

**2016 REPORT TO THE LEGISLATURE
REGARDING ACT 98 (1989)
UNIFORM ENVIRONMENTAL ENFORCEMENT ACT**

10 V.S.A. § 8017

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

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

February 24, 2017

2016 SUMMARY

2016 was a busy year for the Environmental Compliance Division's (ECD) Enforcement team. Our seven Environmental Enforcement Officers, Chief Environmental Enforcement Officer, and Administrative Assistant received 1,997 complaints – our highest since we began reporting in 1995. Of the 1,616 complaints that were closed, over 80% were closed with no violation identified or voluntarily corrected because they were generally minor violations. Of the 64 cases formally prosecuted via citation, Administrative Orders or Assurances of Discontinuance, \$438,090 in penalties were assessed.

- There is a direct correlation between complaints received and violations found. This indicates that complaints are an important source of information to help identify environmental violations.
- The most common environmental violations identified by our division (which may or may not include data from other divisions) include: waste, wetlands, air, illegal discharges to water, and on-site wastewater.
- Significant effort is expended to identify these violations: only approximately 30% of complaints are found to have an environmental violation occurring.
- The number of complaints appears to be increasing from year to year.

This report is complete only in that complaints and outcomes are recorded in ECD's database. Air, waste and water programs may have complaints and outcomes that are not reflected in this report.

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. This report is required to present, at a minimum, the number of violations, the actions taken, disposition of cases, the amount of penalties collected, and the cost of administering the enforcement program.

II. BACKGROUND: The Environmental Compliance Division

Environmental enforcement for the Agency of Natural Resources is the primary duty of the Enforcement section of the Environmental Compliance Division.

The Environmental Compliance Division was formed in 2015 by combining the Compliance and Enforcement Division (CED) and the Environmental Assistance Office (EAO). The reorganization joined the assistance and enforcement staff into a single division. The division is within the Department of Environmental Conservation (DEC).

The former Compliance and Enforcement Division provided environmental enforcement investigation and legal staff/resources for identification and prosecution of violations of Vermont's environmental statutes. ECD Enforcement is staffed by a Chief Environmental Enforcement Officer and seven Environmental Enforcement Officers (EEOs) located within designated geographical districts throughout the state. These Officers are responsible for the investigation and documentation of any/all alleged violations (including citizen complaints) of Vermont's environmental permits, rules, regulations, and statutes that are under the jurisdiction of DEC, the Department of Forest Parks and Recreation (DFPR), and for coordination on violations relating to the Natural Resources Board (NRB) and the Agency of Agriculture, Food and Markets.

Formally within CED, the Agency of Natural Resources' (ANR) litigation section is now housed within the Office of the ANR General Counsel (OGC). The legal staff in this section handle the legal aspects of environmental enforcement from initial contact to the respondent to brokering settlement agreements and representing the Agency in court proceedings related to enforcement actions. ECD and OGC work closely to bring cases identified by program staff or EEOs to legal resolution.

The Environmental Assistance Office (EAO) is staffed by a program manager, three environmental analysts and four regionally based permit specialists. The Environmental Assistance Office provides guidance to permit applicants, offers environmental assistance to Vermont businesses and municipalities, administers and promotes recognition programs such as the Governor's Awards for Environmental Excellence and the Vermont Green Business Program and provides assistance to municipal household hazardous waste programs. Staff assist businesses, communities, state agencies, and others to identify effective and economical ways to reduce environmental impact to meet or exceed environmental regulations in order to safeguard human health and the environment.

In addition to Environmental Enforcement Officers and technical assistance staff, the Environmental Compliance Division has a Director and an Administrative Assistant.

The ECD was created to allow the Agency of Natural Resources 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 is better organized to utilize its tools to proactively address specific areas of non-compliance.

III. ENVIRONMENTAL ENFORCEMENT IMPLEMENTATION

General Enforcement Process

Generally, the process from complaint identification to prosecution follows a three-step path: complaints/investigations begin with either an air, water, or waste program staff or Environmental Enforcement Officer identifying the violation who work to gain compliance. When violations are identified as priorities, they move through a multi-disciplinary Environmental Referral Review Committee (ERRC) to the Litigation Section of the Office of

General Counsel for prosecution, penalty assessment and handling of all legal aspects of the violation. This process is outlined below.



Detailed Enforcement Process

Enforcement actions are generally initiated in two primary ways: from the air, waste, and water programs or from a complaint from a citizen or State of Vermont staff member. 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, EEOs or 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 and a timeframe within which to do so. When voluntary compliance is not forthcoming, or if violations are identified as priorities, formal enforcement is recommended to the program.

The Division is guided by a “strategic overlay” that identifies priority situations where a violation should proceed to formal enforcement action (i.e. fines). Examples of these factors include when a violation is particularly egregious, repeated, or cannot be corrected. In those instances, (and others), an 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 Superior Court Environmental Division.

The Environmental Referral Review Committee, initiated in the fall of 2015, serves as a forum to provide timely, consistent, and transparent decisions on enforcement activities within the Agency and assure that consistent, quality referrals are being sent to the Litigation Section. The weekly Committee meeting is attended by representatives of each division to provide an evidentiary review of the information provided. It is chaired by the Section Chief of the Litigation Section of OGC and the vice-chair is the Director of the Environmental Compliance 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 of the Vermont Judiciary's Superior Court 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.

Final orders signed by the Environmental Division 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. In 2016 a collections agency was retained by ANR to ensure collections of fines. The Department also utilizes the tax-offset program and a new 2016 collections policy to ensure payment of penalties.

ECD's investigative staff (EEOs) continues to achieve a high level of voluntary compliance in the field, especially for less egregious violations. 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.

Collaboration with Other State of Vermont Entities

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 2016, the NRB filed one AO and resolved eighteen cases via AODs. Several matters involved ANR violations or permit conditions directly related to ANR programs. The NRB also issued five civil citations. In 2016, one mixed NRB/ANR case was resolved in Environmental Court.

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. No AMP cases were prosecuted in 2016.

We continue to work closely with the Attorney General's Office (AGO). During 2016, we referred eight enforcement cases to the AGO which are currently active. The AGO closed one ANR-initiated environmental enforcement action. The OGC Litigation Section of ANR provides information on all new cases to the AGO Environmental Division on a weekly basis. The MOU is also reviewed yearly to ensure its continued effectiveness. The AGO also prosecutes criminal cases which are developed and investigated by ECD. This year we referred one case to the State's Attorney's Office in 2016 for criminal prosecution.

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 2016, ECD staff worked extensively with the Agency of Agriculture, Food and Markets (AAFM). A significant amount of time and resources were invested in increasing the quality of this relationship. Increased collaboration on agricultural violations remains a priority for ECD. Regularly scheduled check-ins between the two agencies related to environmental violations

were established in 2016. This resulted in a number of agricultural discharge matters being referred and prosecuted by both DEC and the Attorney General's office.

The Division is guided by several Memorandum of Understanding (MOU) between ANR and the Attorney General's Office, the Agency of Agriculture Food and Markets (AAFM), and the Natural Resources Board. The AGO/ANR/AAFM memorandum was updated in 2016. It is expected that both the ANR/NRB and the ANR/AAFM memoranda will be updated in 2017.

Training and LEAN

ECD staff continue to identify a need for additional investigative training for DEC field staff. In response to this need, ECD and litigation legal staff have set up several levels of trainings. First, training on the enforcement database and on basic enforcement process and protocols is provided several times a year. Next, ECD and OGC Litigation Section staff began a series of program-specific problem solving sessions. These provide the opportunity to identify and work through issues that are unique to specific programs and provide the most detailed level of problem solving.

In all over 80 DEC field staff members were trained in 2016. ECD will continue to offer and expand this training to new field staff as well as to increase our training to other departments and agencies. AAFM and ANR are currently planning a multi-day joint training for the summer of 2017 for inspection staff. This should enable us to provide more consistent and higher quality inspections.

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. In 2016, many of the outcomes identified in these processes were implemented, resulting in clearer processes for referrals, better tracking systems, and increased communication across divisions related to enforcement matters.

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. Penalty payment is tracked and appeals of these citations are heard by the Environmental Division of the Superior Court.

During 2016, a total of 14 citations were issued. A number of other violations were referred for citations, but were either converted to formal cases or were withdrawn. 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.

Strategic Employment of Resources

An important area of focus during 2016 was 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 a prioritization process based on common areas of agreement, such as impact to human health or the environment. The Compliance Advisory Group (CAG), created in 2015, continued to meet to coordinate on policy matters and creation of enforcement guidance documents for 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. In 2017, we will continue to identify ways to increase transparency of our investigations and their outcomes.

ECD posts 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. We are exploring the use of social media as a tool to inform citizens of pending and completed environmental enforcement actions. ECD continues to utilize 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 2016, additional features were added to the database to increase usage and improve functionality. We expect additional enhancements to be made during 2017 as we improve this tool.

2016 Enforcement, Trends

The Environmental Compliance Division tracks complaints that are reported to the division. Air, water and waste programs may also have complaints and compliance outcomes that are not recorded by ECD and thus are not reported. Penalties assessed, however, reflect all of DEC.

As shown in Table C, after investigation, approximately 80% of complaints closed were closed either through achieving voluntary compliance or by a lack of violation being found. This highlights the benefit of having the EEOs investigate each complaint. It may also highlight a high level of engagement from the public, calling in many suspected violations. Lastly, it may also signify difficulty by the public of identifying environmental violations. Because ECD's responses are currently complaint-driven, and because all DEC or ANR programs do not track enforcement actions similarly and are not included in this report, we lack baseline information that would enable us to ascertain statewide environmental compliance rates. Moving towards

obtaining this baseline information across the Department of Environmental Conservation will be a priority of ECD in 2017.

In 2016, the top five categories of complaints received are, in order: wetlands, solid waste management practices (i.e. dumping), illegal discharges to water, on-site wastewater systems such as residential system failures, and air. These are presented in Figure 1 below.

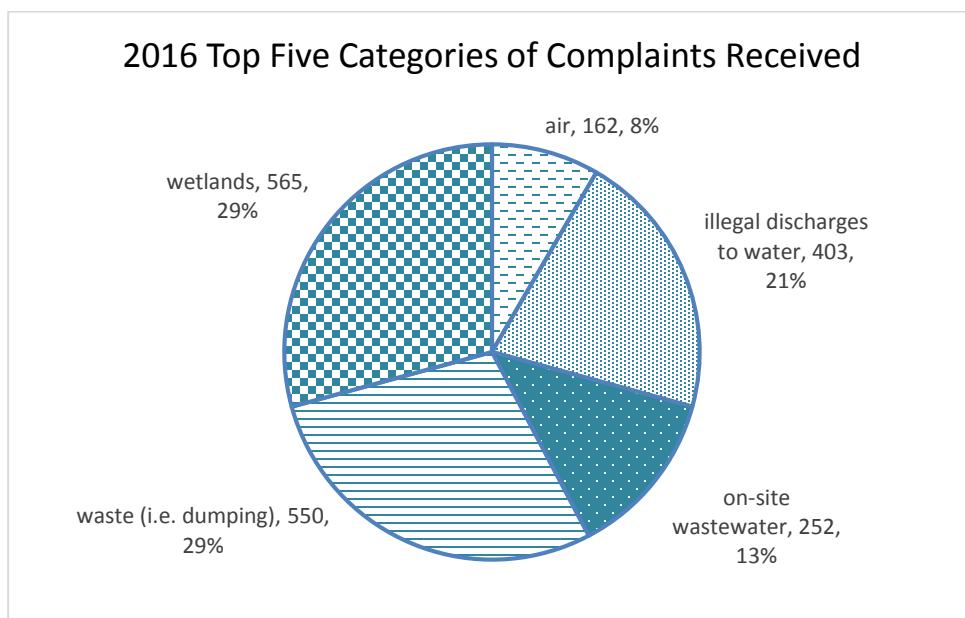


Figure 1. Major categories of complaints received in 2016.

The top five categories of violations found in 2016 are, in order: waste, wetlands, air, illegal discharges to water, and on-site wastewater. These are presented in Figure 2.

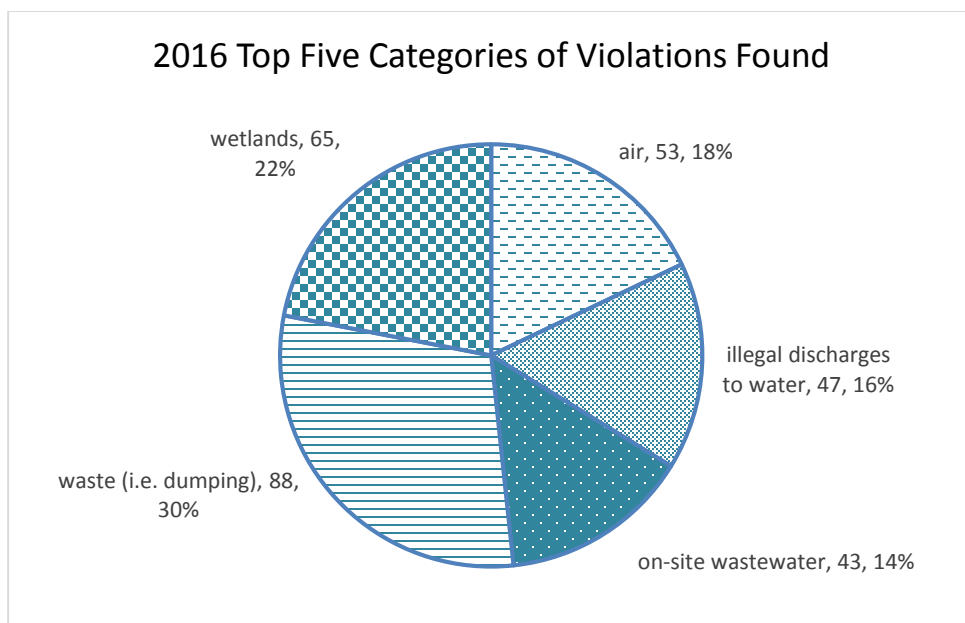
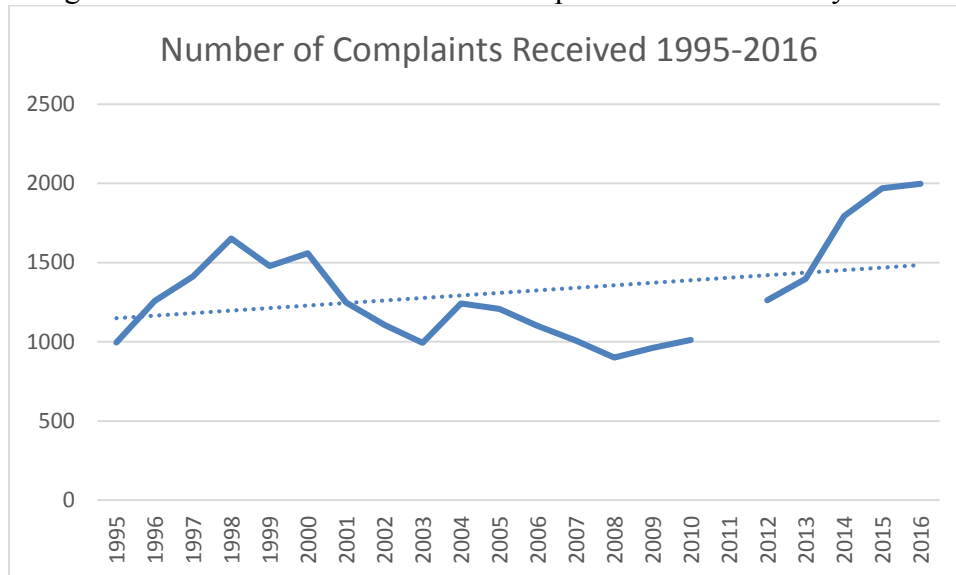


Figure 2. Major categories of violations found in 2016.

Looking at long-term data in the chart below, it appears that the trend for the number of complaints is a general increase in the number of complaints received each year.



From this data in this report and from looking at historical reports we can draw several conclusions:

- There is a direct correlation between the nature of complaints received and the nature of violations found. This indicates that complaints are an important source of information to help identify environmental violations.
- Significant effort is expended to identify these violations: only approximately 30% of complaints are found to have an environmental violation occurring.
- The number of complaints appears to be increasing from year to year.

The Office of the Vermont State Auditor is currently auditing the Department of Environmental Conservation's enforcement actions in several program areas and within ECD. The audit is expected to be released in the spring of 2017. We eagerly await their findings and will look to the outcome of that audit to highlight areas of improvement for 2017.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Environmental Compliance Division's budget includes both assistance and enforcement efforts. For purposes of this report, the enforcement component of the budget and operating expenditures for enforcement efforts only were funded in fiscal year 2016 as follows:

Interdepartmental Funds \$1,251,170

V. ATTACHMENTS

In further response to the requirements of 10 V.S.A. § 8017 (Annual Report), the following tables are provided.

Table A summarizes Formal Court Actions including Assurances of Discontinuance and Civil Complaints to in 2016. There were no Supplemental Environmental Projects implemented in 2016.

Table B reflects Administrative Orders, Emergency Orders and Informally Closed Cases in 2016.

Table C summarizes citizen complaints received by or resolved by the Environmental Compliance Division and, to a lesser degree, DEC air, water and waste programs as well as the present status of complaints and the types of closure for all complaints received and/or closed in 2016.

VI. CONCLUSION

As the statistics found in the attachment demonstrate, ECD continued to advance its goals during 2016. These goals are the protection of the public health and Vermont's environment for present and future generations of Vermonters. Department staff worked diligently to investigate every complaint received. We have developed a cohesive, high functioning team that continually strives for the highest levels of fairness, consistency, and overall excellence in order to achieve these goals.

Respectfully Submitted,

Joanna Pallito

By: _____
Joanna Pallito, Interim Commissioner
On behalf of Julie Moore, Secretary Agency of
Natural Resources

2/24/2017
Date: _____

Formal Court Actions (Table A)
January 1, 2016 – December 31, 2016

Assurances of Discontinuance (AODs) and Civil Complaints (CC)

Regulatory Programs	# AODs Issued	\$ AOD Penalties Assessed	\$ AOD Penalties Collected By ECD	# Citations Issued	\$ Value of Citations	\$ Citation Collected
<i>Air Quality & Climate Division</i>	4	\$64,852.80	\$65,702.80	2	\$1,050.00	\$1,050.00
<i>Environmental Compliance Division</i>	3	\$7,750.00	\$7,750.00	2	\$2,400.00	\$900.00
<i>Department of Fish and Wildlife</i>	1	\$22,859.50	\$0.00	0	\$0.00	\$0.00
<i>Department of Forests, Parks, & Recreation</i>	0	\$0.00	\$0.00	0	\$0.00	\$0.00
<i>Drinking Water & Groundwater Protection Division</i>	8	\$77,204.00	\$79,196.00	0	\$0.00	\$0.00
<i>Facilities Engineering Division</i>	1	\$13,500.00	\$375.00	0	\$0.00	\$0.00
<i>Natural Resources Board</i>	1	\$643.00	\$643.00	0	\$0.00	\$0.00
<i>Waste Management & Prevention Division</i>	13	\$110,125.00	\$63,877.00	6	\$6,000.00	\$3,000.00
<i>Watershed Management Division</i>	3	\$27,600.00	\$44,900.00	4	\$2,100.00	\$2,100.00
TOTALS	34	\$324,534.30	\$262,443.80	14	\$11,550.00	\$7,050.00

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

Regulatory Programs	# AOs Issued	\$ AO Final Penalty	\$ AO Penalties Collected By ECD	# EOs Issued	Closed Informally*
<i>Air Quality & Climate Division</i>	0	\$0.00	\$0.00	0	1
<i>Environmental Compliance Division</i>	1	\$9,509.43	\$0.00	0	0
<i>Department of Fish and Wildlife</i>	0	\$0.00	\$0.00	0	0
<i>Department of Forests, Parks, & Recreation</i>	0	\$0.00	\$0.00	0	0
<i>Drinking Water & Groundwater Protection Division</i>	5	\$73,497.40	\$6,045.21	0	1
<i>Facilities Engineering Division</i>	0	\$0.00	\$0.00	0	0
<i>Natural Resources Board</i>	0	\$0.00	0	0	0
<i>Waste Management & Prevention Division</i>	1	\$19,000.00	\$1,500.00	0	4
<i>Watershed Management Division</i>	0	\$0.00	\$45.21	0	3
TOTALS	7	\$102,006.83	\$7,590.42	0	9
*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.					

Summary of Complaints Received and/or Resolved as Recorded by ECD
January 1, 2016 – December 31, 2016
Table C

Regulatory Program	Total Received 2016	Pending of Those Received in 2016	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 - 131 Closed</i>									
<i>Engineering Services</i>			2						2
<i>Field Services</i>	158	55	75	2	2	31	13	4	127
<i>Technical Services</i>	1	1							
<i>Mobile Source Control</i>	2		1					1	2
<i>Environmental Compliance Division - 321 Closed</i>									
<i>Unpermitted Discharges (HAZ)</i>	24	8	10			4		1	15
<i>Unpermitted Discharges (1259)</i>	292	89	163	3	2	30	10	18	226
<i>Unpermitted Discharges (AMPs)</i>	34	8	23			6			29
<i>Unpermitted Discharges (Erosion)</i>	19	1	17			2			19
<i>Unpermitted Discharges (AAPs)</i>	34	5	28			2	2		32
<i>Department of Forests, Parks, & Recreation - 5 Closed</i>									
<i>Forest Resources</i>	7	2	5						7
<i>Drinking Water & Groundwater Protection - 172 Closed</i>									
<i>On-Site Program</i>	229	96	103	10		27	6	2	148
<i>Engineering & Operations</i>	1	1	4			1			5
<i>Compliance</i>	19	6	5				7		12
<i>Permit & Licensing</i>	1		3						3
<i>Indirect Discharge Permits</i>	1		1			1	1		3
<i>Resources</i>	1	1		1					1

Regulatory Program	Total Received 2016	Pending Of Those Received in 2016	Closed No Violation	Closed NOAV Issued	Closed Citation Issued	Closed Voluntarily Corrected	Closed Formal Action Taken	No Formal Action Taken*	Total Closed
Facilities Engineering Division - 6 Closed									
<i>Dam Safety</i>	6		3			2		1	6
Natural Resources Board - 28 Closed									
<i>Act 250</i>	44	27	22			1	1	4	28
Waste Management & Prevention Division - 435 Closed									
<i>Hazardous Materials - Releases</i>	132	43	55		4	19	6	18	102
<i>Salvage Yards</i>	93	65	33	4		4	6	8	55
<i>Resource Conservation Recovery Act (RCRA)</i>	22	7	16	1		5	2	1	25
<i>Underground Storage Tanks (UST)</i>	11	2	1			2	7		10
<i>Sites Management</i>	2	1	1			4			5
<i>Solid Waste Management Practices</i>	277	92	114	15	2	49	21	9	210
<i>Certification & Technical Assistance</i>	11	3	6	3		15	3		27
<i>Residuals Management</i>	2	1					1		1
Watershed Management Division - 518 Closed									
<i>Lakes & Ponds</i>	109	40	62	4		10	1	14	91
<i>Stormwater</i>	97	25	62	10	1	15	6	15	109
<i>River Corridor Management</i>	107	25	92			5	1	7	105
<i>Wetlands</i>	188	56	109	6	3	49	7	16	190
<i>Ecosystem Restoration</i>	40	33	1			4			5
<i>Direct Discharge Permits</i>	24	9	3			11	3	1	18
TOTALS	1997	701	1020	59	14	299	104	120	1616

*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.