement activities) and ECD have identified a complete update to the 2001 DEC Compliance Procedure document as a priority for the year ahead. The Audit underscores this need.

The comprehensive update to the 2001 Procedure will address several other suggestions identified in the Audit; notably in Table 7, “*Summary of Whether Compliance Procedures Include All Expected Attributes, by DEC Program Division.*” ECD has collected and reviewed all Program compliance procedures and guidance documents for commonalities. ECD has provided the Enforcement Workgroup with a summary of these procedures and, as an appendix to the Compliance Procedures, will provide a template for each Division and program to modify to meet their needs. The template will contain the basic elements of the revised DEC Compliance Procedure, resulting in all program-level compliance procedures being aligned to the updated DEC compliance procedure.

### Current Status

An initial revision of the 2001 DEC Compliance Procedure has been reviewed by the Enforcement Workgroup. In January 2018, the draft was distributed for comment to all DEC programs. The revised Procedure is on schedule for adoption in 2018.

## Recommendation 7 – Annual Reporting

7. *Create a process by which all complaint data is accurately and completely reported to the legislature, as required by 10 V.S.A. §8017, as well as in performance reports.*

### Response and Plan

DEC's Environmental Compliance Division tracks enforcement activity in its BEAR database. While the BEAR database is an excellent tool to provide metrics of enforcement activities conducted by ECD, the Audit correctly identifies an opportunity for DEC to more fully comply with 10 V.S.A. §8017 by incorporating programmatic enforcement information that exists outside of BEAR. To address this, ECD has initiated a new process to solicit from Programs required information for the annual enforcement report, such that the report reflects the full breadth of DEC's compliance and enforcement activities. While in the near term, this approach could potentially “double count” some activities that are carried out jointly by ECD and the programs, this approach will produce more complete reporting. Achieving this goal will require

the completion of the business analysis and information technology solutions suggested for BEAR in recommendation #5.

#### Current Status

Title 10 V.S.A. §8017 requires that the Secretary report annually, by January 15<sup>th</sup>, on the environmental compliance and enforcement activities of DEC for the calendar year. In the 2017 report, DEC's Environmental Compliance Division will report data from the BEAR database as well as from enforcement databases maintained by media programs outside of BEAR.

Furthermore, DEC notes that the deadline of January 15<sup>th</sup> is a difficult date to meet, in that only two weeks will have elapsed between the close of the calendar year and the report deadline. Accordingly, DEC has recommended to the General Assembly that the submission date for this annually-required report be amended to February 15<sup>th</sup>.