

SUMMARY

A Review of Regulatory Issues at the Department of Natural Resources

INTRODUCTION

Members of the General Assembly requested that the Legislative Audit Council conduct an audit of the Department of Natural Resources (DNR). The review focused on DNR's compliance with the Administrative Procedures Act when promulgating regulations. We also examined DNR's enforcement of state laws and regulations and the communication of changes in the law to DNR officers and the public.

The Department of Natural Resources is responsible for the conservation, management, utilization, and protection of the state's natural resources. DNR sets hunting seasons, the methods of hunting, and the amount of game that can be caught, as well as other requirements. The extent of regulation depends on whether the land is private and where it is located in the state. The DNR Law Enforcement Division protects the state's natural resources through enforcement of laws and regulations and by conducting educational and public awareness programs.

During FY 02-03, DNR officers issued 24,354 citations for game, fish, and boating violations and an additional 2,353 citations for other violations such as littering or alcohol violations. DNR's fish and game licensing program issued over 750,000 licenses in FY 02-03.

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ENFORCEMENT OF STATUTES AND REGULATIONS

We reviewed whether DNR had enforced state law and regulations appropriately when issuing tickets. In 24 (30%) of 81 tickets that were sampled, DNR fined individuals when it did not have the authority or when the regulations were not in effect. Seven individuals lost their wildlife management area (WMA) privileges for a year as a result of these tickets. We also reviewed DNR's ticket database and found 186 tickets that cited statutes incorrectly.

TICKETS WRITTEN CITING REPEALED OR REDISGNATED STATUTES		
STATUTE	YEAR	JAN. 2002 – OCT. 2003
§50-21-310	1999	172
§50-1-120	1994	1
§50-9-11	1996	1
§50-9-15	1996	1
§50-9-190	1996	1
§50-17-510	2000	2
§50-17-720	2000	5
§50-21-360	1999	2
§50-21-370	1999	1
TOTAL		186

For example, DNR cited the incorrect statute for boater registration. Between January 2002 and October 2003, 172 (16%) of the 1,078 tickets DNR issued cited the incorrect statute. Under the previous provisions, counties kept 25% of the fine amount. Under the new provisions, DNR keeps all the fines. The 172 citations totaled over \$16,000; thus, DNR may have lost over \$4,000.

DNR incorrectly issued tickets for violations under the state lakes program at a location that was not part of the program. We found that, between 1998 and 2001, DNR issued 116 tickets totaling \$8,450 at Lake Monticello when it is not part of the program. In addition, we found 18 tickets totaling \$1,400 that were written after officers were instructed not to write tickets.

DNR REGULATIONS

We found that DNR has generally complied with the Administrative Procedures Act. However, DNR has issued regulations under statutory authority that had been repealed. DNR has also enforced regulations where it did not have statutory authority. Many of these regulations addressed hunting on private lands rather than WMAs where DNR does have the authority to regulate.

- DNR required hunters to wear orange clothing when deer hunting in game zones 1, 2, and 4. A state circuit court judge determined that DNR did not have the authority to make this requirement.
- DNR only had the authority to set bear hunting seasons. DNR did not have the authority to set limits or methods of hunting on private land.

DNR reviewed its enforcement of regulations and had state law and regulations amended in 2002 to address many of these issues.

AUDITS BY THE LEGISLATIVE AUDIT COUNCIL CONFORM TO GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS AS SET FORTH BY THE COMPTROLLER GENERAL OF THE UNITED STATES.

FOR MORE INFORMATION

Our full report, including comments from DNR, and this document are published on the Internet at

www.state.sc.us/sclac

Copies can also be obtained by calling

(803) 253-7612

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NO WAKE ZONES

DNR administratively establishes no wake zones when it would be more appropriate to establish this process through regulation. As of 2004, there were 211 no wake zones which had been created through statute, regulation, or by DNR. If DNR were to promulgate a regulation outlining the procedure for establishing a new no wake zone, zones would be established in a consistent manner. Since violation of a no wake zone can result in a ticket and a fine, the public and the General Assembly should be allowed input into the process for establishing no wake zones.

COMMUNICATION WITH OFFICERS AND THE PUBLIC

DNR has not always effectively communicated changes in statutes and regulations to the public. For example, DNR publishes a brochure for turkey hunting that has contained errors.

- The 2003 turkey brochure cited statutes that had been repealed. These statutes listed penalties for hunting on a WMA outside specified times and reporting a hunting accident.
- The 2003 turkey brochure also said that feeding turkeys was illegal. Feeding is legal. In a 2004 brochure there is no discussion of feeding.

DNR has not always effectively communicated changes in statutes and regulations to its law enforcement officers. Because of frequent changes to statutes, regulations and enforcement procedures, it is important that DNR have means for communicating these changes to its officers in the field as quickly and as clearly as possible. We found several examples where it was unclear if changes in statutes and regulations had been communicated to law enforcement officers. DNR has revised its procedure for informing officers of changes in regulation to document the communication.

We conducted a survey of 271 current and recently retired DNR law enforcement officers. The survey results identified several areas of concern among DNR law enforcement officers including communication and the enforcement of regulations.