



*North Carolina Department of
Environment and Natural Resources*

Enforcement Assessment

2000

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I. Purpose

The goal of an environmental regulatory agency is to protect the public health and environment and improve the environmental performance of business, industries, farms, and individuals. The regulator’s contribution to environmental protection is to foster compliance and to encourage businesses and industry to do more than just the bare minimum to comply with the law (i.e. go beyond compliance.) The Department of Environment and Natural Resources (DENR) has many tools at its disposal to promote good behavior by the regulated community.

Figure 1 shows the activities that can drive compliance, including education and technical assistance. These activities complement each other, and DENR must continually improve all tools at its disposal to increase compliance.¹

Fostering compliance with environmental regulations is a fundamental goal of DENR. Enforcement is one of many tools to achieve this goal.

Enforcement is one of DENR’s most visible tools for fostering compliance. A successful enforcement program will not only bring violators back into compliance, but it will also theoretically create broad incentives and a deterrent to encourage future compliance for all regulated entities. A strong enforcement program can help leverage the effectiveness of technical assistance and educational effort, as those options are preferable to the regulated community. The purpose of this Enforcement Assessment is to examine the process of enforcement in DENR and to outline actions to enhance DENR’s enforcement efforts.

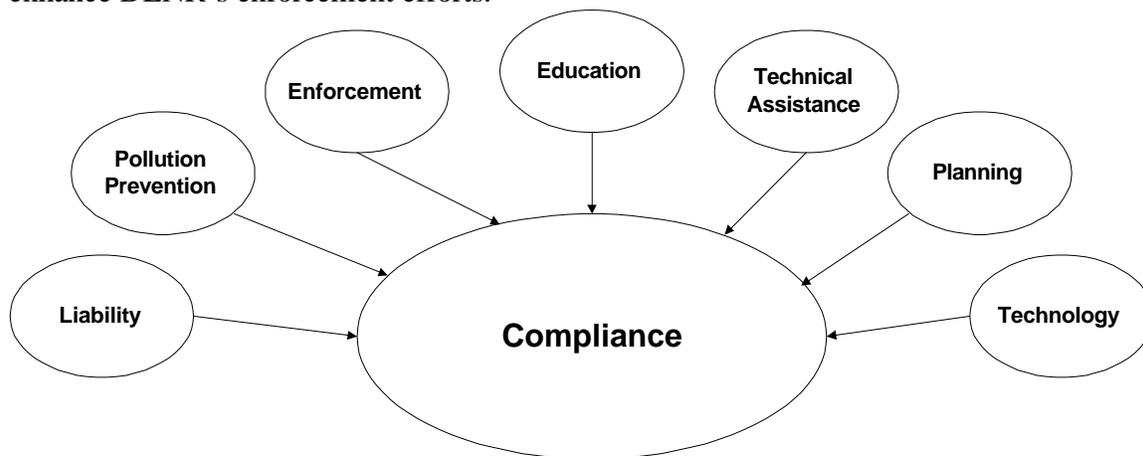


Figure 1. Building Blocks of Compliance

¹ Although enforcement and compliance are integrally linked, due to the potentially huge scope of exploring all compliance-related issues, this assessment has focussed on enforcement. A compliance assistance assessment may be valuable at some future time.

II. Vision

DENR’s vision for enforcement of environmental regulations is as follows:

- (1) Tough, swift, predictable, even-handed, consistent, and defensible to legal appeals.
- (2) The cost of violating the law must be more expensive than abiding by it.
- (3) Enforcement complements other tools to foster compliance and going beyond compliance.

III. Current Enforcement System

The current process of enforcement can be broken down into five phases as presented in Figure 2. Figure 3 on the following page breaks out each of the five stages in more detail and each stage is discussed below.

Phase 1: Philosophy/Values

The fundamental aspects of enforcement are based upon values, and DENR regulatory programs base their values on state and federal law. Values drive DENR’s educational and technical assistance efforts, the size and frequency of penalties, the criteria used to assess penalties, and other facets of enforcement. For example, state law dictates the following criteria DENR should use in assessing environmental violations for some programs:

- Degree and extent of harm
- The duration of the violation
- The cost of rectifying the damage
- Economic benefit of non-compliance
- Willfulness and intent of violation
- Compliance history of the violator

Values combined with resource constraints, procedures, relationships, communication, and experience with the court system, set the stage for the next four phases of the enforcement process. As programs operate under different statutes and rules and other constraints, there are differences in the way the Divisions do enforcement.

Figure 2. Phases of Enforcement Process

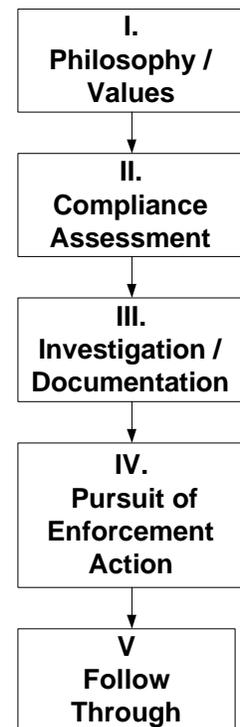
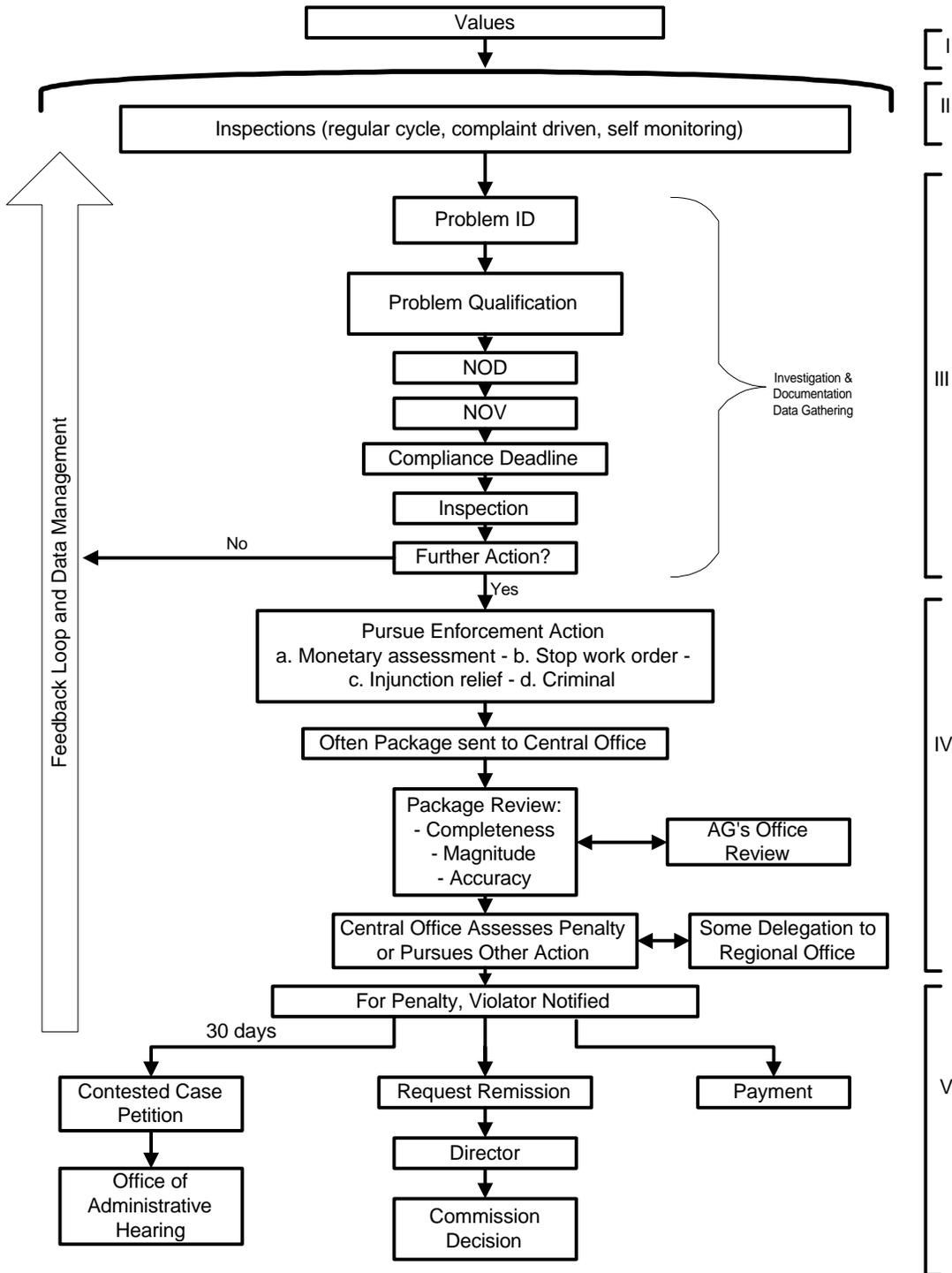


Figure 3. DENR Generic Enforcement Flowchart*



* Note that all steps in this enforcement flowchart are not applicable to all programs and the flow chart does not include all steps in the enforcement process.

Phase 2. Compliance Assessment

Finite resources make it impossible for DENR to perform comprehensive reviews of the compliance status of all members of the regulated community. DENR decides on which facilities are priorities for review, and the following vehicles help DENR to determine where and when compliance status is assessed: (1) regular inspections, (2) complaints, (3) self-reports, (4) monitoring data submittals, and (5) ambient environmental monitoring results. Respond to complaints takes priority for many programs. Some set their inspection schedules to focus on the worst offenders while others focus on those with the greatest potential risk to the environment. Self-reports and monitoring data may also lead to on-site inspections.

Phase 3. Investigation and Documentation

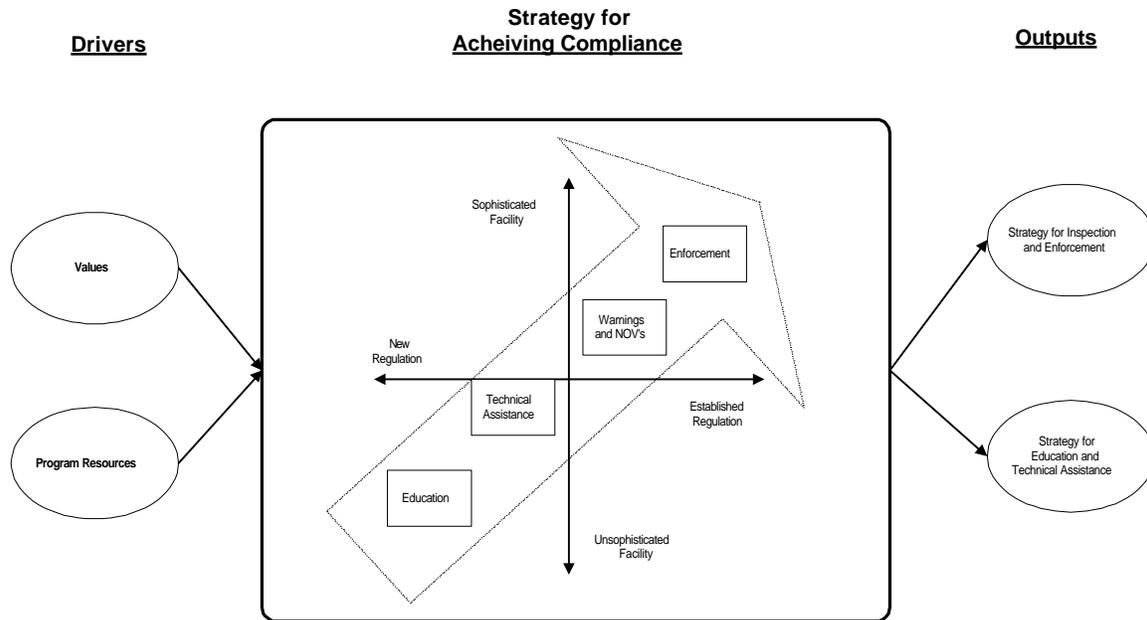
If violations occur, inspectors may provide or recommend a source of technical assistance, issue a warning or notice of deficiency, issue a notice of violation, set deadlines for compliance, perform follow-up inspections, and/or recommend pursuit of enforcement actions. The relationship between technical assistance and enforcement is complex, as both are often available to further compliance. Where an individual facility falls along the technical assistance-enforcement spectrum depends on how recently a regulation was put in place, how sophisticated the facility may be, the clarity of the regulation, the seriousness of the violation, and the track record of the facility. Figure 4 presents the technical assistance-enforcement spectrum related to two of these factors. This figure shows that if a regulation is new and a company is an unsophisticated small operation, education and technical assistance may tend to be the most effective way to achieve compliance. It should be noted that all facilities are expected to comply with regulations, and the applicability of Figure 4 varies widely by program. Also the spectrum presented in the diagram is predicated on drivers such as program values and resources. The desired output of such a system is well thought out strategies for inspection, enforcement, education, and technical assistance.

Phase 4. Pursuit of an Enforcement Action

In most cases, recommendations for enforcement actions are generally sent to the divisional central office in Raleigh, where enforcement packages are reviewed. Stop work orders and injunctive relief are options for situations of gross non-compliance or imminent danger to public health and safety or the environment. Most enforcement actions take the form of monetary penalties. In the Water Quality NPDES program, authority to assess some penalties has been partially delegated to the regional offices. For some programs, such as Hazardous Waste, the use of Supplemental Environmental Projects² (SEPs) has been an effective way to achieve both compliance and fund environmental projects that benefit the community.

² A pending lawsuit on the constitutionality of SEPs currently discourages their use.

Figure 4. Technical Assistance – Enforcement Model



Phase 5. Enforcement Follow Through

Once a penalty or other enforcement action is decided upon, the regulated party acquiesces or embarks on the process of remitting, contesting, and/or appealing as shown in Figure 3. Although this seems to be the end of the enforcement process, in some ways, Phase 5 drives the earlier stages. DENR has no control over the Office of Administrative Hearings, regulatory commissions, and the court system, who rule or make recommendations on many of the enforcement cases brought forward by DENR, and these rulings influence how programs apply enforcement.

The above five phases apply mostly to the enforcement programs that are administered directly by DENR. Some enforcement programs are delegated or partially delegated to local authorities (e.g. program in the Divisions of Environmental Health and Land Resources). Local based program create challenges for DENR in terms of tracking enforcement information and overseeing programs with wide variations in resources. Also, enforcement may be shaped by the type of permit in question. There are ongoing permits with regular reporting requirements such as a Air Quality Title V permit. In contrast, there are one-time permits such as CAMA or on-site waste water for which

DENR only interacts with a permittee during the application process. These one time permits generally cover private property owners that do not develop track records, and catching a violation may prove difficult due to the short time frame of a project.

IV. Current Enforcement Improvement Efforts

Enforcement of environmental laws is a continual improvement process. As technologies, communication systems, legal authorities, and management practices improve over time, DENR has increasing capacity to make its enforcement processes more efficient and effective. Also, over the years, heightened public concern about environmental issues has given DENR more public support to penalize those who violate regulations. These same factors also increase environmental awareness in the regulated community which helps to increase compliance.

A recent notable improvement in enforcement and compliance was made by the Division of Water Quality in conjunction with the DENR Secretary's office. Beginning on July 1, 1998, the Division of Water Quality's seven regional offices were delegated the authority to assess civil penalties for NPDES violations of permit limits. Also, the review of monitoring data increased from an annual basis to a monthly basis. The increased enforcement effort combined with an aggressive up front educational may be responsible for an upward trend in compliance as shown in Figure 7, which is discussed below. The Water Quality initiative may shed some light on opportunities for other DENR regulatory programs.

V. Enforcement Assessment

Beginning in May of 1999, DENR for the first time ever initiated a broad-based assessment of its enforcement programs. This assessment offers a foundation for enhancing DENR enforcement efforts department-wide. The goals of the assessment were to shed light of the questions bulleted below:

- a) What is the relationship between enforcement and compliance, and how can we use this information to improve compliance and meet other DENR objectives?
- b) What are the strengths of current enforcement procedures in each division and the department as a whole, and how can we widely implement successful enforcement experiences?

Measurement of the Relationship Between Enforcement and Compliance
(See Question A above)

Figure 5.
Hazardous Waste Enforcement Parameters

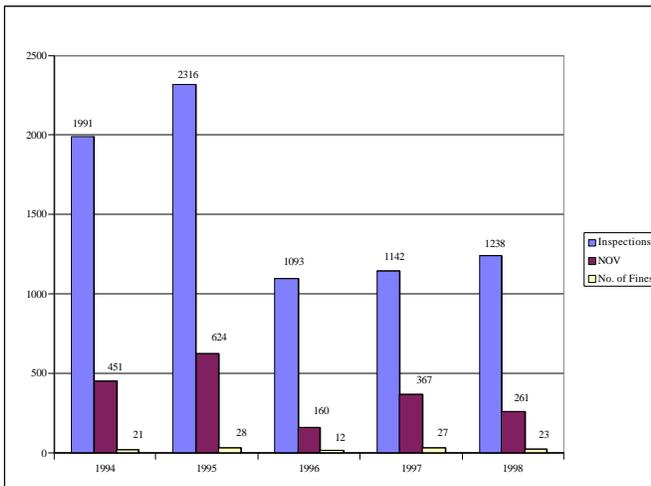
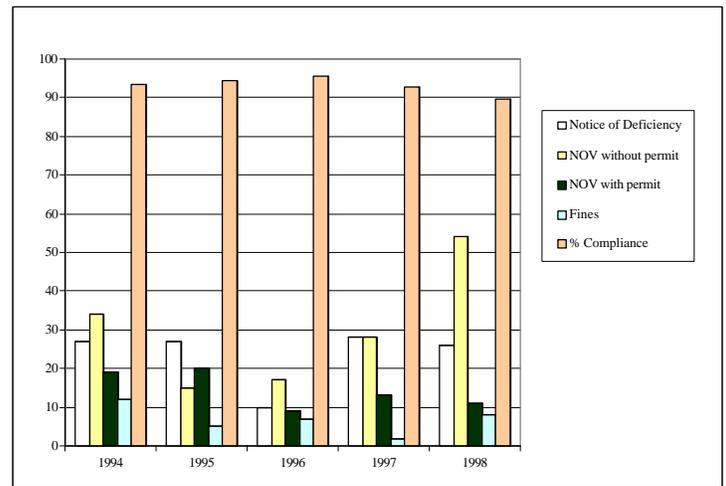
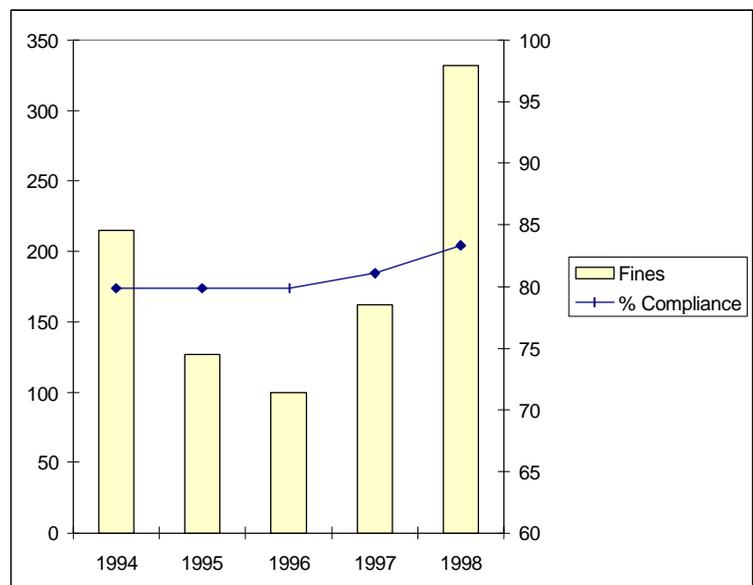


Figure 6.
Mining Enforcement and Compliance



From the outset of the assessment, it was clear that it would be difficult to answer the Question A in a satisfactory manner since DENR had not previously established ways to measure the relationship between enforcement and compliance. Tracking enforcement parameters over time (the numbers of inspections, violations, or penalties assessed) may provide some limited insight on an enforcement program’s progress, but these may provide an incomplete and sometimes misleading picture of the most effective enforcement tools. For example, Figures 5 and 6³ from the Hazardous Waste and Mining programs show the types of data that are collected and easily accessible to most regulatory programs. Correlating such attributes with compliance over time may in some cases reveal the relationship between enforcement and compliance. For example, Figure 7 shows that as the number

Figure 7.
Water Quality NPDES Fines vs. Compliance



³ In Figure 6, the percent compliance is defined as 1 minus the total number of violations over the total number of permittees. The value of this graph is not in the raw values, but the trend.

of fines increased for the Division of Water Quality’s NPDES Program, the percent compliance⁴ has also increased. It should be remembered that as indicated by Figure 1, there are many other factors that also impact the compliance rate.

Figure 8.
Air Quality Inspections vs. Compliance

Figure 8 compares compliance⁵ to inspections for the facilities overseen by the Division of Air Quality. The graph may indicate a correlation between that the number of inspections and the rate of compliance. Although not presented in the graph, facilities with air quality permits had about a 2% repeat offender rate from 1996 –1998. Tracking such data over time may shed light on the effectiveness of enforcement efforts.

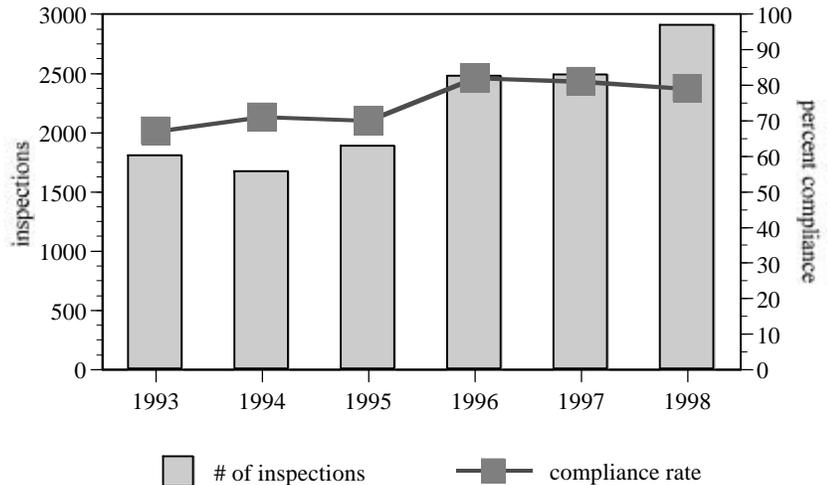
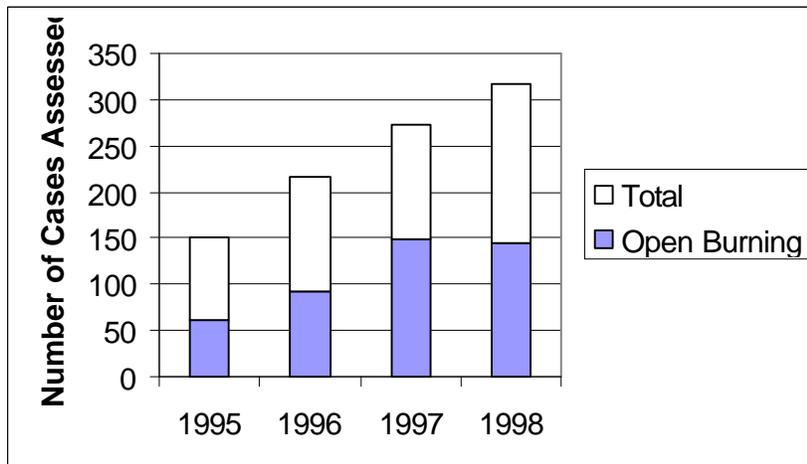


Figure 9.
Air Quality Case Load



Data from the Division of Air Quality also shows that open burning cases comprise about 50% of its increasing case workload (see Figure 9). Open burning cases present management challenges for DENR. Such cases are difficult and time consuming to process and, even if the enforcement action changes the behavior of one individual, there are still countless

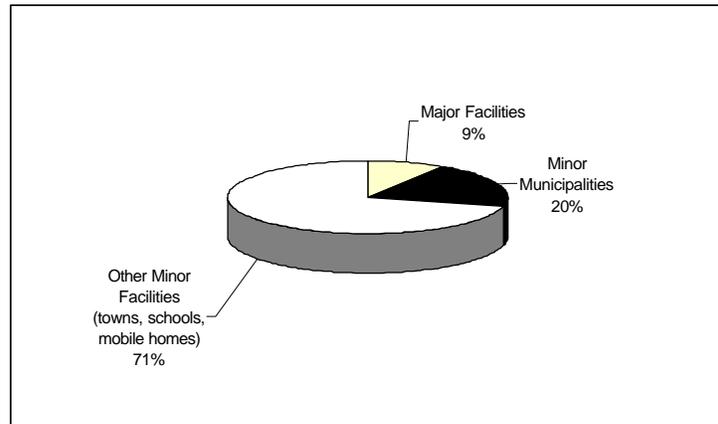
people contributing to air pollution through open burning in North Carolina.

⁴ In Figure 7, the percent compliance is defined as the number of facilities in compliance divided by the total number of permitted facilities. The value of this graph is not in the raw values, but the trend.

⁵ In Figure 8, the percent compliance is defined as 1 minus the total number of violations over the number of inspections. The value of this graph is not in the raw values, but the trend. Note that these compliance rates are not comparable to those of Figures 6 and 7.

Figure 10. NPDES Enforcement Action by Sector

A breakdown of Division of Water Quality NPDES enforcement assessment data may indicate that as regulations are fairly enforced, those that can least afford to pay sometimes make up the bulk of the enforcement actions (see Figure 10). These data may demonstrate the importance of up front education and technical assistance. At the same time, many small violators may not take environmental compliance seriously until they receive a penalty.



DENR is challenged to figure out better ways to measure the effectiveness of its enforcement programs. Such measurements could provide better information for program managers for decision-making and give the public a quantitative assessment of DENR’s enforcement efforts. North Carolina is not alone in its challenge to figure out effective ways to measure the effectiveness of its enforcement programs in fostering compliance, as there are national efforts to develop such indicators.

Attributes of Strong Enforcement

Question B from above: What are the strengths of current enforcement procedures in each division and the department as a whole, and how can we widely implement successful enforcement experiences?

For Question B, DENR interviewed staff in its enforcement programs, held internal focus groups, sponsored focus groups of the environmental, manufacturing, and agriculture communities, interviewed attorneys in the Attorney General’s Office, and reviewed activities in other states. Strengths of enforcement in DENR varied by program, but as a general theme the foundations that appear to be common attributes of a strong enforcement programs are presented in the table below. The table breaks these attributes into processes and outcomes.

Attributes of an Effective Enforcement Program	
Process	Outcome
<ul style="list-style-type: none"> - clear sense of goals of enforcement - clear written procedures and other guidance - well organized and clear documentation of violations - well formulated penalty trees - two-way communication among regions, central office, and Attorney Generals Office - communication among programs - periodic meeting of enforcement staff from across the state - staff training - adequate resources - inspection schedules based on data and past experience - organized data management systems - measurement and tracking of progress over time - delegation of enforcement authority where appropriate - ample front end education - clear expectations for regulated community - links between compliance history and permitting 	<ul style="list-style-type: none"> - high compliance and resource protection - deterrent against future violations - cost of compliance less than cost of violating the law - swift and timely enforcement actions - enforcement actions commensurate with the severity of an infraction - consistency - courteous and respectful inspections - permits clearly written to facilitate enforcement of permit conditions

The causes of non-compliance can also shed light on opportunities to improve enforcement programs. A recent Environmental Protection Agency study⁶ identified the following root causes of noncompliance (presented in descending order of frequency):

- Facility unaware of applicability of regulation
- Human error or poor professional judgment
- Operating procedures not followed
- Equipment design or installation problems
- Contracted services
- Communication difficulties between facility and regulatory agency.

⁶ *Root Cause Analysis Pilot Project*, Environmental Protection Agency and the Chemical Manufacturers Association, 1999.

VI. Key Opportunities for Improvement

As a result of its enforcement assessment, DENR has identified a number of potential opportunities for improvement. These opportunities fall into six key categories:

- Guidance and Training
- Inspections
- Penalty Assessment
- Measurement and Information Management
- Internal Communication
- External Communication

Under of these key areas are a number of opportunities for improvement. Many of the ideas presented below are already in place in some programs. DENR divisions can review these opportunities for guidance on enhancing their enforcement programs. As resource constraints will limit how much the department or programs can undertake at one time, a small number of priority recommendations are listed in Section VII.

Key Opportunity #1: Guidance and Training

Field and central office staff in DENR desire clear written procedures and other guidance to help them do their jobs, and they would benefit from training as procedures are written or updated. Written procedures enable staff at all levels to develop a common understanding of their enforcement functions. They can help improve efficiency, fairness to the regulated community, and consistency among offices and individual inspectors. DENR programs have varying levels of written procedures in place. Specific opportunities for improving guidance and training are listed below:

- Programs should develop written procedures to guide all facets of the enforcement programs from inspections to penalty assessment and negotiation. Such guidance should reflect and departmental principles that may be created and allow some flexibility, as enforcement cases do not always fall neatly into distinct categories.
- Programs should periodically (perhaps annually) review their written procedures to assure they are current.
- Programs should provide training to all central and field staff on written procedures. E-mail is a good way to maintain an ongoing dialogue on written procedures.
- Programs should make all written procedures available to external DENR customers. The DENR web page may be a convenient vehicle to make such information available.
- DENR programs should work creatively to ensure that all central and regional office staff are properly trained. Staff exchanges between central and regional offices can help give employees an appreciation of the larger system. Training coordinated at the departmental level or by multiple divisions may realize economies of scale and cost savings.
- The regulated community may be open to assist in training of DENR staff to help DENR better understand its specific sector. Such training could help the inspectors become more efficient and accurate in their evaluation of a facility.

- The department should not be overly prescriptive regarding guidance documents or training. These issues should be left at the division / program level.

Key Opportunity #2: Inspections

Inspections provide the first link in the enforcement process. Although inspections were not a focus of the assessment of the enforcement programs, several themes regarding inspections emerged. Possible areas for improvement regarding inspections are as follows:

- Programs should use compliance history data when applicable in determining their inspection schedules. Programs should focus limited inspection resources toward repeat offenders.
- Inspections should be unannounced, (except in some cases for compliance deadline inspections established in an NOV.)
- Inspectors should treat all members of the regulated community respectfully regardless of their business or compliance record.

Key Opportunity #3: Penalty Assessment

Although assessing penalties tends to be one of DENR's more visible responsibilities, it is only one aspect of enforcement. DENR does not see penalties as a goal, but as a means to achieve greater compliance statewide. DENR is working to increase the size of penalties in some programs. Additionally, specific opportunities for improving the penalty assessment process are presented below. It is important to note that penalty assessment is largely guided by authorities given to programs in statute, and some programs may not have the flexibility to implement some of the recommendations below.

- DENR should develop a set of enforcement principles to provide guidance to programs for the negotiation of fines, quantity of fines, use of the maximum penalty, and other factors.
- Programs should develop or review penalty trees to incorporate any departmental principles that may be developed.
- DENR should articulate the purpose and potential use of a maximum penalty so staff and the public have a clear understanding when the maximum may be used.
- Programs should consider creating a graduated system of notice of violations so a minor "paperwork" violation is not treated the same as a potentially serious violation. Note that many paper violations are serious and represent significant risk to public health and/or the environment.
- Programs should consider targeting enforcement toward specific problem areas. For example, if a particular type of violation is a critical problem, a program can adopt a focused strategy of tighter enforcement to target that violation.
- Programs should incorporate whether or not a company is a repeat violator in issuing fines. Repeat violators would need to be defined.
- Programs should address how the ability to pay impacts the effectiveness of penalties in achieving compliance.

- ❑ Programs should explore the feasibility of delegating some penalty assessment authority to regional offices. Note that delegation increases the potential for inconsistency.
- ❑ Programs should understand and use enforcement tools beyond penalties (injunctions, stop work orders etc) as appropriate.
- ❑ Programs should link a facility's compliance history with the permitting process. For repeat violators, DENR should explore requiring performance bonds when reissuing permits where statutory authority permits.
- ❑ DENR should explore the relationship between environmental justice concerns and enforcement.
- ❑ DENR should develop an award system for good actors (e.g. extended permits, recognition, etc.)
- ❑ Sometimes statutory limitations on the size of penalties are barriers to effective enforcement. DENR should encourage the General Assembly to expand penalties for violations to meaningful levels for all DENR enforcement programs.

Key Opportunity #4: Measurement and Information Management

Periodic review of enforcement data is fundamental to an efficient and effective enforcement program. Reviewing data trends can provide DENR insight on the good and bad actors, performance by sector, and use of staff resources. Lessons learned through the review of data, combined with qualitative data and program experience, can help managers (1) evaluate whether programs are meeting their goals, (2) decide where to intensify educational or enforcement efforts, and (3) allocate staff resources. Quantitative measurements must be supported by computerized data management systems to track data and perform analysis. Opportunities to improve measurement and information management include the following:

- ❑ DENR should develop meaningful and common measures of its enforcement efforts. Repeat violators and time to return to compliance are the two potential measures. Such measures can be used to track a program over time and evaluate consistency across regional offices.
- ❑ Programs should establish centralized systems so that programmatic data can be reported to a central location and periodically analyzed at the program level. Also, programs should evaluate data by region to understand variations by region.
- ❑ As much of the data gathering responsibilities are at the regional level, regional staff should be provided written guidance and training on data collection and management.
- ❑ Programs should develop performance measures for enforcement (e.g. staff hours per inspection by facility type or turn around time to process a case). Such data could be valuable as programs allocate resources or as DENR seeks additional resources for enforcement from the General Assembly.
- ❑ Programs should ensure that staff has access to high-quality data base software and are trained to use such software.

- DENR should continue its data management improvement efforts led by the Information Management Resource Board. Improved data management can link enforcement data across programs and between permitting and enforcement processes.

Key Opportunity #5: Internal Communication

The enforcement process is complex as indicated by the flow chart in Figure 3. The complexity is increased as multiple DENR agencies regulate the same facilities. Good communication allows the enforcement system to function smoothly, and it enables individuals to see themselves as part of a larger effort. In the past, communication commonly went in one direction from the regional office to the central office and on to the Attorney General's Office. In recent years, DENR and the Attorney General's Office have worked to improve communication in both directions. Most programs hold periodic enforcement meetings with staff statewide, and there has been a concerted effort in many programs to funnel information back towards the regional offices. Many opportunities to improve communication remain:

- Programs should hold periodic meetings of enforcement staff from across the state to share experiences and strategies and improve consistency.
- DENR should create a set of guiding principles on enforcement to underscore common values of enforcement programs.
- Program central offices should create feedback loops to inform regional office staff on the status of cases. When cases are not successful, the central office should inform regional office staff of the reasons a case did not move forward as this information could help guide future regional office work.
- The Attorney General's Office and DENR should work together to make the AGO case tracking system more accessible to DENR staff so interested parties can be kept updated on the status of cases. The DENR web page may provide a convenient forum to share such information.
- The Attorney General's Office and DENR should create a short fact sheet that describes in a user-friendly manner the role of the Attorney General's Office and the enforcement options available.
- DENR Division Directors, the Attorney General's Office, and the Environmental Management Commission should periodically evaluate the remission process to help achieve a common understanding of roles and the types of cases that would likely be remitted.
- DENR should communicate its expectations for enforcement clearly to the divisions and track the critical attributes of programmatic enforcement efforts.
- DENR should make all departmental enforcement policies (e.g. self-confessor policy, divisional SEP policies, etc.) available in one place. The DENR webpage may be provide a convenient place to post such information.
- Programs should ensure that communication within a program reaches employees at all levels.
- DENR should create a transmittal slip for requesting information on specific enforcement cases to provide Senior Staff a simplified and more clear avenue to request information from programs.

Key Opportunity #6: External Communication

Although DENR pursues its enforcement options aggressively, at times, DENR allows itself to be seen as a defender of a repeat offender because its enforcement actions do not seem strong enough to the public. The challenge for DENR is to leverage public concern to help meet its goals while ensuring that a facility's actions are the criteria used for determining when and what type of enforcement is appropriate. External communication and public involvement can help empower the public to fulfill its role as a watchdog and thus complement DENR's enforcement system. Such public pressure may be one of the strongest inducements for a facility to improve its environmental performance. External communication can be improved in the following ways:

- DENR should improve public access to enforcement information.
- DENR should develop a unified and use-friendly website to provide a first point of access on enforcement issues in DENR. The web site should convey the information that the public would most like to see.
- Programs should make all available procedures and guidance documents available to the public and put these documents on the DENR webpage. An ongoing list of offenders should also be presented on the web page as well.
- DENR staff should share enforcement cases and data openly with the concerned citizens upon request.
- Programs and the Attorney General's Office should keep the public informed on status of cases by putting such information on the World Wide Web to the extent that the release of information will not interfere with potential enforcement proceedings.
- DENR should increase the use press releases to major dailies and to local papers in the area of the violation as a deterrent. DENR must rely on such deterrents as it only has a small number of inspectors compared to the numbers of facilities that fall under the regulated authority of the state.
- DENR should keep a list of repeat violators (using very clearly defined criteria) on its web page. This list may be valuable to the public, but also it could be valuable to DENR permitting programs in evaluating permit applications.
- Programs should provide up front education when new regulations are issued. The education should be presented in a manner appropriate to the needs of the regulated sector.
- Programs should work to notify potentially impacted individuals when a violation has occurred.

VII. Priority Recommendations for Improvement

DENR has an opportunity to build on the enforcement improvements it has made over the last two years. Many of the specific opportunities for improvement listed above in Section VI have some common root causes: lack of guidance at the departmental level, lack of a system to measure the effectiveness of enforcement efforts, and an underdeveloped system to provide convenient access to enforcement information. In order to maximize the benefit of staff resources, DENR should focus its near-term improvement efforts at the department level to these root causes which are reflected in the recommendations below. As resources allow, individual programs are encouraged to go beyond the scope of a departmental effort in making improvements listed in Section VI. As these recommendations are met, DENR can take on other improvement opportunities in a continual improvement effort.

<p>Recommendation #1: Create a set of Departmental Guiding Principles on Enforcement</p>

Need

The many enforcement programs in DENR have innate differences due to their varying statutory authorities, the characteristics of the sectors that they regulate, and other factors. Despite these differences there are some fundamental aspects of enforcement oversight that should be common to all programs. A set of Departmental Guiding Principles on Enforcement would create a common framework in which all the regulatory programs could function. Also, currently the Secretary's Office has very little role in enforcement beyond the involvement in a few high profile cases. A set of Guiding Principles would provide a basis for departmental expectations while minimizing the need for involvement with specific cases.

Action

DENR should create a set of Guiding Principles on Enforcement by April 1, 2000. The Principles should deal with only general themes to respect inherent differences in the programs. The following list provides examples of issues that could be addressed in a set of Guiding Principles:

- Compliance is a goal, and enforcement is a tool to achieve compliance.
- Enforcement should encourage compliance at a facility level and create a deterrent against violations for all regulated entities.
- Education and technical assistance are critical tools that complement enforcement oversight.
- The regulated community should have sufficient opportunity to become aware of regulatory expectations.
- A regulated entity should not benefit economically from noncompliance.

- Enforcement information should be easily accessible to the public.
- Penalties and enforcement actions should significantly increase in severity for regulated entities with poor compliance histories.⁷
- Programs should prioritize resources to the regulated sectors in the greatest need of compliance improvement.
- Enforcement oversight for a regulatory sector should be consistent from region to region.
- Enforcement decisions should be defensible, consistent within a program, and documented.

Outcome -- *How will implementation of this recommendation improve compliance?*

A set of principles developed in a vacuum will not have an appreciable impact on compliance rates. Thus, Guiding Principles should be developed jointly by the department and the programs, and there needs to be a commitment to follow through on the intent of the principles. With follow through, such principles could improve consistency throughout the department which could in turn improve the quality of enforcement oversight. In addition, such principles could improve compliance rates in two ways: (1) by underscoring the importance of key enforcement issues that impact compliance rates and (2) by clarifying DENR's expectations to the regulated community which could foster increased compliance.

⁷ Penalties must be set consistently with authorizing state and federal regulations which may influence a program's ability to incorporate compliance histories.

Recommendation #2: Develop Meaningful Measures of DENR's Enforcement Efforts

Need

Currently, DENR has not established quantitative measures to track the overall progress of its enforcement efforts. This lack of ongoing measurement encourages the evaluation of DENR programs by external organizations using measures that do not necessarily reflect meaningful trends in DENR's enforcement efforts. Through the development of objective measures, DENR could accomplish two goals: (1) DENR could communicate to the public and interested parties the status and trends of enforcement efforts in various programs, and (2) programs could use such measures, in conjunction with hands-on experience and other factors, to set enforcement priorities and strategies.

Action

DENR should develop a common set of measures by May 1, 2000 to evaluate trends in its enforcement efforts. The Secretary's Office should work with programs to develop such measures which could then be updated on an annual basis. Possible measures that could be tracked over time include the following:

- Repeat violators
- Return to compliance
- Correlation of compliance rates to enforcement parameters (e.g. number of fines or inspections)

Outcome -- *How will implementation of this recommendation improve compliance?*

The development of these measures over time would enhance a manager's understanding of the strengths and opportunities in a program. With such information, the program manager can prioritize resources or develop strategies to address specific problem areas. For example, if the repeat violators are increasing for a program, this trend may indicate the need to focus resources (enforcement and/or educational) to address the problem.

Recommendation #3: Improve Access to Information

Need

Facilities across North Carolina are often regulated by multiple DENR programs. Thus, DENR's regulatory programs need convenient access to each other's compliance and enforcement data so such information is available for all permitting and enforcement decisions. In addition, the public, including both the regulated community and environmental activist organizations, is very interested in DENR's enforcement efforts. The public is not only interested in seeing information on enforcement cases and amounts of fines levied, but they would also like access to DENR policies and procedures on enforcement. Failure to provide easy access to such information generates distrust of DENR by both the regulated and environmental communities.

Actions

DENR should develop and implement a strategy improving access to enforcement information by August 1, 2000. This strategy should build on existing DENR webpage information, create direct links to divisional enforcement web pages, and use other avenues for making information available. Data, policies, procedures and other information on enforcement should be made accessible to both the regulated community and the general public.

Outcome -- *How will implementation of this recommendation improve compliance?*

Providing convenient access to enforcement information would increase compliance in four ways:

- Programs will be able to share information better and provide a more coordinated response in addressing compliance issues at a facility. For example, enforcement data from one program can influence enforcement or permitting decisions made in other programs.
- A portion of the many requests that DENR receives on enforcement can be dealt with in a systematic way, allowing staff to focus their time on the process of enforcement.
- As policies and procedures would be more readily accessible, the regulated community would have a better opportunity to understand the requirements and increase their rates of compliance.
- Frequently, environmental groups or citizens are pitted against DENR. Improved access to current information would provide activist groups key information they feel they need to do their job monitoring the regulated community. Access to current information can enable the environmental community to be effective "watchdogs" and advisors, which could complement DENR's efforts to increase compliance.