

**2014 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). In 2013 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.

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 Supplemental Environmental Projects (SEP) 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 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 program clients to help them to maintain consistency and to develop strong enforcement referrals. 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 2014 the NRB filed one AO and resolved sixteen cases via an AoD and of that number three matter contained significant ANR violations, while a number of other matters contained minor ANR violations. The NRB also issued seven civil citations with one being dismissed by the court after a hearing. 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 four 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 2014, the AGO closed five environmental enforcement actions. The AGO also resolved two other cases with collection of funds reimbursing the clean-up of contaminated properties. 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. During the review in 2014 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 CED. This year two criminal matters were sent to the AGO for 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 2014 CED staff worked extensively with the Agency of Agriculture (AA). This signaled a much stronger relationship with AA. DEC staff met regularly with AA staff. Lines of communication were both clarified and strengthened during 2014. This resulted in a number of agricultural discharge matters being referred and prosecuted by both CED and the Attorney General's office. In addition to regular meetings CED staff provided training for AA staff on a number of topics. It is expected that this greatly improved relationship will continue to blossom in 2015 as both entities focus on improving water quality in Lake Champlain.

CED staff identified a need for additional investigative training for DEC field staff. In response to this need CED 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 CED. 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. CED will continue to offer 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 2014 DEC began to use LEAN business tools to examine how we can improve our business processes. CED staff participated extensively in this new initiative receiving training on LEAN and helping to facilitate a number of LEAN events within the department. CED 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 to CED for formal enforcement action. Both LEAN projects will continue in 2015.

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. A significant effort was made during 2014 to expand the use of this enforcement tool. As a result, 46 citations were issued during 2014. The citations process created at the end of the 2013 has worked smoothly. That coupled with the extensive DEC staff training will likely result in an increase in the number of citations issued during 2015. 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 plans to address some of these areas via the rule making process during 2015.

An important area of focus during 2014 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. In furtherance of this objective a strategic enforcement and compliance team (SECT) was created in the department. The group includes section chiefs and program staff from the DEC regulatory programs. 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. At one meeting EPAs foremost expert on Next Generation compliance and enforcement came to Vermont and presented on this topic to members of SECT. This presentation generated ideas for how we can improve our work by using new tools to allow us to work both more efficiently and with greater effect.

Finally, information about CED is available to the public via our web page. Staff 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.

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.

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 2014 additional features were added to the database to increase usage and improve functionality. We expect additional enhancements to be made during 2015 as we improved this tool as a result of a LEAN event.

IV. COST OF ADMINISTERING ENFORCEMENT PROGRAM

The Compliance & Enforcement Division was funded in fiscal year 2014 as follows:

Interdepartmental Funds	\$1,506,184
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The Compliance & Enforcement Division's operating expenditures for fiscal year 2013:

Personal Services	\$1,241,693
Operating	<u>\$ 264,491</u>
Total	\$1,506,184

During 2014 CED the CED Director and DEC General Council collaborated in the hiring of a new attorney who will focus on the prosecution of environmental cases. The attorney began in late May.

Our investigative staff consists of a Chief EEO with six EEOs in separate geographic districts. The EEO staffing level continues to reflect the staff reduction that were put into effect six years ago. In response to the reduction in the size of the EEO force the Chief EEO is responsible for covering a district in addition to his management duties.

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 Supplemental Environmental Projects agreed to in 2014. Table B reflects formal actions as well as informal resolutions from 2014. 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 2014. Table D summarizes the Civil Citations issued in 2014 and the programs for which they were issued.

VI. CONCLUSION

While 2014 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.

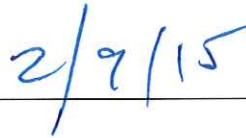
Respectfully Submitted

A handwritten signature in blue ink, appearing to read 'DM', is written over a horizontal line.

By:

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

Date:

The date '2/9/15' is handwritten in blue ink over a horizontal line.

Formal Court Actions (Table A)
January 1, 2014 – December 31, 2014

Assurances of Discontinuance (AoDs) & Supplemental Environmental Projects (SEPs)
Table A

Division of DEC	#AoD's Issued	\$AoD Penalties Assessed	\$AoD Penalties Collected
Air Quality & Climate Division (AQCD)	2	\$5,500	\$3,364
Compliance & Enforcement Division (CED)	0	\$0	\$3,587
Drinking Water & Groundwater Protection Division (DWGPD)	5	\$51,499	\$31,458
Waste Management & Prevention Division (WMPD)	5	\$21,750	\$25,870
Watershed Management Division (WSMD)	7	\$81,650	\$82,400
TOTALS	19	\$160,399	\$146,679

The Compliance & Enforcement Division (CED) collected a total of \$146,679 in penalty payments between January 1, 2014, and December 31, 2014, this includes penalties collected on cases from previous years.

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

Division of DEC	#AOs Issued in 2014	#AOs Pending of 2014	#AOs Final of 2014	\$AO Final Penalty Amount*	\$AO Penalties Collected in 2014	#EOs issued	Referred to AGO	Closed Informally**
AQCD	1	0	1	\$8,000	\$0	0	0	1
CED	4	3	1	\$9,000	\$4500	0	1	0
DWGPD	5	4	1	\$6,000	\$14,564	2	1	0
WMPD	3	1	2	\$13,400	\$0	0	0	1
WSMD	0	0	0	\$0	\$14,292	1	1	0
TOTALS	13	8	5	\$36,400	\$33,356	3	3	2

*Does not include penalty amounts that have not been finalized.

**An enforcement attorney may have been able to obtain compliance without the need for formal, legal action, or negotiations may have revealed that an enforcement action was no longer needed or appropriate, or one case may have been consolidated with another.

Summary of Complaints Received and/or Resolved by CED
January 1, 2014 – December 31, 2014

Table C

Divisions of DEC (section)	Closed Citation Issued	Closed Formal Action	Closed Informally	Closed No Formal Action	Closed No Violation Found	Closed NOAV Issued	Closed Voluntary Correction	Pending Received in 2014	Total
AQCD									
Field Services - Unpermitted Activity	5	6	8	1	39	3	15	46	123
Field Services - Permit Violations	2				1			3	6
CED									
Unpermitted Discharges {1259}	6	7	17	3	161	4	26	77	301
Unpermitted Discharges (AMPs)			1	1	16		1	6	24
Unpermitted Discharges (AAPs)		1	2	8	24		2	28	65
DFPR									
FOREST - Unpermitted Activity				1	4			4	9
FOREST OPERATIONS					1			1	2
DWGPD									
Technical Services - Unpermitted Activity		2	12	5	84	8	9	69	189
Technical Services - Permit Violations		2	1		5		1	8	17
Engineering Services - Unpermitted Activity			2						2
Operations and Compliance - Unpermitted Activity		2			1			4	7
Operations and Compliance - Permit Violations		21			2			13	36
Permits & Licensing - Unpermitted Activity							1	1	2
Indirect Discharges - Unpermitted Activity					3			1	4
Indirect Discharges - Permit Violations	1	2						1	4
FED									
Dams - Unpermitted Activity		3			1				4
NRB									
A250 - Unpermitted Activity		5		1	9			16	231
A250 - Permit Violations	1	8			1		1	15	26

WMPD									Total
HAZ -MAT Releases	4	2	22		50		16	49	143
Salvage Yard - Permitted		1	1		1				3
Salvage Yard - Unpermitted		3	1		13		2	43	62
RCRA - Unpermitted Activity	1				7		1	6	15
UST - Unpermitted Activity	1		1		6			8	14
UST - Permit Violations	5	1	2		1		1	7	17
Sites - New								5	5
Sites - Old				1	5				6
SWMR - Uncertified Facility		2	22	1	93	1	7	57	183
SWMR - Certified Facility	1	1	1		1			4	8
Certification & Technical Assistance					2				2
C&T Uncertified Facilities		1	1		2		1	5	10
C&T - Certified Facilities		2	1		15		1	37	56
WSMD									
Lakes & Ponds - Unpermitted Activity			4		30		1	25	60
Lakes & Ponds - Permit Violations								2	2
Stormwater - Unpermitted Activity	2	3	3		36	1	4	14	63
Stormwater - Permit Violations			3		6		3	14	26
Rivers - Unpermitted Activity	2	2	1		37		2	15	59
Rivers - Permit Violations							1	1	2
Wetlands - Unpermitted Activity		4	14		81	1	6	69	175
Wetlands - Permit Violations					5			1	6
Residuals - Unpermitted Activity					2				2
Direct Discharge - Unpermitted Activity								2	2
Direct Discharge - Permit Violations		2	5		5		3	5	20
Total	31	83	126	24	750	18	105	666	1793

Summary of Citations Issued between 1/1/2014 and 12/31/2014
Table D

Division of DEC	#Issued	#Pending	#Closed	\$Assessed	\$Collected
AQCD	10	0	10	\$3,600	\$2,550
CED	7	0	7	\$3,550	\$1,850
DWGPD	11	1	10	\$7,500	\$6,000
WMPD	15	0	15	\$8,700	\$6,150
WSMD	3	0	3	\$1,350	\$1,050
TOTALS	46	1	45	\$24,700	\$17,600

The Compliance and Enforcement Division began issuing Environmental Citations in August 2013. The above table displays summary data of all Environmental Citations issued between January 1st, 2014 and December 31st, 2014. A total of 46 citations were issued during this period.

Of these, 1 is pending, meaning it has 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 45 citations have been resolved with final judgment orders. The resolved citations have resulted in the assessment of \$24,700 and the collection of penalties totaling \$17,600.00.