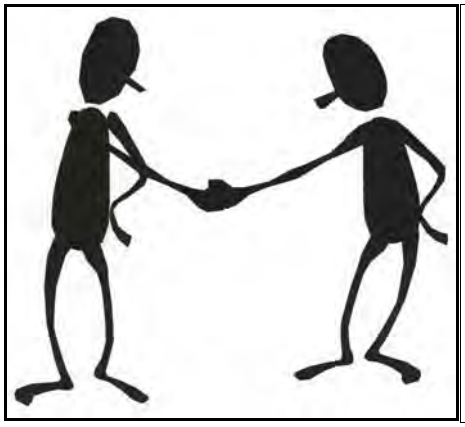
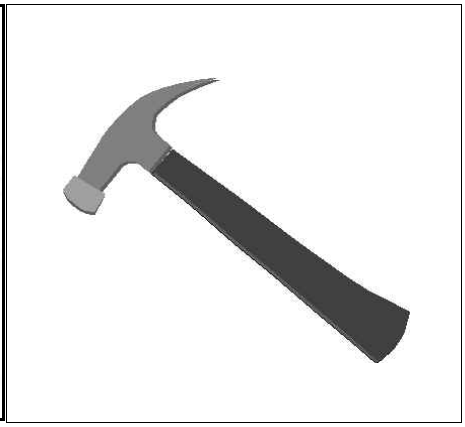
Report to the 56th Legislature

Compliance with and Enforcement of Montana's Natural Resource and Environmental Laws





March 1999

Environmental Quality Council
State Capitol, Room 106
Helena, MT 59620
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Environmental Quality Council

The Environmental Quality Council (EQC) is a state legislative committee created by the 1971 Montana Environmental Policy Act (MEPA). As outlined in MEPA, the EQC's purpose is to encourage conditions under which people can coexist with nature in “productive harmony.” The Council fulfills this purpose by assisting the Legislature in the development of natural resource and environmental policy, by conducting studies on related issues, and by serving in an advisory capacity to the state’s natural resource programs.

The EQC is bipartisan, meets 4-6 times a year, and has 17 members--6 state senators, 6 state representatives, 4 public members, and a representative of the governor.

Environmental Quality Council Members

House Members: Representative Haley Beaudry, Representative Vicki Cocchiarella, Representative Kim Gillan, Representative George Heavy Runner, Representative Karl Ohs, Representative Bill Tash

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Governor’s Representative: Ms. Julie Lapeyre

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INTRODUCTION

This report summarizes the results of the implementation of HB 132, passed by the 55th Legislature in 1997. HB 132 requires Montana agencies with natural resource and environmental programs to biennially report to the Environmental Quality Council (EQC) on the status of compliance with and enforcement of Montana's natural resource and environmental laws.

The body of this report focuses on what led to the passage of HB 132, how the EQC and agencies worked together to efficiently implement this new requirement, some highlights from the reporting, and the EQC's evaluation of how the agencies responded to this directive. EQC guidance to the agencies and the agencies' written responses are provided in the Appendices.

Why HB 132?

The 1995-96 Environmental Quality Council spent a significant amount of time responding to HJR 10, passed by the 54th (1995) Legislature. In part, HJR 10 requested the EQC to:

> give priority to the study of the compliance and enforcement programs of the state's natural resource and environmental agencies [including] a review and analysis of:
> (a) the state's existing enforcement and compliance framework and how it is implemented;
> (b) the constitutional and statutory goals of the various state natural resource and environmental agencies, whether these goals are consistent and appropriate, and whether these goals are being met;
> (c) the proper balance among sanctions, incentives, technical assistance, education, and other enforcement tools in an effective and efficient enforcement program; and
> (d) other states' natural resource and environmental agencies' attempts to improve and measure compliance and enforcement.

During the 1995-96 Interim, the Council's bipartisan, 10-member Compliance and Enforcement Subcommittee worked with EQC and agency staff to review 28 Montana programs within the Departments of Environmental Quality (DEQ), Natural Resources and Conservation (DNRC), and Agriculture (Dept. of Ag.). They also requested and reviewed some compliance-related information from the Montana Department of Fish, Wildlife & Parks (FWP).

The products of the 1995-96 HJR 10 Compliance and Enforcement Study included:

- A compliance and enforcement Final Report to the 55th Legislature documenting the mandate, process, and results of the EQC's HJR 10 deliberations, including 32 recommendations (see **Figure 1**).
- A Technical Appendix, documenting in a consistent format compliance and enforcement information for all 28 programs reviewed by the Subcommittee;
- Recommended legislation (introduced as HB 132) to require that Montana's agencies biennially report to the EQC on the status of natural resource and environmental compliance and enforcement.

Copies of these products are available from the EQC office in the State Capitol in Helena.

One of the Council's findings, which follows, provided the rationale for the proposed legislation:

> the compliance and enforcement activities of the executive branch agencies have not had consistent legislative oversight in past years. For this reason and others, the failure by some agencies to compile data in an accessible, understandable, and usable format made it difficult to determine if the programs are doing their jobs. In many cases, inadequate baseline data existed regarding compliance history, which is necessary to assess trends. In many cases, programs still track project information by hand, making assimilation of data difficult. *(HJR 10 Compliance and Enforcement Study Final Report, December, 1996; p.8)*

In 1996, when the Council originally discussed their legislative proposal (which later became HB 132) with the executive branch agencies, the agencies generally responded that the proposal embodied activities they believed they should be doing, and that it would help them better implement Montana's natural resource and environmental mandates.

Rep. Dick Knox, Chair of the EQC's Compliance and Enforcement Subcommittee, was the primary sponsor of HB 132. The bill was endorsed by the Council, gathered a variety of Legislative co-sponsors, received broad support during Legislative deliberations, and passed the House and Senate with only 2 dissenting votes. HB 132 was signed by the Governor, and is now codified as follows:

> **75-1-314. Reporting requirements.** (1) The departments of environmental quality, agriculture, and natural resources and conservation shall biennially report to the [environmental quality] council the following natural resource and environmental compliance and enforcement information:
> (a) the activities and efforts taking place to promote compliance. . .;
> (b) the size and description of the regulated community and the estimated proportion of that community that is in compliance;
> (c) the number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending; and
> (d) a description of how the department has addressed the noncompliances identified in subsection (1)(c) and a list of the noncompliances left unresolved.
> (2) When practical, reporting . . . should include quantitative trend information.

Although each agency report was prepared in response to the same legislation, each is unique in its approach and presentation. The EQC recognizes that the mission of each agency is different. There are statutorily defined differences in their roles and in their approach to protecting, preserving, and enhancing the quality of Montana’s natural resources and environment. These differences are also reflected in the format of the agency reports.

The following report sections describe how the Council responded to this new law, how the agencies responded, and what the Council thought about the agencies' responses. The full text of the agencies' responses are provided in the Appendices.

Figure 1. EQC 1995-96 Compliance and Enforcement Study Recommendations

Enforcement Policies

1. Each program or agency with compliance and enforcement responsibilities should be required to prepare and implement a written compliance and enforcement policy and procedures manual which clearly defines responsibilities of staff, decision points, decisionmakers, and response criteria. The program should be flexible enough to allow for "common sense" responses and consultations in the field, while retaining enough "backbone" to assign meaningful penalties when appropriate.

2. Natural resource agencies should develop and follow written compliance and enforcement policies that are easily understood by the public and the regulated community. Their monitoring and enforcement efforts should be tracked and reasonable time lines followed. This information should be made readily available to the Legislature and the public on a regular basis.

3. Internal tracking of violations from the first Notice of Noncompliance (NON) through enforcement should stem from written policy within each department; adequate staff training to assure complete familiarity with that policy is essential.

4. The enforcement policy should include a clear and consistent chain of command for each agency. Decisionmakers at each step in the process should be identified. The basis for each decision should be documented.

5. Policies should have formal, documented components related to education (regulated community), technical assistance, public outreach, incentives for compliance, penalties, monitoring, and tracking of agency actions.

6. During the 1997-98 Interim, the EQC and DEQ should consider evaluating the penalty and enforcement authorities specified in the various state environmental statutes, with the goal of increasing consistency.

Use and Balance of Enforcement Tools:

1. Compliance should be the goal, with effort expended on the "front end" to provide technical assistance, outreach, and public information so that the role and expectations of the program or agency are clear to the regulated community and to the interested public. Informal activities in this regard are helpful, but formal, written assistance, outreach, and training goals should be required for all programs as part of the overall compliance and enforcement scheme. Cooperative efforts, like BMP programs, self audits, etc., should be examined and built into any one of these agency programs where appropriate. The regulated public should be encouraged to achieve some ownership in the success of the compliance and enforcement program.

2. Education, technical assistance, simplified reporting, better communication, and perhaps community or program liaisons, should receive more emphasis.

3. Public outreach and outreach and assistance to the regulated community should be encouraged and resources allocated to bolster that encouragement.

4. State enforcement and compliance agencies should minimize the need for formal enforcement actions to the greatest extent possible by the education of the affected publics, creating forums for the public and regulated community, and by maximizing contact with the regulated community.

Figure 1. EQC 1995-96 Compliance and Enforcement Study Recommendations (cont.)

Record Keeping/Measuring Success/Legislative Oversight

1. Each program or agency should be required to establish record keeping procedures that allow for quick public access to matters related to compliance and enforcement activities. Yearly summaries of this information should be routinely maintained.

2. In conjunction with record keeping, each program or agency should be encouraged to identify what information might best be used to judge the effectiveness or success of each compliance and enforcement program, in relation to their statutory goals. Recommendations should then be prepared on how that information might most efficiently and cost-effectively be collected, maintained, and reported. The goal should be to identify "indicators" that could be incorporated in future EQC and/or agency or program publications.

3. The state should continue to track indicators of Montana's environmental conditions. Programs should review these indicators and improve data where necessary to help assess their success in meeting their statutory goals.

4. The state's natural resource and environmental agencies should provide compliance data on an annual basis to the EQC. Those that can easily provide historic (1991-1995) data should do so as time permits. Agencies should compile data on enforcement actions so that it is understandable and it gives an accurate picture of what is happening on a historical basis. Based on the results of annual reporting, the EQC can choose to evaluate the data and take action and/or communicate the information to the Legislature. (The Council recommends legislation be drafted to require mandatory annual agency reporting (to the EQC) on compliance and enforcement activities. Topics and the extent of the data will be coordinated between agency and EQC staff.)

5. The HJR 10 report should be updated with a biennial review of how the agencies and programs have succeeded at implementing each of the recommendations of this study. If not, why not?, etc.

6. The EQC should receive a report during the next interim on the development and implementation of enforcement manuals by programs reviewed in this study.

Seriousness (Risk) of Violation

1. Program and policy emphasis should stress preventing and correcting violations that pose the greatest risk to human health and the environment.

Staffing/Resources/Contracting

1. When considering contracts, the state of Montana should retain in-house all regulatory decisionmaking and quality control functions.

2. The agencies should include contract stipulations that protect against conflict of interest.

3. Appropriate funding for state agencies to carry out their statutory obligations is needed (see explanation, below).

Explanation of Recommendation #3: The Legislature deals with this issue continually. Everyone has their own definition of "appropriate." It is important to reflect that funding is necessary to implement statutory mandates. The Council could not agree on an acceptable revision of the above recommendation, due to fundamental philosophical differences regarding whether, under budget constraints, additional funding is needed and should be provided, or mandates eliminated.

Figure 1. EQC 1995-96 Compliance and Enforcement Study Recommendations (cont.)

4. Where severe staff retention problems exist within programs, the executive branch should prepare recommendations to deal with these problems and present such suggestions to the next legislature.

Primacy

1. Primacy issues were a major topic during this study. EQC should facilitate a process to further identify and address primacy problems.

2. The Department of Environmental Quality should pursue its proposed study of the "primacy" situation in Montana. Proposals may include:

    - Expedite and simplify the authorization or endorsement process;
    - Improve state/EPA Annual Agreements by moving toward block grants and "Performance Partnership Agreements";
    - Consolidate the state/EPA Enforcement Agreements, including specifying criteria for EPA-initiated actions and for state requests for EPA actions;
    - Develop and follow consistent and predictable enforcement procedures; and
    - Improve communication.

3. Overlapping jurisdiction between the state and EPA, and between state and local jurisdictions, should be eliminated, or at least clarified to ensure predictability of enforcement action.

4. Evaluation of primacy issues on Indian reservations should be continued.

Further Recommendations

1. State agencies should improve coordination with local jurisdictions regarding delegated or overlapping regulatory functions.

2. State agencies should provide timely follow-up with citizens who filed complaints (about the resolution of those complaints).

3. Rulemaking should be completed for all legislation requiring rules.

4. Solutions/efforts to protect environmental quality in Montana should be recognized, including public/private cooperative efforts, and other tools (besides the court) should be encouraged to resolve problems.

5. The EQC should further investigate opportunities for the use of voluntary BMPs to achieve compliance and enforcement goals.

6. State regulatory agencies should develop Ombudsman-like programs for pollution prevention (currently in effect in the Air Quality arena) for other media (i.e. water, hazardous waste, etc.).

7. During the 1997-98 Interim, the EQC should review the effects and implications of state natural resource/environmental agency reorganization on compliance and enforcement.

COUNCIL RESPONSE TO HB 132

The Council undertook the following actions related to their role in the implementation of HB 132.

Council Decisions on Scope of Effort

June, 1997

During their work planning for the 1997-98 Interim, the Council made the following decisions related to HB132 implementation:

- EQC staff should work with agency staff and others to create a **specific reporting format** for the purposes of achieving the topical mandates of HB132. Program staff would be asked to provide written compliance information according to the format and to summarize their information verbally for the Council.
- EQC staff should coordinate with Council and agency staff to develop a **list of questions** that would elicit agency responses to the recommendations made in the HJR 10 Study Report. Responses should be presented verbally at an EQC meeting by agency staff, likely with handouts.

Initial EQC/Agency Staff Coordination

Summer 1997

On July 21, 1997, EQC staff met with DEQ, DNRC, and Dept. of Ag. staff to discuss preparation for implementing HB 132. Topics discussed included reporting dates, programs to be included, report content, report format, next steps, and how to respond to the general recommendations of the HJR 10 study. The group made some decisions and listed questions for the Council. Based upon decisions made, EQC staff developed a mock-up format to provide reporting format guidance to the participating agencies.

EQC Guidance to Agencies

Fall 1997

At its September 18th meeting, the EQC created a Compliance and Enforcement Work Group made up of Council members who had served on the HJR 10 Compliance and Enforcement Subcommittee the preceding Interim. This Work Group met the following day to provide guidance to the reporting agencies and answers to the outstanding questions. This meeting resulted in a list of guiding principles for the agencies to consider in their preparation for their reporting to occur in the fall of 1998 and confirmation of the model reporting format. (See Appendix A for EQC guidance and suggested reporting format provided to the agencies.) The agencies agreed to respond to the HJR 10 study recommendations in writing at the same time they provided their HB 132 reporting.

DEQ Enforcement Update

January 1998

The EQC reviewed information from the DEQ enforcement division listing the number of complaints received by the division and the status of enforcement actions processed for calendar year 1997. Presentations were made by the agency director, the Governor, and the public regarding compliance and enforcement issues and the DEQ.

DEQ/DNRC HB 132 Reporting to EQC

September 1998

These two agencies presented their compliance and enforcement reports to the EQC on September 10th. The DEQ report was in draft form pending EQC response and further work by the agency. The final DEQ report was submitted on November 17th.

Dept. of Ag. Reporting (plus FWP)

October 1998

These two agencies submitted compliance and enforcement reports to the EQC on October 30th. HB 132 requires the Department of Agriculture to report. The Department of Fish Wildlife and Parks presented compliance and enforcement activity information to the Council at its request.

EQC Response to Reporting

Fall 1998

The Compliance and Enforcement Study Work Group held a conference call on October 6th to discuss the DNRC and DEQ reports and prepare recommendations for the full EQC and the agencies. Suggestions were provided to the agencies at the October 30th EQC meetings. Findings and conclusions of the EQC are found in this report.

EQC Adopts HB 132 Report

December 1998

The EQC met on December 4th in Helena to review, refine, and adopt the HB 132 report, and its related findings and recommendations.

EQC HB 132 Report Submitted to 56th Legislature
March 1999

The report will be made available to all requestors. It will also be distributed to members of the House and the Senate Natural Resources and Agriculture committees and to members of the appropriation committees that oversee these agency budgets.

AGENCY RESPONSE TO HB 132

The full text of the Department of Environmental Quality (DEQ), Department of Natural Resources and Conservation (DNRC), and Department of Agriculture (Dept. of Ag.) responses to HB 132 mandates is provided in Appendices B through D, respectively. Appendix E contains Department of Fish, Wildlife & Parks' (FWP) information related to game farms and illegal fish introduction. This information was not required by HB 132, but had been discussed during HJR 10 deliberations, and continues to be of interest to the Council.

Summary of Agency Reporting

The EQC requested that their staff provide a summary of HB 132 reporting. They asked that the summary not compare agencies or overly tax staff resources late in the Interim. Staff responded by providing the following list of observations of the 1997-98 information reported pursuant to HB 132.

It should be noted that the amount of program information entered below is not in any way proportional to any level of concern regarding compliance or enforcement under that program. To the contrary, the scale of information provided below is more an indicator of the level of relevant and meaningful information provided by agency staff, as well as aspects that appeared specifically related to issues and recommendations from the EQC's compliance and enforcement deliberations over the past three years.

EQC staff thank agency staff for their efforts to communicate to the EQC the status of compliance with their programs, and (where such comments were provided) their related interpretations of what works, what might explain apparent compliance problems, issues they are trying to tackle, and hurdles they still face.

Solid Waste

- The number of landfill inspections conducted in FY 1997 was one-third of the average number of inspections for the preceding three years, due to staff losses, required vacancy savings, relocation disruption, and increased emphasis on certain types of problems. Though state staff conducted fewer inspections, the proportion of major violations discovered was much lower than in the preceding three years. (See page B-3.)

- The number of municipal solid waste landfills continues to decline with the consolidation of sites. (See page B-2.) Three formal enforcement actions were prepared for violations of the Solid Waste Act. One action was settled and $23,250 in penalties were collected.

- State inspections of septic tank pumping service license holder operations were limited due to program funding. The program efforts are limited primarily to the issuance of a state license and a response to complaints. Program responsibilities were transferred to this DEQ administrative unit in 1997. (See page B-1.)

- The motor vehicle recycling and disposal program reported responsive compliance in most cases and also reported 95 continuing violations with 17 cases referred for legal action. (See page B-6.)

(Note: The enforcement division reports a caseload of 7 motor vehicle cases.) Two enforcement actions resulted in the imposition $205,900 in penalties. No penalty was reported as having been collected during the reporting period.

Public Water Supply, Distribution, Treatment and Operator Certification

- The requirement to certify operators of "nontransient" water supply systems (e.g. for businesses and schools) went into effect on July 1, 1998. As of late summer 1998, the operators of over half of the nontransient systems state staff are aware of had already been certified. (See page B-9.)

- 1986 amendments to the federal Safe Drinking Water Act (SDWA) resulted in voluminous, complex new monitoring and treatment requirements for public water suppliers. State staff note that although the number of violations has greatly increased since then, the quality of water served by public water suppliers has dramatically improved through implementation of the requirements. They add that there are many technical violations because of complex new regulatory requirements, but most of the violations do not result in significant public health risk. Public notification is required for all violations of the SDWA. (See pages B-9 and B-16.)

- State staff note that most water suppliers are determined to stay in compliance. State staff are addressing back-logged drinking water enforcement cases in order to proceed with new noncompliance issues. Particular attention is given to significant noncompliers (SNCs). Once a water supplier is identified as a SNC, more formal enforcement actions are implemented. Formal enforcement information appears to indicate there are currently 41 SNCs in Montana (or a lesser number of SNCs, some with multiple formal enforcement actions). (See pages B-16 and B-81.)

- Recorded violations of drinking water standards (Maximum Contaminant Levels, or MCLs) for inorganic chemicals decreased by two-thirds between 1996 and 1997, but nitrate/nitrate violations increased somewhat over the same period. State staff note that most of the MCL violations are for naturally occurring fluoride and nitrate, but some of the nitrate violations may be the result of contamination from improper sewage disposal or agricultural practices. Most of these violations were addressed through treatment or the use of alternate water sources. (See page B-10.)

- Violations of public water supply coliform rules increased between 1996 and 1997, with a large increase in the number of non-acute violations. State staff note that most of the coliform problems are from improper disinfection of water systems following repairs, inadequately protected water sources, or bio films that exist within water distribution systems. The number of significant monitoring violations (i.e. those considered to be creating a possible public health risk due to lack of information) increased somewhat over the same period, but the number of systems with multiple monitoring violations declined. (See pages B-9 through B-11.)

- Violations of drinking water treatment procedural requirements increased between 1996 and 1997, with a much higher average number of violations per noncompliant system in 1997 than the previous year (for both treatment procedures and monitoring/reporting. State staff note that treatment technique problems are normally due to inadequate filtration or disinfection when water quality or water demands are extreme. Many of the water supply owners that failed to install filtration equipment couldn't find funding for such improvements. Very small water suppliers had the most problems with monitoring requirements. (See pages B-12 through B-13.)

- In 1996 and 1997, 12% of public water systems required to be operated by a certified operator were out of compliance with operator certification requirements. Of the public wastewater systems requiring a certified operator, 26% were out of compliance with this requirement in 1996 and 1997. State staff reported difficulty in promoting compliance due to staff shortages and problems with their database. They note that a July 1998 addition of 1.2 FTE to the operator certification program, and a transition to a better database, should lead to additional operator contacts and improved compliance in FY 1999. (See page B-16.)

Asbestos

- The asbestos control program responded to over 3,000 requests for information during the 2 year reporting period between FY 1997 and FY 1998. During these 2 years, 324 permits were written, 67 inspections were conducted, and 13 violations identified by inspection or complaint were addressed. Six are pending resolution, all of which have been identified as significant violations. (See page B-18.)

- The enforcement division shows a case load of 8 asbestos actions and 18 complaints. Two cases imposed penalties totaling $20,852; no penalties were shown as having been collected. The 1995-1997 HJR 10 study provided no comparative information for this program.

Hazardous Waste

- The program conducted over 600 inspections of hazardous waste handlers, generators, and management facilities during the reporting period and documented 79 violations. Ongoing compliance efforts by program staff were expanded during the reporting period. Violations are segregated into categories of significance. Of the 6 high priority violations reported during FY 1997 and FY 1998, 2 were at large quantity hazardous waste generators and 4 were violations by small quantity generators. Trend information back to FY 1995 was not reported. (See page B-23 through B-30.)

- The enforcement division received 98 complaints regarding hazardous waste issues and processed 7 hazardous waste cases, two of which were closed. Two penalties were assessed with fines totaling $19,900, none of which was collected during the period.

Air Quality

- There were 426 permitted air pollution sources/facilities during the reporting period. Compliance efforts with these and other non permitted facilities are extensive within the department across several administrative units. The department conducted 374 on site inspections and issued 42 notices of violation (NOVs), 17 that were categorized as significant. Three of these were identified as the result of department inspections and the remainder as the result of department review of facility reports. (See page B-32 and B-33.)

- For the FY 1995 and FY 1996 report, the department indicated that 73 NOVs were issued of which 15 were considered to be major or significant. Half were discovered through department inspections.

- The enforcement division reported 335 complaints regarding air quality issues during the reporting period. A total of 18 air quality cases were processed by the division, seven of which were closed. The department issued 10 orders with penalties totaling $376,827 all except $65,296 of which was collected or expended in the performance of supplemental environmental projects.

Opencut Mining and Reclamation

- In FY 1997 and FY 1998, 18 Notices of Violation were issued to opencut (i.e. gravel, scoria, etc.) miners in Montana. All 18 violations were discovered through state staff inspections of mine sites. Most violations were for mining without a required opencut mining contract with the state, failing to reclaim, or failing to set aside (salvage) soil for later reclamation. Although the state assigns points for the level of seriousness of the violations, points were not provided in state reports. State staff note that usually operators with violations either secure a contract, reclaim (or forfeit their bond), begin to salvage soil correctly, and/or correct other problems. Program staff feel that both the

number of operators and the number and type of violations have been relatively stable over the last 20 years, with about 2,000+ operators and less than 20 noncompliances per year. Staff note that new operators are more likely than others to be out of compliance; with increasing numbers of operators associated with residential subdivision development and infrastructure projects, there may be more noncompliances in the future. (See pages B-38 through B-40.)

Coal Mining and Reclamation

- For coal mining, federal laws and regulations provide very little discretion of whether or not to initiate enforcement. A nation-wide tracking system lists coal mining violations across states, and entities listed on the system are blocked from obtaining permits if violations have not been resolved. Because being listed in the system can affect major corporate activities, such as buying and selling mines, compliance is a high priority for companies involved in coal mining. (See pages B-41 and B-43.)

- State staff inspect coal facilities on a schedule mandated by Montana's Administrative Rules (ARMs). During inspections, state staff identify "maintenance items" (things that might lead to a noncompliance if not rectified) and discuss them with the permittee. The number of maintenance items noted, as well as those not addressed, has shown a gradual decline since FY 1996. The number of violations increased between 1997 and 1998. Program staff note that an unusually high number of Cessation Orders were issued to one company in the past two years.

- There were 24 pending coal violations at the beginning of FY 1997, about half pending from the 1980s; 13 of these are in court, two have a deceased permittee, and four have had their bond forfeited. (Note: Table 32 on p. B-83 lists no pending coal cases.) During FY 1997 and 1998, state staff issued 17 Notices of Noncompliance and 6 Cessation Orders to coal operators, all with an associated penalty. (Note: Table 33 on p. B-83 lists 13 coal orders with penalties.) The Cessation Orders were all issued for unresolved noncompliances. Types of coal violations are listed on p. B-47. As of August, 31, 1998, 8 of the FY 1997-1998 violations had been resolved and the remainder were still active. (See pages B-42 through B-49.)

Water Quality

- As of the end of 1997, there were approximately 700 active permits to discharge waste into Montana's surface or ground waters, including surface, municipal and industrial, stormwater and ground water permits. Compliance inspections are performed in all of the water quality permit programs. Generally, 200-300 inspections are performed in a typical year. Some of the facilities are targeted at random, but most are selected for inspection due to self-monitoring violations or complaints received. Some facilities request inspections to clarify application of the rules or to obtain advice on staying in or returning to compliance. (See pages B-50 and B-51.)

- Of 254 MPDES permits, there were 187 violations (most at public facilities), in FYs 1998-1999. Of 56 Concentrated Animal Feeding Operation (CAFO) permits, there were 24 violations in the same period. Of 364 storm water permits, there were 324 violations, and of 23 groundwater permits, there were 10 violations. There were 75 violations related to unpermitted discharges. State staff note that it is not uncommon for permittees to have occasional effluent violations. There may be a hundred or more of these per year. However, in most cases the permittees make adjustment and quickly return to compliance. Very serious or chronic violators are referred to the Enforcement Division. Typically, the programs may have 10-12 formal enforcement requests submitted at any one time. Of the 620 recorded water quality violations in FYs 1997-1998, 27 are noted as being referred to the Enforcement Division. (See pages B-52 and B-53.)

- Not unexpectedly, most discharge permit noncompliances are discovered through self monitoring and inspections. Most CAFO and unpermitted discharge noncompliances are discovered via

complaints. Most stormwater and ground water noncompliances are discovered through self-monitoring.

- Based on the water quality-related noncompliances in FYs 1997-1998, state staff wrote about 1,000 violation or warning letters, conducted about 1,000 noncompliance-related calls/meetings and 171 inspections, and referred 16 cases to the Enforcement Division. Limited information is provided on the proportion of the noncompliances resolved or still pending.

- State sanitation (in subdivisions) staff recently increased efforts to provide more formal training to county sanitarians and consultants and recently began distributing quarterly newsletters to boards of health and county commissioners. Because of issues of construction prior to subdivision approval, staff revised forms and stepped up efforts to inform relevant parties of related prohibitions. State staff reviewed almost 3,000 subdivision proposals in FYs 1997-1998, and evaluated more than 10,000 sewage systems to ensure compliance with state water and sanitation law. (See page B-53.)

- State staff report 5 violations of the Sanitation in Subdivisions Act in FY 1997 and none in FY 1998. They refer all complaints and potential enforcement actions directly to DEQ's Enforcement Division. (See pages B-53 and B-54.) Enforcement Division information shows no entries for enforcement actions under the Sanitation in Subdivisions Act.

Hard Rock Mining and Reclamation

- Of the 72 hard rock mines permitted in Montana, 23 involve precious metals, 7 are for base metals, 24 are for quarry rock, 5 are for talc, 3 are for soil, and there are 3 other mines not falling into these categories. Active mining is occurring on at least 32 of these sites. (See page B-56.)

- State staff note that 57 hard rock noncompliances were discovered between 1989 and 1998, with 2 still being active, and 11 which appear to be awaiting bond release (hand-written information is unclear). (See page B-57 through B-67.) Formal Enforcement Division information notes 11 metal mine cases pending. No information was provided on the method of discovery of hard rock noncompliances, but 1995 EQC/DEQ information notes that most are discovered through site inspections. State staff note that probably three or four of the noncompliances over the 1989-1998 period could be judged significant, though none threatened human health. (Note: Information in the 1997 *HJR 10 Compliance and Enforcement Study Technical Appendix* lists 14 hard rock noncompliances issued in 1995; 1998 DEQ reporting information lists only 3 hard rock noncompliances issued in 1995. There is no discussion of the possible reasons for the discrepancy.)

Major Facility Siting

- The department is overseeing the compliance of 15 facilities operating under certificates issued under the Major Facility Siting Act or federal authorizations (for federally owned facilities). (See page B-69.) Certificates may be suspended or revoked for noncompliance but penalties are not authorized. No certificates were revoked or suspended during the reporting period. The department has notified 3 facilities of noncompliance with their issued certificates and is working to correct the problems. The Enforcement Division reports no activity regarding this program during FY 1997 or FY 1998.

Remediation

- During this reporting period, the underground storage tank (UST) program has accelerated its compliance activities, given the impending December 1998 federal deadline for upgrading all

existing tanks. Only 2 cases were referred to the Enforcement Division during FY 1997 and FY 1998. No fines or penalties were imposed or collected for UST program violations according to the report.

- The number of active USTs continue to decrease as facilities make decisions on the economic viability of the business over the costs of compliance with the new tank and leak detection requirements. The department reported a total of 23,463 USTs in Montana as of 1995. The current report identifies 5,347 active UST systems regulated by the state. Of these, an estimated 67% meet the new leak detection standards and estimated 53% meet the new tank performance standards. (See page B-72.)

- The UST program is utilizing a new EPA-State reporting software that tracks the number of tanks in compliance, removed from service, still active but not in compliance, etc. (See Appendix A of the DEQ report [Appendix B]).

- The UST program has a significant compliance reporting ability that was absent in most other programs.

- The corrective action section of the UST program has identified 3,308 petroleum releases from USTs since the program began in 1988. The department has issued 20 notices of violation for 27 violations of the corrective action provisions of state law since 1989. Seventeen, or 63% of these, were for failure to conduct a required remedial investigation in response to a release. The department maintains that voluntary remediation occurs in the vast majority (98.4%) of release incidents due to the availability of remediation funds through the Petroleum Release Compensation Board for those owners that take responsibility for the tank and the release. (See page B-75.)

- The Mine Waste Cleanup Bureau reported activities under the federal Superfund program (CERCLA) and a similar state program (CECRA) that addresses hazardous materials release sites not administered through the federal act. Montana has 8 such federally designated sites and over 300 sites subject to the state law. (See page B-78.) Compliance is accomplished through negotiation with responsible parties or through the issuance of orders to remediate or through direct state intervention in the absence of a responsible party response. A description of orders issued and the responses was not provided. No quantitative trend information from past years was provided. The department has not been able to track and compile enforcement related information for the program since 1993 according to the report.
- For the HJR 10 report, the department did report a series of program efforts including cost recovery efforts, and complaints received in FY 1995.

- The Enforcement Division reported no activity in response to efforts involving the state or federal “superfund” programs.

General Enforcement (DEQ)

- In addition to the program information above, all citizen complaints and spill reports received by DEQ are routed to the Enforcement Division’s complaints clearinghouse, established to ensure that all citizen complaints are recorded and addressed in a timely manner and to eliminate duplicate investigation of citizen complaints. Of the 1,947 total spill reports and citizen complaints received in FYs 1997-1998, about 46% are closed (resolved or no violation), 22% were referred to and resolved by other DEQ programs, 16% are still active, 13% were referred to other agencies, and 3% did not have enough information to be pursued. (See page B-80.)

- Of the 166 current formal enforcement cases, 146 were FY 1997-98 requests received from other DEQ programs. Of the 166 active cases, about 80% are being pursued via administrative action, with 6 being pursued through civil or criminal procedures. State staff note that the department’s approach is to take enforcement action before a violation becomes severe by issuing

administrative penalty orders with small penalties. However, they note the department also assesses large penalties through civil actions against major violators who cause significant violations. Currently, the most active topic areas for formal enforcement actions are: public water supply (41 cases), water quality (27 cases), opencut mining (25 cases), air quality (18 cases), and coal (17 cases). It is not entirely clear how the various DEQ programs determine whether to request formal assistance from the Enforcement Division or how many cases are referred by the programs but are not being processed by the Division. The relationship between the Enforcement Division and the department's legal unit and its caseload is not described. (See pages B-81 through B-84.)

- Of the 166 formal enforcement cases active in FYs 1997-1998, 52 have been settled and closed, 74 are under a legally-enforceable order, and 40 are still being worked on. Penalties assessed by the Enforcement Division totaled about $1.1 million in FYs 1997-1998, with about $3,000 suspended and $330,000 received so far (others are due in FY 1999, are being appealed, or there are ability to pay issues). In addition, the department received about $431,000 in bond forfeitures and $66,000 was committed to conducting environmental projects in lieu of paying cash penalties. State staff noted they expect increased enforcement in the areas of water quality and underground storage tanks, and that administrative penalty regulations

  promulgated in 1998 will provide the department with increased flexibility to issue administrative penalty orders. (See pages B-81 through B-84.)

Note: pages B-84 to B-89 include the DEQ's response to the recommendations (in question form) from the EQC's 1995-1996 HJR 10 Compliance and Enforcement study (see **Figure 1**). Those responses are not summarized here, as they are already in summary form.

Service Forestry

- State enforcement of forestry-related violations take on many forms, but almost always involves technical assistance to help mitigate a problem. State staff note that the Hazard Reduction Law has a unique system where the landowner is watching the operator to ensure hazard reduction compliance, and the operator is watching the mills to ensure fee compliance. Trends in compliance with hazard reduction requirements have improved over the last 15 years; active hazard reduction activities have more than doubled (to over 4,500 in 1995), while the number of state takeovers was reported as stable or decreasing for the same time period (61 state takeovers in FY 1998). State staff note there are approximately 50 wood producing manufacturers (total not reported) that are occasionally or habitually noncompliant with fee payments. The state took a variety of steps to encourage compliance, including one formal mill audit in 1997. (See pages C-3 through C-7.) (No information was provided on whether the state actions improved compliance.)

- Compliance with best management practices has improved, with 92% of applications meeting or exceeding BMP requirements in 1996 (up from 78% in 1990), and 2.3 "impacts" per site in 1996 (down from 8 in 1990). (See page C-7.)

- Streamside Management Zone enforcement actions include warnings or orders. Orders may be accompanied by fines. To date, no fines have been challenged in court proceedings. Three SMZ notices of violation and orders to mitigate for damage were issued in FY 1998. SMZ violations over the four-year history of enforcement do not yet establish a clear trend. In FY 1997, DNRC issued 28 SMZ-related warnings. In FY1998, SMZ-related warnings increased to 34. In both years, the most common rule violations were; SMZ width, equipment operation, and slash in the stream. The average number of rule violations per warning increased from 1.9 in FY 1997 to 2.3 in FY 1998. Between 1994 and 1998, 7 SMZ fines (varying from approximately $200 to $17,500 each) were assessed; 6 were paid, one is pending. (See pages C-8 through C-10.)

Dam Safety

- State staff note that enforcement actions are usually on a case-by-case basis, depending on the potential threat to life and property. Although the Dam Safety Act provides authority to levy a fine or place a lien on property, this has not been done to date. Generally, program staff have been able to work with dam owners in violation of a permit condition to resolve conflicts. In most instances a reservoir level restriction eliminates safety concerns until the violation has been resolved. All reservoir level restrictions currently in place have been agreed to voluntarily by the dam owners. (See page C-10.)

- Currently, the program's primary outreach effort is to get seepage monitoring plans implemented on all high hazard dams. This requires careful coordination with the owners and the owners' engineers. The department feels they have had great success in this area, noting that, when explained properly, dam owners understand the importance of seepage monitoring. Implementing a proper seepage monitoring plan can be expensive, if drilling is necessary, so state staff are trying to use a phased approach to avoid economic hardship on the dam owners. (See page C-10.)

- The dam safety law required that operation permits be submitted for all high hazard dams by July 1, 1995, which was achieved. Some permit renewals are now necessary. No permits have been denied, although some reservoir level restrictions are in place. Although these figures represent 100% compliance with the requirement to obtain a permit, development downstream of dams may mean that some dams not currently classified as "high-hazard" should be, which would add dams to the number currently regulated under this program. Department staff note they do not have an adequate means of determining if this is happening on a broad scale, but cited an example of a reclassification, and noted they intend to address this issue in the near future. (See page C-12.)

- State staff note that annual updates of emergency action plans are required and can involve a considerable amount of effort. They note that, though the responsibility of the dam owner, owners do not submit updates on a regular basis without active state staff involvement. Program staff also note that several actions specified in permit conditions to be completed are now overdue; staff typically have to work with dam owners to address these conditions, and intend to make this a priority over the next year.

- Overall, state staff believe overall compliance is very good. They feel that compliance with the Act is dependent upon considerable agency outreach activities. They conclude that when a dam owner realizes the importance of properly maintaining, monitoring, and inspecting their dam, they go out of their way to stay in compliance. They note that one of the biggest compliance problems relate to the age of dam facilities, and the costs associated with repairs to aging facilities. (See pages C-12 and C-13.)

Water Measurement

- The water measurement program was established in 1991. In 1994, Mill Creek was the first waterway to be designated as chronically dewatered. The Musselshell is the only other waterway to receive the designation so far (and thus be subject to program requirements to install measuring devices and submit records), which occurred in 1995. (See page C-14.)

- Program staff note that their approach shifted from a strictly public meeting format in 1997, to a public meeting and individual inspection/assistance format in 1998. They feel that individual inspections are a more effective approach to gaining compliance, while the general education and public meetings still provide vital background information.

- For Mill Creek, program staff note that although they have only received records from one of the eight diversions, the trend is very positive. They note that two years ago, only one of the eight

diversions had a measuring device, and now six do. They expect to receive records for the other installed measuring devices by the end of 1998. (See page C-15.)

- Regarding the Musselshell, staff note that compliance among water association users is likely high, while natural flow (decreed right) users have a low compliance rate, especially in the upper part of the basin. Program staff plan to field check 10-20% of the diversions per year over the next five years. They note the compliance trend is positive, and add that site visits, direct assistance, field inspections and information, are leading to increased numbers of measuring devices installed, especially in the upper basin. (See pages C-15 and C-16.)

- The program has not enforced violations through issuing fines. The program is relatively new, and has the potential to grow to cover large areas. Enforcement responses in the manner of technical assistance and information have been effective so far in progressing toward program goals.

- Staff note they have had difficulty retaining a program manager. They hope to address the problem by allowing for and providing funding for continued training and development in related technical areas (e.g. hydrology, hydraulics, agriculture, etc.). (See page C-17.)

Water Rights

- There are about 200,000 water users in Montana (i.e. persons with water right permits, claims, certificates, or reserved water rights). Water rights staff in DNRC's regional offices estimate that, statewide, agency staff discuss water rights with at least 80 people each day. (See page C-19.)

- Program staff note they received almost 6,500 water right ownership updates in FY1997-1998, though information is not provided on what proportion of the regulated community this may represent. Staff note they must send hundreds of reminder letters to well owners to file notices of completion. They also report they terminated 64 permits and changes in FY1997-1998 due to an applicant for a general water use permit or change not filing a notice of completion or getting an extension to do so. According to program staff, noncompliance related to water measurement required by permits or changes is rare. (See page C-19.)

- Program staff estimate the regional water rights offices annually receive 500 allegations of violation of the water use Act. About 150 of these require some follow-up. Complaints are the primary way staff are made aware of unauthorized water uses, at which time they work with the users to fill out the needed applications. (See page C-20.)

Board of Water Well Contractors

- The Board issued 337 licenses of varying types (water well contractors, water well drillers, and monitoring well constructors) to 263 individuals in FY 1997. An estimate of 4,500 wells were drilled in the state according to the report but the time frame was not identified. The Board received 122 complaints in FY 1997 and 64 in FY 1998. (See page C-22.)

- The department typically only investigates those complaints that involve allegations of faulty well construction. In FY 1998, 41 of the 64 complaints were investigated, 11 complaints were referred to the Board for action, 2 faulty wells were reconstructed, one license was suspended, and 2 licenses were placed on probation. The department reports that between 30 and 40 well construction complaints are received each year. At the end of the reporting period, the Board states that no licensees are out of compliance (with the licensing requirements) and that there were no pending compliance violations. (See page C-21.)

Oil and Gas

- Field inspectors of the Board of Oil and Gas performed over 4,900 well inspections during FY 1998. There are approximately 6,500 wells in active status in the state of Montana. Four noncompliances were documented during the calendar year of 1998. (See pages C-28 and C-29.)

Pesticides

- The department has 10,970 licensed pesticide dealers and applicators. The department, in cooperation with the Montana State University Extension Service, provides initial training and testing of farm applicators. A qualification exam by the department is required for licensing of commercial and governmental applicators.

- The department conducted a total of 745 routine inspections in 1998. Sixty five noncompliance actions were issued. (See pages D-1 through D-12.)

Agricultural Chemical Ground Water Protection

- In FYs 1997 and 1998, the department had conducted 343 pesticide inspections that included a groundwater component. Since the Montana Agricultural Chemical Groundwater Protection Act was enacted in 1989, the department has issued 4 administrative orders requiring the clean-up of pesticide spills, sampling soils and ground water, and some soil removals.

- The department has placed an emphasis on ground water research and technical assistance. The department is in the process of developing specific management plans (SMPs) for ground water protection. Most compliance activities will be linked to the adoption of SMPs and, since the SMPs are not currently in effect, routine enforcement is not yet underway. (See pages D-13 through D-17.)

Game Violations/Illegal Fish Introductions

(Note: This information was not required by HB132; it is included here because of continued EQC interest in the topic.)

- Poaching statistics in 1997 include 100 game violations of which 62 were big game violations and 33 poaching activities related to fish. The department has documented over 340 illegal fish introductions into 204 waters in the state. (See Appendix E.)

Agency Conclusions Regarding HB 132 Implementation

Agency representatives drew the following conclusions regarding the mandates and results of HB 132:

- DNRC Director Bud Clinch concluded that the reporting process was beneficial to the department in examining agency priorities and allocating staff resources.

- DEQ Director Mark Simonich viewed the HB 132 effort as an integral part of helping DEQ reorganization work to its fullest potential.

COUNCIL FINDINGS AND RECOMMENDATIONS

Findings

The Council came to the following conclusions regarding the process and products of the first biennial implementation of HB 132, mandatory state agency natural resource and environmental compliance and enforcement reporting:

- The agency reports were a good effort and answered many of the questions requested in statute and by the Council.
- There was some difficulty with the DEQ report due to the split in information (i.e. formal enforcement information at the end separate from the compliance information); it made the report difficult to understand and the information difficult to track. It is important for the reader to be able to track information from permitting, through compliance, through enforcement; that is difficult to do with the split format.
- The reports did not fully respond to the aspect of the statute that requested a discussion of the significance of noncompliances. The Council is especially interested in aspects of state policy that relate to significant noncompliances.
- Compliance and enforcement has been a major project for the EQC. The EQC was briefed on some significant legislative initiatives that impact agency compliance and enforcement efforts at its October 30, 1998 meeting. The Council would like more (and more timely) coordination from natural resource agencies regarding related legislative and administrative proposals.
- The EQC Compliance and Enforcement Work Group expressed a desire that agencies incorporate more information describing the condition and trends in the quality of the resource into their compliance and enforcement activities. In describing the success of environmental programs, agencies could use indicators of resource status and not just numbers of enforcement actions.
- The Council commended the Department of Agriculture for the environmental indicators they noted that might assist in connecting compliance with pesticide and agricultural chemical ground water protection laws to actual effects of these policies and compliance rates on the ground.
- The Council concluded that this reporting should not be used to contrast one agency against another. The EQC recognizes that the statutes implemented by each agency are different in their policy and purpose, their authorizations and constraints, and are affected by a variety of internal and external parameters.
- There was some discussion regarding potential public review of compliance and enforcement reporting information, including the option for DEQ to post theirs on their website. However, no formal recommendations were made.

Recommendations

The Council recommended the following regarding products of this first round of reporting, as well future compliance and enforcement reporting pursuant to HB 132 (Section 75-1-314, MCA):

- The Council adopted the agency reports prepared for this biennium, but recommended that next biennium's reporting include more DEQ integration of enforcement division information with program-specific (compliance) information.

- The Council recommended incorporation of additional trend information as it becomes available.

- The reporting next biennium should include more information on staffing resources, turnover, and the effect these parameters have on compliance, enforcement, and program continuity.

- Regarding the products of the reporting this biennium, the Council recommended an Executive Summary which should discuss trends in compliance and enforcement activities. The three agency reports should be bound together and made available with the Executive Summary. Information from the Department of Fish, Wildlife and Parks on illegal fish introductions and game farms should be included as an appendix. The report should be made available to natural resource and agriculture committees in the House and Senate, the appropriation subcommittees with oversight roles for these program budgets, and any other interested legislators.

- Many programs currently collect data related to the condition of the resource they are charged to protect or enhance. Future reports should attempt to include a descriptive connection between the condition and trend in the resources and the compliance and enforcement efforts of the programs.

- The U.S. Environmental Protection Agency encourages state agencies to develop environmental indicators and performance measures as part of the environmental Performance Partnership Agreements the EPA negotiates with individual states. The EQC recommends that Montana state agencies work to develop and expand indicators and performance measures for use in those agreements, as well as in reporting the effectiveness of compliance and enforcement to the EQC.

Appendix A

ENVIRONMENTAL QUALITY COUNCIL

STATE CAPITOL
PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

Memo To: Members, Compliance and Enforcement Reporting Work Group (Rep. Cocchiarella, Ms. Souvigney, Mr. Tollefson)

From: Kathleen Williams

Date: October 27, 1997

Subject: Results of 9/19 Work Group Meeting with Agency Representatives

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This memo provides the following:

- the **questions** posed to the Work Group concerning environmental compliance and enforcement reporting and how the Work Group **answered** those question at its September 19, 1997 meeting with natural resource agency representatives;

- a list of **"guiding principles"** summarized from Work Group discussions that, if concurred in by the full Council, should serve to further guide the agencies in preparing and delivering their responses to the mandates of HB132, as well as the general recommendations of the Council's *Compliance and Enforcement Study* from last interim;

Attached to this memo is a **revision of the sample reporting format** handed out at the September 18th Council meeting. It has been revised based upon Work Group comments. It is not intended to state requirements for reporting, but to provide guidance from the Council to the reporting agencies on the level and extent of information desired, and how it might best be presented.

The full Council agenda includes an opportunity for Work Group members to update the Council on the guidance they have provided to the reporting agencies, seek confirmation from the Council, and address any questions that may yet be outstanding. **One item that has not been addressed is how the information reported by the agencies will be used by the Council.** Should it be repackaged by EQC staff for general public consumption? Should the Council formally evaluate what they have heard and forward that evaluation and a summary of the information to the Legislature? Should we combine the reporting with a seminar on

environmental compliance and enforcement, possibly in tandem with U.S. Department of Justice offings? Do you want to just wait and see, or talk about options before the reporting occurs...?

Staff will assume the Work Group members will raise any questions and/or suggestions they wish to make to the Council on November 14th. Please let us know if we can be of assistance beyond what is provided here. Copies of this memo and the attachment will be available at the Council meeting on the 14th, unless we are instructed otherwise.

Staff appreciates the willingness of the Work Group members to revisit topics that required so much of their energy last Interim. I believe it was very helpful for the agency representatives to hear Council members' perspectives.

Questions and Answers

The Council delegated the answering of the following questions to the Compliance and Enforcement Work Group. Following each question is the answer staff recorded. Please let staff know if you disagree with what was recorded.

Council Question #1: Are there any comments or concerns about the planned September, 1998, HB132 reporting date?

> Answer: The pros and cons of September vs. October, 1998, were discussed with agency staff. All agreed that September was either preferred or workable. September it is.

Council Question #2: What changes should be made from the programs included in the HJR10 study to the programs reporting under HB132?

> Answer: DEQ's Asbestos and Megalandfill programs should not be added to the reporting under HB132. The four programs DNRC recommended be deleted from reporting should be. (The programs were; conservation districts, grazing districts, fire and aviation, and floodplain management.) The Work Group recommended that no programs from the Department of Fish, Wildlife & Parks be included in the reporting, but did want to follow up on the two programs that had some reporting inconsistencies last Interim (game farms, and illegal fish introductions). The Work Group had no other suggested changes to the programs included in the reporting. The revised Table of Contents in the sample format reflects the DNRC program deletions.

Council Question #3: Is the reporting content and format guidance developed by EQC and agency staff (see pp. 2-5 of the attachment to the September 4th Council memo on this topic) appropriate?

Answer: Since most of the above ideas were incorporated into the sample reporting format, it is assumed that the Work Group generally agreed with the above approach, tempered by their suggestions to "tweak" the sample, as well as their general thoughts incorporated into the "guiding principles," below.

Council Question #4: How should the Council follow up on the general recommendations made in the 1996-97 Compliance and Enforcement Study?

Answer: EQC staff have converted into questions the Study recommendations that are not being covered in other EQC efforts. The result was provided to agency staff, under the assumption they could respond verbally to these questions during the same meeting they were providing their HB132 responses, presuming sufficient time. The Work Group would like these responses in writing, rather than verbally, and requested EQC staff to consult with agency representatives to determine if they would provide their responses in writing. As of this writing, the Department of Agriculture has agreed to provide their responses in writing as well as verbally, as have DNRC and DEQ.

Preliminary "Guiding Principles" for HB132 Reporting to the Council

The following are snippets from my notes of the Work Group meeting with agency representatives. They represent general opinions and goals expressed by Work Group members regarding HB132 reporting and can be made more formal if the Work Group or Council desires.

- Make it meaningful.
- The Noncompliances table should be expanded to make the entries more descriptive.
- Rep. Cocchiarella hopes the results of HB132 reporting will allow her to respond to a constituent calling her about the status of natural resource compliance and enforcement -- she doesn't want to give a rhetorical response, but a real and informative one.
- The information presented should speak for itself.
- Paint a picture of the program, both now and trends.
- This will not tell us what is happening in the environment, we acknowledge that; it should, however, tell us trends in enforcement.
- We don't want a huge report.
- Don't provide answers unless those answers are meaningful.
- Make it simple to understand.
- Individual non-compliances are less important than the overall status and trends.
- When identifying "significant" non-compliances, just tell us whether it was a big deal or not.
- We need a "picture" of compliance.
- We want to be able to determine if the tools being used are working.
- Be graphic!

- Although this may be a starting point for reporting for some programs, trends are important -- trends in permits, trends in non-compliances, etc. We need to get a feel for trends.
- This reporting format should be standardized as much as possible, but allow sufficient flexibility that programs can provide meaningful responses.

Please let staff know if anything listed above is inconsistent with what you remember being stated at the September 19th meeting with agency representatives or if you would like any other information prepared for your update to the full Council on November 14th.

As always, we appreciate the early and productive participation of agency representatives. I hope they will pass this memo along to whomever needs it, and contact EQC staff if they note any discrepancies in what is included.

cc: Sen. Grosfield
Co-Chair Mesaros
Agency Representatives at 9/19 Work Group Meeting:
George Algard, Dept. of Agriculture
Steve Baril, Dept. of Agriculture
Sandi Olsen, DEQ
Ray Beck, DNRC

(mockup!)

Report to the 56th Legislature

Status of Compliance with, and Enforcement of, Montana's Natural Resource and Environmental Laws

Environmental Quality Council
December, 1998

Table of Contents

_____ **PROGRAM** (Hypothetical)

Promoting Compliance

Over the last two years, the ___ program has undertaken the following to promote compliance with the statutory goals of the program:

Information/Education....

Technical Assistance....

Inspections...

Enforcement Actions...

The "Regulated" Community

(example from Hard Rock)

Small miners are those disturbing less than 5 acres of ground and removing less than 36,500 tons of material annually. Small miners must sign a Small Miner Exclusion Statement (SMES), committing to not exceed the small mine criteria. A valid SMES exempts them from needing an Operating Permit, unless a portion of their operation involves use of cyanide. If so, they must have an operating permit for that portion. There are approximately 750 small miners, covering about the same number of small mining operations, distributed in 37 of Montana's 56 counties, primarily in the western third of the State. Most of these miners are seasonal operators. About 285 of the 750 are placer miners, three are dredge operators, and the remainder are underground miners. Of the 750, about 19 use cyanide in their operations. (See MCA 82-4-303(15) and -305 for statutory provisions specific to this community.)

(new information...It is estimated that approximately ___ percent of small miners are in compliance with program requirements. Those that are out of compliance are typically out of compliance because _____, and can be brought into compliance with _____.)

Hard rock **exploration efforts** involve the search and testing of potential marketable ores. About half of all the licensees are large companies, contractors, or the development companies themselves. The remainder are medium to small companies and individuals. Exploration activities are limited to a total recovery of 10,000 tons of ore. If exploration efforts will create a "material disturbance," a state license and plan of operations are required. Mechanized exploration requires posting of a reclamation bond. "Hobby miners" (i.e. those collecting rock samples as a hobby, or when products are sold for less than a total of $100/year) are exempt from exploration or SMES requirements. In 1995, there were 180 exploration permittees, covering 372 exploration licensees, primarily in the western half of Montana. Exploratory efforts typically last two years, and less than 1 percent of exploration efforts lead to development. (See MCA 82-4-303(7) for statutory provisions specific to this community.)

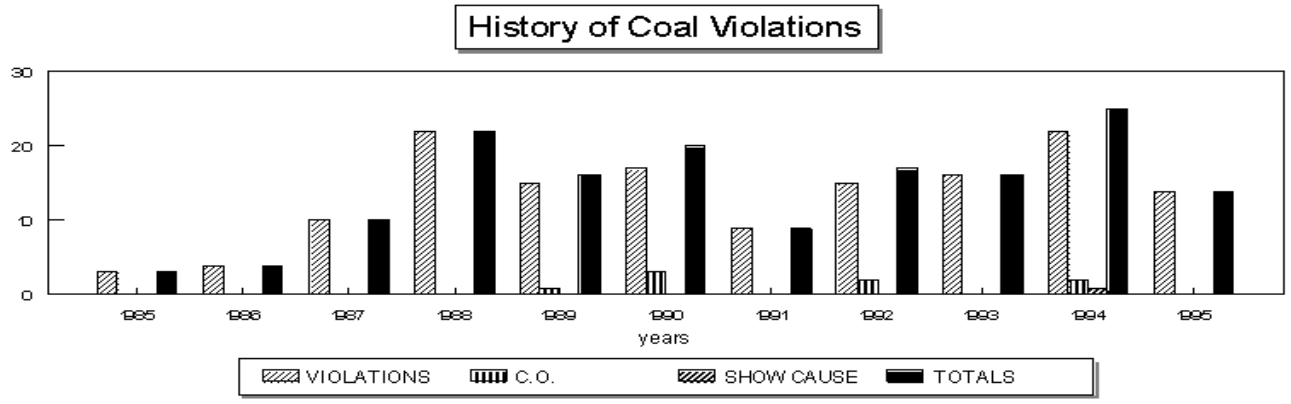
(info on proportion of exploration community estimated to be in compliance)

Hard rock operating permits are required for **large mine development**, which involves the extraction, processing and reprocessing of mineral ores, and reclamation of related disturbances by those who are not considered "small miners." These operations may be placer, open pit, or underground operations. In 1995, there were approximately 65 companies operating 84 active hard rock mines in Montana. Mine sizes are varied; of the 1994 permitted mines, 61% were 5-100 acres; 20% were 100-500 acres; 6% were 500-1,000 acres; and 13% were over 1,000 acres. Average operating life varies from one year to over 30 years, depending on the discovery or existence of additional reserves. Of the 159 permits ever issued (since 1971), nearly 75 have been completely reclaimed; seven of the 159 are no longer active, but reclamation is not complete. Of the currently permitted mines, about 50% have filed for major expansions since issuance of their original operating permits.

(info on proportion of large mine development community estimated to be in compliance)

History of Compliance

Trends in compliance with Coal and Uranium program rules and requirements are illustrated below. Over the last 10 years, violations are issued at about a typical rate of 10 to 25 violations per year. Few Cessation Orders or Show Cause orders are issued. Cessation orders are typically issued to operations which are not operating and are not maintaining reclamation bonds. The only show cause order ever issued by the program was issued to Western Energy Company and was resolved.



Noncompliance

(example from Coal) Over the long term, most violations in the Coal and Uranium program are discovered through on-the-ground inspections. Many others are discovered through review of monitoring reports, both monthly and annual, as shown below. (Please note: Pie charts for each group is preferred over the table format shown.)

Violations Discovered, By Method, 1995					
Group	Total	Agency Review of Monitoring Reports	Self-Reporting of Violation	Inspection	Citizen Complaint
Mines	15	9	1	4	1
Prospecting	0	0	0	0	0
TOTAL	15	9	1	4	1

Source: Lovelace, 1996.

Coal and uranium operators may be out of compliance, but if the problem can be corrected in the field and no resource was lost (such as soil lost to runoff), they will not be issued a violation nor penalized. The Coal and Uranium program defines a "violation" upon issuance of a Notice of Non-Compliance (NON). "Major or Significant" violations would be issued Cessation Orders and would meet the definition of imminent harm or other criteria described above.

As shown in the table on the following page, the Coal and Uranium bureau issued 16 Notices of Non-Compliance (NONs) and no Cessation Orders (COs) in 1995. No NONs were issued to prospecting operations; 16 were issued to mining operators. Two of these violations were vacated. Of the NONs issued in 1995, there were two repeat violators in that time period, one with two violations, and another with seven. As shown for 1995, violations are typically of a few types: 1) actual on-the-ground violations which require equipment to perform work, 2) monitoring or reporting violations, 3) practice or method violations which require a revision to the permit to implement the practice, and 4) the violations which cannot be abated because a resource was lost or data was not collected.

(Note: We expect reporting agencies will report noncompliance information in a table with cell entries, rather than the more-difficult-to-format example on the following page, especially since they will be providing more narrative than in the example. It did not appear to be cost-effective to reformat the sample in a cell format at this time, but can assist reporting agencies with formatting if requested.)

1995 Coal Non-Compliances, by Type, Response, and Status

Month NON Issued	Type of Operator	Description of Violation (points assessed[1])	Latest Action Taken/ Method of Resolution	Penalty Assessed?	Status at Year End[3]	Significant Violation?
Pending in FY96[2]:						
June '85	Operator	Unacc. Sedim. Ctr. Struct. (20 pts.)	(new column)	12,400	pending	Yes
July '85	Operator	No Annual Rept/Unabated (13 pts.)		8,060	pending	Yes
July '85	Operator	No Permit to Construct (28 pts.)		24,800	pending	Yes
Aug. '86	Operator	Sediment Overflow (15 pts.)		9,300	pending	Yes
May '87	Operator	Failure to Maint. Sed. Traps (40 pts.)		62,000	pending	Yes
May '87	Operator	No Pond Cert. Reports (26 pts.)		18,600	pending	Yes
May '87	Operator	No Ann. WQ Mon. Repts. (26 pts.)		18,600	pending	Yes
June '87	Prospector	No Prospecting Permit (no pts.)		15,000	pending	Yes
June '88	Operator	No Permit to Mine (55 pts.)		127,500	pending	Yes
Aug. '90	Operator	Inadequate Sed. Control (43 pts.)		2,300	pending	Yes
Aug. '90	Operator	Inadequate Sed. Control (41 pts.)		2,100	pending	Yes
July '91	Operator	No bond, permit, or recl. (55 pts.)		127,500	pending	Yes
Sept. '91	Operator	Failure to Reclaim (55 pts.)		$3,500	pending	Yes
July '92	Operator	Unperm. Sed. Deposit. (21 pts.)		420	pending	Yes
Sept. '92	Operator	Poor Site Security (55 pts.)		127,500	pending	Yes
July '93	Operator	Degr. of Soil/Sed. Overfl. (19 pts.)		380	pending	No
June '94	Operator	Imminent Danger (55 pts.)		127,500	pending	Yes
July '94	Operator	Failure to Abate CO (55 pts.)		127,500	pending	Yes
Oct. '94	Operator	Inadeq. Biol. Mon. (32 pts.)		1,200	pending	No
Oct. '94	Operator	Inadeq. Wildl. Mon. (29 pts.)		900	pending	No
Nov. '94	Operator	Driving on Reclamation (24 pts.)		480	pending	No
Nov. '94	Operator	Discharge Exceedence (18 pts.)		360	pending	No
Dec. '94	Operator	Spoil Ridges in Pit (20 pts.)		400	pending	No
Issued in FY96-97:						
January	Operator	Discharge Exceedence (14 points)		$260	resolved	No
January	Operator	Inconsis. w/Blasting Plan (40 pts.)		2,000	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)		500	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)		500	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)		500	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)		500	resolved	No
March	Operator	Erosion Problems (41 points)		2,100	resolved	No
March	Operator	Grading Problems (21 points)		420	resolved	No
March	Operator	Pond Constr. Problems (21 pts.)		300	resolved	No
April	Operator	Soil Salvage Problem (19 pts.)		380	resolved	No

August	**Operator**	**Contamin. of Coal Reserve**		**vacated**	
October	**Operator**	**Excess Use of Explosives (22 pts.)**	**440**	**pending**	**No**
October	**Operator**	**Failure to Reclaim/Permit Expiration/ Insolv. Bond (pts. undetermined)**	**undet.**	**pending**	**No**
November	**Operator**	**Inadeq. Aerial Wildlife Surveys (20 pts.)**	**400**	**resolved**	**No**
November	**Operator**	**Discharge Exceedence (13 pts.)**	**520**	**pending**	**No**
November	**Operator**	**Inadeq. Aerial Wildlife Surveys (19 pts.)**		**vacated**	

Notes:

1 "Points" refers to the number of points assigned to a violation, based upon the system discussed in the Technical Appendix. Not all programs have a point system to rate violations; this is only an example of one that does.

2 Most of the carry-over violations were Cessation Orders issued to small coal mining operations.

3 The 1997-98 Compliance and Enforcement Reporting Work Group has recommended this column include greater detail than merely "pending" and "resolved"; it is up to the discretion of the reporting agency as to what to include to provide the most meaningful result.

Source: Lovelace, 1995, 1996.

Appendix B

REPORT TO THE MONTANA

ENVIRONMENTAL QUALITY COUNCIL

ENVIRONMENTAL ENFORCEMENT

AND COMPLIANCE FOR FY97 AND FY98

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

January 13, 2005

Table of Contents

Section 1. Introduction

This report is submitted to the Environmental Quality Council (EQC) by the Department of Environmental Quality (DEQ) to meet the reporting requirements prescribed in § 75-1-314, MCA. The period covered by this report covers July 1, 1997 through June 30, 1998. The report is organized according to DEQ's division structure and statutory authority. Section 2 describes the compliance assistance activities provided by DEQ's regulatory bureaus and this information generally follows the order of the reporting requirements listed in the statute. Response to citizen complaints and spill reports and a summary of formal enforcement actions are contained in Section 3. Answers to EQC follow-up questions are provided in Section 4.

Section 2. Compliance and Enforcement Activities

Permitting and Compliance Division

Community Services Bureau

Montana Solid Waste Management Act, 75-10-201, et seq, MCA
Montana Megalandfill Siting Act, 75-10-901, et seq, MCA
Montana Infectious Waste Management Act, 75-10-1001, et seq, MCA
Cesspool, Septic Tank and Privy Cleaners Act, 37-41-101, et seq, MCA

1. Program description

The Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana. These wastes include municipal solid waste, commercial and industrial non-hazardous wastes, infectious medical wastes, used tires, construction and demolition debris, and septic tank pumpings. Some wastes are excluded from regulation because they are either self-regulating or are regulated as part of another program. These wastes include on-farm agricultural wastes, wastes from the operation of a mine, mill, smelter, electrolytic reduction facility, electric generating facility, or petroleum refining facility. Wastes from the drilling and production of oil and natural gas are also exempt, as are remediation wastes under State and Federal Superfund Programs.

2. Activities and efforts taking place to promote compliance and assistance

Compliance Assistance Inspections

The major outreach efforts conducted by the Solid Waste Program are the site visits to proposed facilities and inspections of license holders. Regulatory program goals include visiting every solid waste facility at least once a year, major landfills at least twice a year, and problem facilities as often as necessary to achieve compliance. The Licensing Program staff visit every proposed solid waste facility and actively encourage prospective applicants to attend pre-submittal scoping meetings to facilitate the licensing process. Septic tank pumpers are subject to limited inspections due to lack of program funding.

Technical Assistance Training

The major formal educational outreach is a series of regular training sessions conducted for landfill operators organized by the Montana State University Extension Service through a contract from the Solid Waste Program with the Montana Association of Counties. Program staff participate or instruct at all of the training sessions. The staff of both programs spend considerable time in answering questions over the telephone. The Pollution Prevention Program of the Pollution Prevention and Assistance Division provides informational materials, public outreach, and telephone contact information on waste reduction, waste minimization, and household hazardous waste questions.

3. Size and description of the regulated community

There are currently 251 licenses issued by the Solid Waste Program in Montana, as compared to 119 in 1995. These include:

Table 1. List of Solid Waste Licenses Issued in Montana in 1995 and 1997

	1997	1995
Burn Sites	11	9
Compost Sites	3	2
Infectious Waste Sites	1	1
Class II Landfills (Municipal solid waste landfills)	32	42
Class III Landfills (Inert waste landfills)	47	47
Incinerators	1	1
Resource Recovery Facilities	3	3
Sewage Sludge Sites	1	1
Soil Treatment Facilities	10	4
Transfer Stations	8	9
Septic Tank Pumpers	131	NA
Septage Sites (Used under pumper license)	165	

Changes between 1995 and 1997 are the result of the closure of some smaller Class II landfills in the face of modern regulations on proper waste disposal methods, an increase in the number of Soil Treatment Facilities, and the addition of the Septic Tank Pumpers to the Solid Waste Program as a result of reorganization.

4. Number, description, method of discovery, and significance of noncompliances, including those that are pending

In FY96 and FY97, the Solid Waste Program conducted 167 solid waste facility inspections. Of these, 96 major and 84 minor violations were noted during the inspections. Some facilities had multiple violations and some had none. The majority of the violations were actual environmental threats, such as inadequate cover, poor run-off controls and litter problems. Seven landfills are in corrective measures for groundwater contamination and another four landfills are required to do additional sampling because of low levels of groundwater contamination. Four landfills require methane gas control measures. The lower numbers of landfill inspections in FY97 was a result of staff losses, required vacancy savings, relocation disruption, and increased emphasis on groundwater and methane problems discovered in monitoring required by new rules.

Table 2. Number of Landfill Violations and Inspections for 1994 through 1997

	FY94	FY95	FY96	FY97
Major Violations	96	58	81	15
Minor Violations	39	58	62	22
Total	135	116	143	37
Landfill Inspections	107	132	127	37

5. Description of how the department had addressed the noncompliance listed above and inclusion of noncompliances that are pending

Most landfills resolve problems as soon as they are noted in an inspection report. The Solid Waste Program emphasizes education and assistance over enforcement. Only two landfills have had their licenses revoked for numerous solid waste violations since 1991.

Montana Motor Vehicle Recycling and Disposal Act, 75-10-501, et seq, MCA

1. Program description

The Montana Motor Vehicle Recycling and Disposal Program administers and enforces the Montana Motor Vehicle Recycling and Disposal Act. This Act requires the Department of Environmental Quality to license and regulate motor vehicle wrecking facilities (MVWFs) and to administer a program for the control, collection, recycling and disposal of junk vehicles and component parts. The state program (Program) provides annual financial grants to counties to administer the Program on a local level. The Program oversees the operation of the county programs and approves their annual budgets and expenditures.

2. Activities and efforts taking place to promote compliance and assistance

Program efforts and activities promoting compliance and providing assistance fall into several general categories identified and discussed below:

Compliance Assistance Inspections

MVWFs and motor vehicle graveyards are usually inspected for compliance each year. The inspections include a detailed assessment of the adequacy of the facility's shielding to screen the junk vehicles and component parts from public view, as required in the laws and rules, and a review of the facility's records. Any noncompliance noted during the inspection is recorded in the inspection report, brought to the operator's attention, and is scheduled for correction. If the violation continues unabated to the next scheduled inspection or beyond the scheduled date for compliance, enforcement action may be required.

Technical Assistance Training

Each county program has been provided a Motor Vehicle Recycling and Disposal Program REFERENCE AND GUIDANCE MANUAL. This manual is comprehensive. Annual training is provided to all county programs. The training is usually offered in Billings and in Helena.

Internet

Although not a newsletter, the Program does have an Internet Home-Page. One goal is to provide “interactive” forms so they can be completed and re-submitted using the “Web”.

Other

The Program is in the process of developing a “Resource Manual” of other state’s junk vehicle activities which will be made available to county program personnel as needed.

3. Size and description of the regulated community

The regulated community includes any Montana citizen, government or commercial entity possessing a junk vehicle in Montana. The following chart provides a synoptic description.

Table 3. Summary of Junk Vehicle Violations Discovered in 1997 and 1998

GROUP	TOTAL	INSPECTIONS	CITIZEN COMPLAINTS OR REFERRALS	PORTION IN COMPLIANCE TO DATE
CITIZENS FY97	850,000		1,817	99.9%
COUNTIES FY97 COUNTIES FY98	54 54	44 49		*100% *100%
MVWF FY97 MVWF FY98	198 189	191 198		99.95% **92%

*Violations discovered at the county level were immediately corrected, leading to 100% compliance.

**Note FY98 follow-up inspections are not complete. Also, more than one inspection may have been performed per MVWF.

Montana Citizens

Any Montana citizen possessing one or more junk vehicles, regardless of ownership, shall shield or remove the vehicle(s). Approximately 59,500 vehicles may have been retired in FY97. Of those vehicles, 1,817 (2%) complaints were received and dealt with at the county or state level. Of the complaints received, 1,705 were resolved.

County Motor Vehicle Graveyards

Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. Ten of 56 counties have merged with other counties or districts. There are 54 licensed county motor vehicle graveyards.

FY97- 44 inspections were conducted and six violations were found, or 86% of the facilities inspected were in compliance.

FY98- 49 inspections were conducted and 14 violations were found, or 72% of the facilities inspected were in compliance.

Note: All county motor vehicle graveyards corrected their violations and were reissued annual licenses.

Motor Vehicle Wrecking Facilities (MVWFs)

In FY98 there were 189 licensed MVWFs: 198 inspections of MVWFs were conducted, and of those, 56 were found to have violations, or 72% were in compliance.

In FY97 there were 198 licensed MVWFs: 191 inspections of MVWFs conducted, and of those, 52 were found to have violations, or 73% were in compliance. Only one facility is still noncompliant.

Note: Violations were corrected by the respective MVWFs, leading to the overall compliance rates shown in the table above.

4. Number, description, method of discovery, and significance of noncompliances, including those that are pending

It is important to note that all violations are aesthetic, licensing, or record keeping issues. When contamination issues (water or ground) present themselves (i.e. fluid removal), staff alert other appropriate programs within DEQ or other agencies as appropriate. For FY97, 1,817 citizen complaints were investigated by county or state Program staff. Routine and complaint-triggered inspections discovered moderate or minor violations in 92% of the cases. Some investigations lead to formal enforcement activities with ongoing actions. Some formal enforcement actions, initiated as far back as 1994, have recently been closed.

5. Description of how the department has addressed the noncompliance listed above and inclusion of noncompliances that are pending

Citizens (FY98 data is not available):

County Motor Vehicle Graveyard contacts FY97:	1,817
Number of continuing violations	95
Number referred for legal action	17

Motor Vehicle Wrecking Facilities (FY97):	
Informal Warning (IW)	5
Compliance Plan Requested (CPR)	1
CPR, Received (CPRE)	9

Montana Public Water Supplies, Distribution and Treatment Act, 75-6-101, et seq, MCA
Water Treatment Plant Operators Act, 37-42-101, 102, 103, et seq, MCA

1. Program description

The Public Water Supply Section (PWSS) in the Community Services Bureau implements and enforces the Montana Public Water Supplies, Distribution and Treatment Law, the Water Treatment Plant Operators Law, and has primary enforcement authority (primacy) for implementation and enforcement of the federal Safe Drinking Water Act (SDWA - 42 U.S.C. 300f et. seq.). There are three programs in the PWSS: The Engineering Services Program, the Field Services Program, and the Water and Wastewater Operator Certification Program. As the primacy agency in Montana, the PWSS regulates approximately 1,970 public water supplies. Public water supplies are defined in Title 75, Chapter 6 as any supply serving 15 or more service connections or 25 or more people for at least 60 days of the calendar year. Public water suppliers must comply with stringent monitoring and treatment requirements. Title 37, Chapter 42, defines a water or wastewater operator as the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant. The statute requires owners of certain public water and wastewater facilities to retain the services of a certified operator. Approximately 1,500 certified operators are employed by approximately 1,150 public water and wastewater system owners in Montana.

The PWSS also implements training, testing, and continuing education services for water and wastewater operators; provides technical assistance to water system operators and managers; helps resolve water system contamination problems; reviews plans for water and wastewater improvements to ensure conformance with minimum water system design and construction standards; and provides general assistance to the public and other state and federal agencies. Reports for the implementation of Title 75, Chapter 6 and Title 37, Chapter 42 are addressed separately below.

2. Activities and efforts taking place to promote compliance and assistance

Public Water Supplies, Distribution and Treatment

Many of these section activities overlap with section activities under Title 37, Chapter 45. Section staff participate in a very active statewide operator training program that also involves other technical assistance providers. The program emphasizes operator training, technical assistance, and proper water treatment and monitoring. These activities promote public health protection through preventive measures.

The section performs routine sanitary surveys (inspections) of public water systems to identify possible system deficiencies that may affect compliance. The section also provides technical assistance to water suppliers to address specific compliance issues. Some technical assistance is provided in the office or via the telephone, and some is provided directly on site, depending upon circumstances. Plan review is performed prior to construction of system improvements to ensure compliance with minimum design standards. Conformance with minimum design standards helps to ensure a long-term life of system components, and minimizes the possibility of noncompliance problems related to system construction. These activities are summarized in Table 4 below.

Table 4. Summary of Technical Assistance Efforts in the PWSS

Activity	1996	1997
Sanitary Surveys (Inspections)	276	206
Technical Assistance Site Visits	130	230
Training/Education (staff-days of training)	60	60
Plan Review	290	320

Water Treatment Plant Operators

During FY97 and FY98, the Water and Wastewater Operator Certification (WWOC) Program has undertaken the following activities to promote compliance with the statutory goals of the program:

Information/Education:

Certification of operators: Processed 643 operator applications, certified 312 new operators, and processed renewals for 2,967 water and wastewater operator certifications.

Training and information: Trained new operators on certification requirements at four (4) water schools; notified 223 non-transient non-community (NTNC) systems of certification requirements which took effect July 1, 1998; co-managed a contract with Montana State University to upgrade a groundwater training manual for small systems; continually explored new technology (i.e., CD-ROMs and Internet) to make training more accessible to operators; and supported new operator training in conjunction with examination sessions being held at small system training, DEQ water schools, in DEQ offices, and at Montana Rural Water Systems and Montana Association of Water and Sewer Systems conferences.

Examinations: Held 55 examination sessions.

Technical Assistance:

Outreach: Spoke at seven (7) conferences or water schools and contributed to seven (7) Montana and regional newsletters.

Peer Review: Held seven (7) Water and Wastewater Operator Advisory Council meetings, and eight (8) Continuing Education Credit Review Committee meetings.

3. Size and description of the regulated community

Public Water Supplies, Distribution and Treatment

The PWSS regulates approximately 1,970 public water supply systems. A community water system is a public water supply system which serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. There are approximately 650 community systems. A transient water system means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are approximately 1,100 transient systems. A non-transient water system is a public water supply system that is not a community water system and that regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are approximately 220 non-transient systems. Public systems in Montana serve up to 800,000 people daily.

Water Treatment Plant Operators

Although exact numbers vary continually, there are approximately 650 community public water supply systems and 220 non-transient public water supply systems that must retain the services of a certified operator. There are presently 268 public sewage systems that must retain the services of certified operators.

The requirement for certified operators at community public systems has been in effect for 31 years, but the requirement for operators at non-transient systems went into effect on July 1, 1998. The process to certify non-transient operators was begun in November, 1997, and 120 of the 227 currently identified non-transient systems already have certified operators.

4. Number, description, method of discovery, and significance of noncompliance, including those that are pending

Public Water Supplies, Distribution and Treatment

Introduction: The data presented in this section are taken from annual compliance reports prepared by the PWSS for calendar years 1996 and 1997. These annual reports are a requirement of the SDWA. The data were not recalculated for the time period July 1, 1996 through June 30, 1998 because the information in these reports should effectively provide the same information.

Noncompliance is normally discovered through submission by the water supplier of sample results and self-monitoring reports, or through the failure to submit this required information. Noncompliance is also discovered through routine inspections, and by direct contact with system operators or owners. The PWSS attempts to notify water suppliers of every violation in writing, and offers instructions and technical assistance to help them return to compliance. Amendments to the SDWA in 1986 resulted in the creation of voluminous, complex new monitoring and treatment requirements for public water suppliers. Although the number of violations has greatly increased since implementation of these regulatory requirements, the quality of water served by public water suppliers has dramatically improved through implementation of the requirements. Public notification is required for all violations.

This report addresses only major monitoring and reporting violations and significant noncompliance (SNC). EPA has defined major monitoring and reporting violations for various regulatory requirements. A major violation would create a possible public health risk due to the lack of adequate water quality monitoring. Significant noncompliance status is assigned to water suppliers who have a history of violations, or who have treatment violations that may directly affect public health.

"Phase 2/5" Rules. Tables 5 and 5a show the violations of maximum contaminant levels (MCLs) and monitoring requirements for synthetic organic chemicals (SOCs), volatile organic chemicals (VOCs), inorganic chemicals (IOCs), and for nitrate in calendar years 1996 and 1997, respectively.

Most of the MCL violations are for naturally occurring fluoride and nitrate, but some of the nitrate violations may be the result of contamination from improper sewage disposal or agricultural practices. Most of the MCL violations have been addressed through treatment or through the use of alternate water sources.

Monitoring violations resulted from late samples, missed samples, improper sampling procedures, or confusion over complex monitoring requirements. As mentioned, public notification is required for all violations.

Table 5. Violations of the Phase 2 and Phase 5 Rules in 1996

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
SOCs		0	0			0	0
VOCs		0	0			105	82
IOCs		15	9			79	12
Total Trihalomethanes	0.10	0	0			8	8
Total Nitrate and Nitrite	10 (as nitrogen)	19	10			175	149
TOTAL		34	19			367	251

Table 5a. Violations of the Phase 2 and Phase 5 Rules in 1997

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
SOCs		0	0			0	0
VOCs		0	0			96	96
IOCs		6	3			69	69
Total Trihalomethanes	0.10	0	0			6	6
Total Nitrate and Nitrite	10 (as nitrogen)	24	12			231	199
TOTAL		30	15			402	370

Total Coliform Rule. Tables 6 and 6a show the violations of the MCLs and monitoring requirements for the TCR in 1996 and 1997, respectively.

Because the presence of fecal coliform bacteria can indicate contamination from the feces of warm-blooded animals, MCL violations are categorized as acute MCL violations when the routine and/or the check sample(s) are positive for fecal coliform bacteria. Boil water orders are issued when an acute MCL violation occurs. Health advisories are issued when non-fecal coliform bacteria are found in the routine sample and in check samples. Most of these violations result from improper disinfection of water systems following repairs, inadequately protected water sources, or biofilms that exist within water distribution systems. Most of the monitoring violations are the result of late samples or missed samples.

Table 6. Violations of the Total Coliform Rule in 1996

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Acute MCL Violation	Presence	23	23				
Non-acute MCL violation	Presence	38	38				
Major routine and follow up monitoring						2,096	709
Sanitary survey						Not available	N/A
TOTAL		51	51			2,096	709

Table 6a. Violations of the Total Coliform Rule in 1997

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Acute MCL Violation	Presence	30	30				
Non-acute MCL violation	Presence	95	95				
Major routine and follow up monitoring						1608	740
Sanitary survey						Not available	N/A
TOTAL		125	125			1,608	740

Surface Water Treatment Rule. Tables 7 and 7a show the violations of the treatment technique requirements (filtration and disinfection), and of the monitoring requirements of the SWTR.

Treatment technique violations are typically the result of inadequate filtration or disinfection when water quality or water demands are extreme. Many of the water supply owners that failed to install filtration equipment experienced difficulty in securing funding for the necessary

improvements. DEQ has issued administrative orders requiring these owners to install filtration treatment. Most of the water suppliers who failed to monitor their water treatment processes adequately were very small water systems.

Table 7. Violations of the Surface Water Treatment Rule in 1996

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Filtered systems							
Monitoring, routine/repeat						130	13
Treatment techniques				114	19		
Unfiltered systems							
Monitoring, routine/repeat						84	9
Failure to filter				13	13		
TOTAL				127	32	214	22

Table 7a. Violations of the Surface Water Treatment Rule in 1997

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Filtered systems							
Monitoring, routine/repeat						429	17
Treatment techniques				203	23		
Unfiltered systems							
Monitoring, routine/repeat						95	15
Failure to filter				15	15		
TOTAL				218	38	524	32

Lead and Copper Rule. Tables 8 and 8a show monitoring and treatment technique violations of the LCR in 1996 and 1997, respectively.

Lead and copper exceedances result from corrosion of lead and copper in plumbing components, not from contamination of source water. Many of the suppliers who failed to install a treatment system did so because of uncertainties regarding appropriate treatment chemicals and/or treatment methods. Each water source is unique, and the appropriate corrosion control chemical or method must be selected carefully.

Most of the monitoring violations resulted from late or missed samples, or from confusion over complex monitoring requirements. Many water supply owners failed to provide the required educational materials to the public regarding lead or copper exceedances, or failed to notify DEQ that they had provided the required public education materials.

Table 8. Violations of the Lead and Copper Rule in 1996

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Initial lead and copper tap M/R						80	80
Follow-up or routine lead and copper tap M/R						183	161
Treatment installation				63	63		
Public education				51	51		
TOTAL				114	114	260	238

Table 8a. Violations of the Lead and Copper Rule in 1997

	MCL (mg/ℓ)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Initial lead and copper tap M/R						167	59
Follow-up or routine lead and copper tap M/R						238	119
Treatment installation				63	63		
Public education				51	51		
TOTAL				114	114	405	178

Radionuclides Rule. Tables 9 and 9a show monitoring violations for radionuclides in 1996 and 1997. Only community water supplies must be sampled for radionuclide testing. No current MCL violations exist. The number of monitoring violations for radium is unknown because radium testing is not required unless the gross alpha test results indicate when and if radium testing is necessary. Most community water supplies have been sampled at least once for these radionuclides, but many failed to sample or report during 1996 and 1997.

Table 9. Violations of the Radionuclides Rule in 1996

	MCL (pCi/l)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Radionuclide MCLs		0	0			0	0
Gross alpha	15 pCi/ℓ	0	0			315	315
Radium-226 and radium-228	5 pCi/ℓ	0	0			Not available	N/A
TOTAL		0	0			315	315

Table 9a. Violations of the Radionuclides Rule in 1997

	MCL (pCi/l)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Radionuclide MCLs		0	0			1	1
Gross alpha	15 pCi/ℓ	1	1			230	230
Radium-226 and radium-228	5 pCi/ℓ	0	0			Not available	N/A
TOTAL		0	0			231	231

Water Treatment Plant Operators

During FYs 95, 97 and 98, 91 contacts were made with water system owners, informing them of noncompliance with the certification rules and requirements. These contacts are illustrated in Table 10 below. Note that the decrease in contacts in FY98 is due to staff shortage and problems with the current database. A significant increase in contacts should be seen in FY99 since the WWOC staff went from 1.84 FTEs to 3 FTEs on June 15, 1998. Plans to switch from the present stand-alone Public Water Supply and WWOC DOS databases to a centralized ORACLE database should also reduce the labor and time in identifying and processing compliance information. Most violations in the WWOC program are discovered through review of database records, inspections, citizen complaints, and notification by the system owner or operator. A summary of public systems in compliance with certification requirements is shown in Table 11.

Table 10. Compliance Contacts in the WWOC Program 1996-98

Compliance Contacts				
Type of Contact	FY96	FY97	FY98	Totals
Warning letter	12	51	25	88
Letter of violation	0	2	0	2
Sent to Enforcement	0	1	0	1
Totals	12	54	25	91

Table 11. Public Systems in Compliance with Certification Requirements in 1996 and 1997

Compliance with Operator Certification Requirements in Title 37, Chapter 42				
Type of System	Number of systems	Systems in compliance	Systems out of compliance	Percent out of compliance
(Community) Public Water	636	557	79	12%
Public Wastewater	268	199	69	26%

5. Description of how the department has addressed the noncompliance

Public Water Supplies, Distribution and Treatment

There are many technical violations because of complex new regulatory requirements. Most of these do not result in significant public health risks, but water suppliers are notified of virtually every violation and given instructions on how to return to compliance. Water suppliers have also been given instructions regarding public notification for every violation.

Informal enforcement efforts are also implemented through phone calls, office visits, field visits (technical assistance), training sessions, and through contracted technical assistance. In order to promote uniform responses to violations, the PWSS has implemented draft versions of enforcement response guides for each rule discussed above. The section has also addressed old back-logged enforcement cases in order to proceed with new noncompliance issues. Particular attention is given to significant noncompliers (SNCs). Once a water supply is identified as a SNC, more formal enforcement actions are implemented (see the discussion of formal enforcement prepared by the Enforcement Division).

Most water suppliers are determined to remain in compliance. Compliance with regulatory requirements protects consumers from unacceptable health risks, promotes public confidence in the water supplier, eliminates the possibility of penalties, and may result in reduced monitoring requirements.

Water Treatment Plant Operators

Most violations in the WWOC program are discovered through review of database records, inspections, citizen complaints, and notification by the system owner or operator. When a system is found to be out of compliance, the system owner is notified of the regulations requiring certification in a warning letter and given until the next exam cycle to either identify a certified operator or to get someone certified. If the requirements in the warning letter are not met, a letter of violation is sent by certified mail giving the system owner 30 days to meet the requirements. If the supplier does not address the requirements of the violation letter, an enforcement request is submitted to the Enforcement Division. Administrative penalties may be assessed against

systems found to be in violation of the relevant operator certification requirements contained in regulations adopted pursuant to the Public Water Supplies, Distribution and Treatment Law, Title 75, Chapter 6.

6. Quantitative trend information

Public Water Supplies, Distribution and Treatment

In 1986, Congress amended the SDWA to require the Environmental Protection Agency to adopt many new monitoring and treatment regulations for public water supplies. Because of the complexity and volume of the new requirements, the number of violations has increased dramatically since 1986. However, the quality of drinking water provided to the public has improved even more dramatically because of the new requirements.

While improvements in compliance are obviously necessary, resources are regularly prioritized to devote attention to correcting the most significant public health risks.

Water Treatment Plant Operators

The number of systems in noncompliance may go up in FY99 with the addition of 227 non-transient non-community (NTNC) systems that are now required to have certified operators. However, 53% of the NTNC systems are already in compliance at the time of this report.

Compliance tracking should be easier in the future with the additional WWOC staff and the proposed new centralized database.

Air and Waste Management Bureau

Asbestos Control Act, 75-2-501, et seq., MCA

1. Program description

As a state program authorized by EPA, and through the Asbestos Control Act and its administrative rules, the Asbestos Control Program regulates a universe of asbestos abatement activities and waste streams to at least the equivalent of regulations under two different federal programs. The program regulates asbestos abatement in public and non-profit private schools in a manner equivalent to the requirements of 40 CFR 763 (AHERA). The program regulates asbestos abatement in buildings other than public schools in a manner equivalent to the requirements of 40 CFR Part 61, Subpart M (NESHAP). The program also maintains standards for asbestos-related occupation accreditation and course approval. Routine compliance inspections of regulated abatement activities are conducted. Additional compliance inspections are made during the investigation of complaints. Technical assistance and compliance outreach to abatement contractors and the public is also provided by the program.

2. Compliance assistance promotion

The program is engaged in several activities to provide compliance assistance. Ongoing efforts include response to written and telephone requests for information. Requests for information deal with diverse topics such as accreditation requirements, identification of asbestos- containing materials and best work practices. During FY97 and FY98, the program responded to 1,451 and 1,556 requests for information, respectively.

3. Size and description of the regulated community; estimate of rate of compliance

Any asbestos abatement project or building demolition of asbestos-containing material 3 linear or 3 square feet or more is subject to regulation by the Asbestos Control Program. In FY97, 144 permits were issued for asbestos abatement projects. In FY98, 180 permits were issued for asbestos abatement projects. In FY97 and FY98, 37 and 30 inspections, respectively, were conducted by the program. In FY97, the program identified violations at four (4) abatement projects. In FY98, the program identified violations at nine (9) abatement projects. The overall rate of compliance can best be defined as the number of handlers with observed violations divided by the total number of inspections conducted. Using this formula, the compliance rates for FY97 and FY98 were 89% and 73%, respectively. About half of the violations were detected during complaint investigations.

4. Description of documented noncompliance and response to violations

A summary of the observed violations, including identification of handler category, description of violation, significance of violation, method of discovery, date of violation, date and type of response to violations, and date of return to compliance, is included in Table 12. The Asbestos Control Program takes a variety of actions toward observed violations. The response is a function of the severity of the deviation from requirements as defined by NESHAP demolition and renovation guidelines. A significant violator (SV) is identified as a source which deviates from the requirements on notification, emissions control, transport or disposal of asbestos-containing material or waste.

Table 12. Summary of Asbestos Violations FY97 and FY98

Source Category	Description of Violation	Significance of Violation[1]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [2]	Date of Return to Compliance
FY97						
Owners	Unpermitted abatement project with unaccredited workers	SV	Complaint	5/29/97, 6/11/97	1/7/98 ER	Pending
Contractor, Worker	Used unaccredited worker	Non SV	Record review	8/29/96	9/11/96 NOV	12/17/96
Contractor	Offering unapproved course	Non SV	Record Review	9/10/96	9/10/96 NOV	12/26/96
Owner, Contractor	Unpermitted abatement project	Non SV	Complaint	6/16/97	7/15/97 NOV	12/22/97
FY98						
Owner, Worker	Unpermitted asbestos abatement with unaccredited worker	SV	Complaint	1/20/98	1/22/98 ER	Pending
Contractor	Unpermitted abatement project with unaccredited workers	SV	Complaint	10/29/97	1/5/98 ER	Pending
Contractor	No notification	Non-SV	Complaint	2/19/98	NOV 3/2/98	3/26/98
Owner	Unpermitted asbestos abatement	SV	Complaint	12/18/97	1/22/98 ER	Pending
Owner	Unpermitted asbestos abatement, no pre-demolition inspection	SV	Inspection	7/23/97	Pending	Pending

Source Category	Description of Violation	Significance of Violation[1]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [2]	Date of Return to Compliance
Owner, Contractor	No permit	Non SV	Inspection	7/11/97	7/29/97 NOV	12/22/97
Owner, Contractor	No notification	Non SV	Complaint	8/20/97	9/17/97	3/3/98, 5/12/98
Contractor	No notification	Non SV	Inspection	1/8/98	1/9/98	3/23/98
Worker	No accreditation	SV	Inspection	3/24/98	5/14/98 ER	Pending

Notes to Table

1 SV = Significant Violator-a source which deviates from requirements on notification, emissions control, transport or disposal of asbestos containing material or waste.

2 Type of Enforcement-

NOV = Notice of Violation

ER = Enforcement Request

Montana Hazardous Waste Act, 75-10-401, et seq., MCA

1. Program description

As a state program authorized by EPA, and through the Montana Hazardous Waste Management Act and its administrative rules, the Hazardous Waste Program controls a universe of waste which is identical to the federal program administered by EPA. The program identifies and regulates hazardous waste generators, transporters, recycling facilities, and used oil handlers at least equivalent to the requirements of the federal program. The program administers requirements for permitted hazardous waste management facilities which are equivalent to the federal program, including provisions for facility wide corrective action. The program conducts inspections of the regulated community on an ongoing basis to determine compliance. Additional compliance inspections are made during the investigation of complaints. The program has developed and follows a consistent policy for categorizing hazardous waste violations and for taking action appropriate to the seriousness of the violation. Technical assistance and compliance outreach to generator operators and the public is also provided by the program.

2. Compliance assistance promotion

The program is engaged in several activities to provide compliance assistance. Ongoing efforts include response to written and telephone requests for information, waste minimization review during compliance evaluation inspections, the development of a small business handbook, contractor service contact lists, and waste stream-specific handouts to answer frequently asked questions. One-time efforts at compliance assistance conducted during FY97 and FY98 include assisting the MSU Pollution Prevention Program in the development of its outreach information and its guidebook for conducting environmental self audits. Program staff produced two public service advertisement videos on used oil and hazardous waste management during this time frame. Program personnel also provided general and industry sector-specific presentations on hazardous waste management when requested.

3. Size and description of the regulated community and estimated rate of compliance

As of July 1, 1998, there are 12 hazardous waste management facilities in Montana with final or temporary permits (interim status) and numerous hazardous waste handlers. The number of handlers remained relatively stable over the last two fiscal years. Table 13 presents the number and types of handlers regulated by the program for FY97 and FY98.

Table 13. Number of Hazardous Waste Handlers Regulated by the Department

Handler Category	FY97	FY98
Treatment, Storage and Disposal Facilities (TSD)	12	12
Large Quantity Generator (LQG)	81	73
Small Quantity Generator (SQG)	103	105
Conditionally Exempt Generator (CEG)	568	570
Used Oil Handler (UOH)	46	49
Transporters	50	43

TSD - A facility that is required to have a permit to treat, store, or dispose of hazardous waste
LQG - A large quantity generator is one that produces greater than 2,200 pounds of hazardous waste in any month.
SQG - A small quantity generator is one that produces between 220 and 2,200 pounds of hazardous waste in any month.
CEG - A conditionally exempt generator is one that produces less than 220 pounds of hazardous waste in any month.
UOH - A used oil handler.
TRANSPORTERS - A transporter of hazardous waste.

In FY97 and FY98, 318 and 288 inspections, respectively, were conducted by the Hazardous Waste Program.

In FY97, the program identified violations at 35 handlers. In FY98, the program identified violations at 44 handlers. The overall rate of compliance can best be defined as the number of handlers with observed violations divided by the total number of inspections conducted. Using this formula, the compliance rates for FY97 and FY98 were 89% and 85%, respectively.

4. Description of documented noncompliance and response to violations

A summary of the observed violations, including identification of handler category, description of violation, significance of violation, method of discovery, date of violation, date and type of response to violations, and date of return to compliance, is included in Table 14.

The Hazardous Waste Program takes a variety of actions toward documented violations. The response is a function of the severity of the deviation from requirements as defined by violation class and violator category. Class 1 violations are deviations from regulations or provisions of compliance orders, consent agreements, consent decrees, or permit conditions which could result in a failure to: a) assure that hazardous waste is destined for and delivered to authorized treatment, storage, or disposal facilities (TSDFs); or b) prevent releases of hazardous waste or constituents, obth during the active and any applicable post-closure periods of the facility operation where appropriate; or c) assure early detection of such releases; or d) perform

emergency clean-up operations or other corrective actions for releases. Class 2 violations are those violations that do not meet the criteria for Class I violations.

With regard to violator category, a High Priority Violator (HPV) is a handler who has caused exposure or a substantial likelihood of exposure to hazardous constituents or is a chronic violator. A Low Priority Violator is a handler with only Class 2 violations and who is not a High Priority Violator. The timely and appropriate response to each of these is set forth in the Cooperative Enforcement Agreement with EPA.

The average time for return to compliance over FY97 and FY98 was 32 days. The longest time for return to compliance for informal enforcement was 86 days. Many minor violations, such as proper marking of waste containers, can be and are resolved by the handler in the field at the time of inspection. As such, these actions represent an almost instantaneous return to compliance. Such violations are noted, nevertheless, in the inspection report and RCRIS database to allow tracking and identification of patterns of waste mismanagement.

Table 14. Summary of Hazardous Waste Violations FY97 and FY98

Handler Category [1]	Description of Violation	Significance of Violation[2]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [3]	Date of Return to Compliance
FY97						
TSD	Failure to maintain hazardous waste containers in good condition	Non HPV	Inspection	8/6/96	8/21/96 WL	9/18/96
TSD	Failure to perform maintenance on storage facility	Non HPV	Inspection	9/4/96	9/16/96 WL	10/4/96
TSD	Failure to conduct tank inspection	Non HPV	Inspection	10/23/96	11/26/96 WL	1/8/97
TSD	Failure to maintain cap	Non HPV	Inspection	10/23/96	11/19/96 WL	12/16/96
LQG	Accumulated precipitation on drip pad	Non HPV	Inspection	2/12/97	2/27/97 WL	5/20/97
LQG	Failure to characterize hazardous waste	Non HPV	Inspection	3/31/97	4/16/97 WL	6/19/97
LQG	Failure to mark containers	Non HPV	Inspection	8/28/96	8/28/96 WL	9/3/96
LQG	Used oil release to ground	Non HPV	Inspection	7/30/96	7/31/96 WL	8/20/96
LQG	Used oil release to ground	Non HPV	Inspection	8/8/96	8/20/96 WL	9/16/96
LQG	Failure to mark hazardous waste containers	Non HPV	Inspection	4/7/97	4/7/97 WL	4/15/97
SQG	Exceeding accumulation time limits	Non HPV	Inspection	1/14/97	2/7/97 WL	3/20/97
SQG	Used oil management standards	Non HPV	Inspection	7/2/96	7/2/96 WL	7/29/96

Handler Category [1]	Description of Violation	Significance of Violation[2]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [3]	Date of Return to Compliance
SQG	Failure to mark hazardous waste containers	Non HPV	Inspection	7/12/96	7/19/96 WL	8/8/96
SQG	Failure to keep manifest records	Non HPV	Inspection	8/28/96	8/30/96 WL	9/3/96
SQG	Failure to keep manifest records	Non HPV	Inspection	8/14/96	8/14/96 WL	8/19/96
SQG	Failure to mark hazardous waste containers	Non HPV	Inspection	3/10/97	3/20/97 WL	4/2/97
SQG	No Land Disposal record keeping	Non HPV	Inspection	8/14/96	8/14/96 WL	8/21/96
SQG	Failure to characterize hazardous waste	Non HPV	Complaint	9/19/96	9/26/96 WL	10/30/96
SQG	Exceed disposal time limits	Non HPV	Inspection	3/27/97	4/9/97 WL	4/30/97
SQG	Failure to mark used oil tank	Non HPV	Inspection	6/20/97	6/30/97 WL	7/10/97
CEG	Used oil marketer analysis/documentation	Non HPV	Inspection	6/17/97	6/24/97 WL	8/4/97
CEG	Failure to label used oil drums	Non HPV	Complaint	8/15/96	8/15/96 WL	10/8/96
CEG	Used oil record keeping	Non HPV	Inspection	7/1/96	7/1/96 WL	7/25/96
CEG	Used oil spill cleanup	Non HPV	Inspection	7/30/96	8/8/96	9/26/96
UOH	Used oil management standards	Non HPV	Inspection	8/7/96	8/16/96 WL	9/24/96
UOH	Used oil transporter and marketer violation	Non HPV	Inspection	7/2/96	7/2/96	8/23/96

Handler Category [1]	Description of Violation	Significance of Violation[2]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [3]	Date of Return to Compliance
NN	Used oil cleanup	Non HPV	Inspection	7/29/96	8/9/96 WL	9/4/96
NN	Used oil cleanup	Non HPV	Inspection	1/16/97	2/4/97 WL	4/3/97
NN	Used oil contaminated soil cleanup	Non HPV	Inspection	6/5/97	6/10/97 WL	6/19/97
NN	Used oil marketer notification	Non HPV	Inspection	8/21/96	8/28/96 WL	10/9/96
NN	Used oil spill/leak cleanup	Non HPV	Complaint	9/12/96	9/12/96 WL	10/8/96
NN	Used oil labeling	Non HPV	Inspection	8/1/96	8/22/96 WL	9/5/96
NN	Improper used oil storage	Non HPV	Inspection	5/14/97	5/22/97 WL	6/17/97
NN	Failure to characterize hazardous waste	Non HPV	Inspection	6/4/97	6/9/97 WL	7/1/97
NN	Failure to characterize hazardous waste	Non HPV	Inspection	2/13/97	2/28/97	4/4/97
FY98						
TSD	Inadequate inspection records	Non HPV	Inspection	7/25/97	8/12/97 WL	11/6/97
TSD	Failure to maintain cap	Non HPV	Inspection	9/9/97	9/23/97 WL	10/30/97
TSD	Used oil container marking	Non HPV	Inspection	9/19/97	10/2/97 WL	11/25/97
TSD	Open containers	Non HPV	Inspection	10/14/97	11/10/97 WL	12/1/97
TSD	Universal waste management standards	Non HPV	Inspection	11/3/97	11/24/97 WL	1/7/98

Handler Category [1]	Description of Violation	Significance of Violation[2]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [3]	Date of Return to Compliance
TSD	Failure to maintain cap	Non HPV	Inspection	11/4/97	12/4/97 WL	12/24/97
LQG	Operating unpermitted land disposal unit	HPV	Self reported	2/13/98	5/18/98 ER	Pending
LQG	Improper land ban records	HPV	Record review	4/20/98	6/2/98 ER	Pending
LQG	Failure to mark used oil containers	Non HPV	Inspection	5/5/98	5/18/98 WL	5/28/98
LQG	Failure to mark used oil containers	Non HPV	Inspection	5/5/98	5/12/98 WL	5/19/98
LQG	Failure to characterize hazardous waste	Non HPV	Inspection	12/29/97	1/23/98 WL	2/2/98
SQG	Used oil management standards	Non HPV	Complaint	10/1/97	10/2/97 WL	10/14/98
SQG	Failure to keep hazardous waste containers closed	Non HPV	Inspection	5/20/98	6/2/98 WL	6/12/98
SQG	Exceed accumulation time limits	Non HPV	Inspection	3/19/98	4/20/98 WL	5/5/98
SQG	Exceed accumulation amount limits	Non HPV	Inspection	11/25/97	1/7/98 WL	1/27/98
SQG	Failure to register	Non HPV	Inspection	12/24/97	1/13/98 WL	1/30/98
SQG	Failure to characterize hazardous waste	Non HPV	Inspection	11/5/97	11/24/97 WL	1/6/98
SQG	Unlawful disposal of hazardous waste	HPV	Inspection	8/7/97	9/29/97 ER	8/5/98

Handler Category [1]	Description of Violation	Significance of Violation[2]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [3]	Date of Return to Compliance
SQG	Failure to keep hazardous waste containers closed	Non HPV	Inspection	2/5/98	2/18/98 WL	4/3/98
SQG	Failure to mark used oil containers	Non HPV	Complaint	6/19/98	8/13/98 WL	Pending
SQG	Failure to properly package universal waste	Non HPV	Inspection	3/18/98	3/26/98 WL	4/16/98
SQG	Failure to mark hazardous waste containers	Non HPV	Inspection	3/18/98	5/4/98 WL	6/5/98
SQG	Operating an unlawful TSD	HPV	Inspection	8/7/97	9/29/97 ER	8/5/98
SQG	Failure to characterize hazardous waste	Non HPV	Inspection	12/22/97	1/8/98 WL	1/26/98
SQG	Failure to mark used oil tank	Non HPV	Inspection	3/19/98	3/24/98 WL	4/3/98
SQG	Failure to mark used oil containers	Non HPV	Inspection	4/6/98	4/7/98 WL	4/14/98
SQG	Failure to characterize hazardous waste	HPV	Inspection	3/3/98	5/1/98 ER	Pending
SQG	Failure to register as a hazardous waste generator	Non HPV	Inspection	11/21/97	12/3/97 WL	2/10/98
SQG	Operating an unlawful TSD	HPV	Inspection	3/20/98	5/1/98 ER	Pending
SQG	Failure to characterize hazardous waste	Non HPV	Inspection	5/20/98	6/3/98 WL	6/30/98
GCE	Failure to mark used oil containers	Non HPV	Inspection	12/24/97	1/16/98 WL	2/10/98

Handler Category [1]	Description of Violation	Significance of Violation[2]	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations [3]	Date of Return to Compliance
GCE	Failure to mark used oil containers	Non HPV	Inspection	3/19/98	4/6/98 WL	5/28/98
GCE	Failure to register as a halogenated solvent user	Non HPV	Inspection	6/16/98	6/25/98 WL	7/9/98
GCE	Failure to mark used oil containers	Non HPV	Inspection	6/19/98	7/16/98 WL	8/6/98
GCE	Failure to register as a halogenated solvent user	Non HPV	Inspection	4/8/98	4/28/98 WL	5/11/98
GCE	Used oil as a dust suppressant	Non HPV	Inspection	5/13/98	6/2/98 WL	6/19/98
GCE	Failure to mark used oil containers	Non HPV	Complaint	6/4/98	6/10/98 WL	6/29/98
GCE	Failure to mark used oil containers	Non HPV	Inspection	2/6/98	2/20/98 WL	5/29/98
GCE	Failure to mark used oil containers	Non HPV	Inspection	5/12/98	5/28/98 WL	6/4/98
GCE	Failure to mark used oil containers	Non HPV	Inspection	5/11/98	5/22/98 WL	6/30/98
UOH	Used oil management standards	Non HPV	Complaint	6/2/98	6/8/98	8/3/98
UOH	Improper storage of used oil	Non HPV	Inspection	8/29/97	9/2/97 WL	11/14/97
UOH	Used oil management standards	Non HPV	Inspection	10/1/97	10/20/97 WL	12/6/97
UOH	Used oil management standards	Non HPV	Inspection	5/15/98	6/2/98 WL	6/5/98

1 Handler Category:

TSD - A facility that is required to have a permit to treat, store, or dispose of hazardous waste.
LQG - A large quantity generator is one that produces greater than 2,200 pounds of hazardous waste in any month.
SQG - A small quantity generator is one that produces between 220 and 2,200 pounds of hazardous waste in any month.
CEG - A conditionally exempt generator is one that produces less than 220 pounds of hazardous waste in any month.
UOH - A used oil handler.
TRANSPORTERS - A transporter of hazardous waste.
NN - (Non-notifier) An entity who is not required to notify DEQ of their waste management activities.

2 HPV = High Priority Violator
3 Type of Enforcement:
WL = Warning Letter
ER = Enforcement Request

Clean Air Act of Montana, 75-2-101, et seq., MCA

1. Program description

The Air and Waste Management Bureau (AWMB) is responsible for administering those portions of the Federal Clean Air Act (42 U.S.C. 7401 et seq.), Clean Air Act of Montana (75-2-101, et seq., MCA)(CAA) and companion regulations (40 CFR Parts 50 through 99, Administrative Rules of Montana Title 17 Chapter 8), pertaining to compliance of air emissions from various types of facilities.

Typical compliance staff duties within the Air and Waste Management Bureau include:

* Regulating emissions of criteria and hazardous air pollutants regulated in the CAA in potentially environmentally sensitive, heavily industrialized, heavily populated, and diverse topographic environments throughout the entire state;
* Conducting regular compliance inspections of all operating facilities pursuant to current permits;
* Recommending enforcement actions to the bureau chief and the Enforcement Division;
* Actively participating in the development of departmental policy regarding air quality standards and compliance processes;
* Coordinating and participating in a variety of technical, public, and general information meetings with other state and federal agencies, special interest groups, landowners, private businesses and the general public regarding compliance with air quality standards;
* Collecting and managing extensive correspondence, maps, and data files pertaining to air emissions, and using, to the extent available, state-of-the-art computer technology;
* Gathering a wide diversity of information on emissions, emission controls - regulation and the related fields - engineering, chemistry, computer programs, etc. The bureau then uses and disseminates the information to industry, government agencies and the general public as requested.

2. Compliance assistance activities

Air and Waste Management Bureau (AWMB) staff members provide compliance and technical assistance on a regular basis through ongoing communication with the regulated community. This assistance occurs during inspections, in the development of annual emission inventories, and in written and verbal response to questions. Assistance is also provided through the semi-annual visible emissions observation (Smoke School) training and certification made available by DEQ.

While the AWMB has primary responsibility for air quality compliance activities, other bureaus within DEQ also provide compliance assistance. The Pollution Prevention Bureau provides a broad range of services to promote compliance and assistance to Montana's businesses and communities. The bureau provides onsite analyses and advice, workshops, and educational materials for business owners and communities in meeting environmental regulations. The Small Business Assistance Program helps small businesses comply with air quality standards through site assessments, workshops, and the operation of a telephone hotline. This Program also offers financial assistance to small businesses through the operation of the Small Business and Tribal Energy and Environmental Loan Program. The loan program is a cooperative effort with the Montana Department of Commerce that offers low-interest loans to small businesses and tribal entities in need of energy efficiency, pollution prevention, and environmental compliance assistance.

The Planning, Prevention and Assistance Division (PPAD), Resource Protection Planning Bureau, provides technical assistance to communities that are violating ambient air quality standards in order to assist them in the development of strategies to reduce emissions and achieve the standards. Upon request, the bureau also provides information, education, and technical assistance to local communities to assist them in avoiding future violations of the ambient standards. Such assistance includes promoting strategies that have worked in other nonattainment areas as well as growth management techniques.

The PPAD Monitoring and Data Management Bureau provides a substantial amount of outreach and compliance assistance to regulated industries. The Ambient Air Quality Section provides training and audit services to industrial sources that operate air monitoring equipment, either voluntarily or as a requirement of an air quality permit. They also consult on and approve monitoring sites and provide certification services for industry calibration equipment. The section also reviews industry data submittals and does final quality assurance on industry data before it is keyed into the nationwide database.

The Analytical Services Section reviews permit applications to assure compliance with ambient air quality standards and consults on and approves modeling protocols for permit submittals. The section also conducts dispersion modeling studies for small sources to assure their compliance with air quality standards. This section provides dispersion forecasts and consultation services for the open burning program.

The Data Management Section processes industry data and updates the nationwide database. This section also tracks industry data completeness for compliance with permit requirements.

3. Size and description of regulated community and estimated rate of compliance

In terms of inspection and annual emission inventory development, the regulated community is essentially all sources/facilities with air quality permits. This includes approximately 426 total sources consisting of 252 stationary sources and 174 portable sources (see Table 15).

To a lesser extent, all potential sources of air pollution within the state may be regulated and are often the subject of a complaint response and investigation. This relates to such things as the open burning provisions and generic rules on fugitive dust control and fuel burning.

Most facilities with emission related air quality violations are back in compliance immediately or in a very short time after the incident. In those cases, enforcement is undertaken for notification and deterrence purposes. Procedural violations, such as failure to perform a source test, reflect noncompliance until the testing is completed; however, these are generally on a compliance schedule immediately after notification.

Table 15. Number of Air Emission Sources, Inspections and Violations for FY97 and FY98

	FY97	FY98
Stationary Sources	252	252
Portable Sources	174	174
Onsite Inspections	180	194
% of Total Inspected Sources Where No Noncompliance Was Detected*	97%	93%
NOVs Issued	14	28
# of Significant Violations [1]	6	9

*Comparison of NOVs issued to total number of facilities.

4. Description of documented noncompliance and response to violations

Table 16 is a summary of FY97-98 noncompliance issues/actions which were addressed through issuance of an informal Notice of Violation. The table includes a description of the violation and response time frames. Some minor violations and potential violations are addressed with warning letters.

Table 16. List of Air Violations and the Response to those Violations

Source Category	**Description of Violation**	**Significance of Violation (SV = Significant Violator)**	**Method of Discovery (R = Report Review)**	**Date of Discovery**	**Date of Follow-up NOV Issued**	**Date Compliance Achieved**
Stationary	H_2S monitor availability	SV	R	6/30/95	11/1/95	6/30/95
Stationary	H_2S monitor availability	SV	R	3/31/96	5/30/96	3/31/96
Stationary	Lack of floating roof on tank	SV	R	6/3/96	5/15/97	Withdrawn 12/22/97

[1] Significant Violators (SV) as defined by EPA.

Source Category	Description of Violation	Significance of Violation (SV = Significant Violator)	Method of Discovery (R = Report Review)	Date of Discovery	Date of Follow-up NOV Issued	Date Compliance Achieved
Stationary	Failure to demonstrate of compliance with NAAQS	SV	R	7/20/94	6/10/97	Pending
Stationary	Opacity exceedance documented	SV	Inspection	7/18/97	8/26/97	7/18/97
Stationary	Late submittal of CEM certification test protocol		R	12/3/97	12/5/97	12/3/97
Stationary	Two opacity exceedances		Inspection	11/6/97 11/17/97	12/23/97	11/6/97 11/17/97
Stationary	Exceedances of monthly fluoride emission limits	SV	R	Multiple Days	11/7/95	11/7/95
Stationary	Failure to comply with permit condition to report amount of gas diverted	SV	R	1/7/97	6/11/97	1/7/97
Stationary	Failure to properly report malfunction	SV	R	1/7/97	6/11/97	1/7/97
Stationary	Failure to comply with permit condition (Section III.B) and NSPS Part 60.47a and Subpart Da reporting requirements	SV	R	1/7/97	6/11/97	Pending
Stationary	Violation of ARM 17.8.111 Circumvention	SV	R	1/7/97	6/11/97	1/7/97
Stationary	Excess SO_2 emission during episodes determined to not be malfunctions	SV	R	1/7/97	6/11/97	1/7/97
Stationary	Opacity exceedance at coke storage facility		Inspection	12/30/97	1/26/98	12/3/97
Stationary	Opacity exceedance at portable crushing operation	SV	Inspection	6/24/96	6/24/96	6/24/96
Stationary	Failure to perform initial demonstration of opacity compliance		R	5/22/97	5/22/97	5/22/97
Stationary	Operating without a permit; Failure to conduct emission and opacity testing		Inspection	4/30/96	9/18/96	Pending
Stationary	Failure to comply with permit condition requiring 80% data recovery on ambient monitors	SV	R	Multiple Dates	12/2/97	12/31/97

Source Category	Description of Violation	Significance of Violation (SV = Significant Violator)	Method of Discovery (R = Report Review)	Date of Discovery	Date of Follow-up NOV Issued	Date Compliance Achieved
Stationary	51 exceedances of the ambient H_2S standard	SV	R	11/1/97	2/3/98	11/1/97
Stationary	Opacity exceedances	SV	R	5/19/98	6/12/98	4/24/98
Stationary	Failure to perform source test		R	2/6/98	2/13/98	2/6/98 CS*
Stationary	Failure to pay operating fees		R	12/96	5/28/97	Pending
Stationary	Failure to test two compressor stations		R	3/6/98	3/19/98	3/6/98 CS*
Stationary	Operating an unpermitted crusher		Inspection	4/15/98	5/15/98	8/3/98
Stationary	Incomplete ambient monitoring data reporting		R	Multiple Dates	6/23/98	12/31/97
Stationary	Operating unpermitted equipment		Inspection	6/1/98	6/30/98	Pending
Stationary	Failure to stack test five compressor stations in Hill and Blaine Counties		R	8/4/97	9/4/97	8/4/97 CS*
Stationary	Failure to perform stack test		R	4/29/97	5/29/97	4/29/97 CS*
Stationary	Failed stack test - Heating plant boiler		R	5/5/98	5/28/98	5/5/98
Stationary	Failed source test		R	12/15/97	2/9/98	12/15/97
Stationary	Late notification of equipment start-up		R	12/3/97	2/11/98	12/3/97
Stationary	Exceedance of permitted emission limitation		R	9/9/97	9/12/97	9/9/97
Stationary	Failure to complete initial demonstrations of opacity compliance on two storage bins	SV	R	4/19/95	4/27/95	4/19/95
Stationary	Construction without a permit		R	6/9/97	9/25/97	9/25/97 CS*
Stationary	Opacity exceedance	SV	Inspection	8/8/97	9/15/97	8/8/97
Stationary	Exceedance of permitted emission limitation		R	Multiple Dates	7/14/97	CS*
Stationary	Failure to conduct emission and opacity testing		R	8/2/97	9/2/97	8/2/97

Source Category	Description of Violation	Significance of Violation (SV = Significant Violator)	Method of Discovery (R = Report Review)	Date of Discovery	Date of Follow-up NOV Issued	Date Compliance Achieved
Stationary	Failure to conduct emission and opacity testing		R	8/16/97	9/16/97	CS
Stationary	Lack of floating roof on crude oil storage tank	SV	R	6/3/96	5/19/97	Withdrawn 12/22/97
Stationary	Opacity exceedance and lack of spray bars		Inspection	10/30/97	11/5/97	10/30/97
Stationary	Opacity exceedance		Inspection	10/30/97	11/4/97	10/30/97
Stationary	Opacity exceedance		Inspection	10/30/97	11/5/97	10/30/97
Stationary	Construction without a permit		R	9/18/97	11/14/97	9/18/97
Stationary	Two exceedances of plant-wide SO_2 daily emission limitation	SV	R	11/10/97	12/8/97	11/10/97
Stationary	Excessive monitor downtime	SV	R	5/27/97	6/25/97	5/27/97

SV = Significant Violator- in most cases refers to a violation at a major facility
CS = Compliance Schedule In Place

Industrial and Energy Materials Bureau

Opencut Mining Act, 37-10-401

1. Program description

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial. The Opencut Mining Act regulates and requires reclamation of land mined for sand, gravel, bentonite, clay, phosphate rock, and scoria, by any party, on any land (except tribal) in Montana.

The Opencut Program goals are the reclamation and conservation of land subject to mining, as well as the following:

a. Effectively, consistently, and fairly administer the Act by working with industry, landowners and concerned citizens to ensure reclamation while not promoting excessive regulation.

b. Provide and retain technically competent staff who possess exemplary communication skills to allow a free exchange of ideas and who are able to accept or offer alternatively effective reclamation methods or actions.

2. Activities to promote compliance

Program staff strive to maintain consistent, fair administration, together with a commitment to serve the regulated and non-regulated community; they offer solutions when possible, and enforcement when necessary. The program's primary goal is the reclamation of mined land by utilizing effective communication, cooperation and trust. Legal actions are also a tool, but they should be the ones used least frequently and usually when environmental harm is affected and/or the violation shows irresponsible negligence.

The Opencut Program's formal inspection and enforcement procedures are documented in their Policy and Procedures Manual, in place since 1987, revised in 1990 and 1998 with the addition of form changes. Other changes in document preparation have taken place periodically. This manual is used by all inspectors so that all contractees will be held to the same standards.

According to program staff, the strongest incentives for compliance with Opencut regulations are agency-generated, because none of the operators "enjoy" receipt of NOVs and civil penalties, even though the penalty amount may seem insignificant. They feel that there are a certain number of operators who would comply and do an excellent job of reclamation without government monitoring. For some however, even though not necessarily correct, they feel compliance costs money and they lose an economic advantage for the bid process and/or profit.

3. Regulated communities

Opencut mining regulations affect those opencut mine operators who remove a cumulative total (at one site or many) of 10,000 cubic yards of material or more. At this level of activity operations become regulated.

Consistent with the activities noted above, the Opencut Program interacts with four primary regulated communities: government (primarily counties, but some cities and federal and state agencies), fixed-base operators, highway contractors, and bentonite miners. Additional information on those regulated through the Opencut Mining Program is provided below.

At least one opencut mining operation exists in each of Montana's 56 counties, from low-elevation alluvial deposits, to high-elevation glacial areas, to the bentonite fields of Eastern Montana. Operations range in scale from 1 acre to over 1,000 acres in size. The total permitted acreage has remained relatively constant over the years, with new operation acreage replacing acreage released from bond.

Approximately 5% of the Opencut contracts are for operations on federal lands, 5% are for operations on state lands, and 90% are on private lands. Approximately 25% of opencut operators are mining their own land; the remainder have received permission from the landowner.

The duration of a mining operation in conjunction with a specific highway project is typically 3-4 years; permanent based operations may last from 5-50 years. Most operators have 2-3 active

operations at a time; the largest operator has 15 concurrent operations. A number of large highway contractors have up to 60 operations at some stage of development or reclamation.

4. Violations

Opencut operators may be out of compliance, but if they correct the situation, they are not issued a violation nor penalized. The Opencut Program defines a "violation" upon issuance of a Notice of Violation (NOV). Significant violations are defined as those which cannot be waived. During FY97 and FY98, the Opencut Program issued 18 NOVs. There were no repeat violators in that time period. The FY97 and FY98 list of opencut violations are shown in Table 17.

Table 17. List of Opencut Violations

Date Issued	NOV No.	Violation	Penalty $
04/18/97	OC-95-09	Mining without Contract	400.00
03/06/97	OC-96-06A	Mining without Contract	400.00
08/27/96	OC-96-07	Mining without Contract	400.00
11/15/96	OC-97-01	Mining without Contract and Improper soil handling	900.00
04/01/97	OC-97-02	Mining without Contract	400.00
04/28/97	OC-97-03	Mining without Contract	400.00
10/23/97	OC-97-04	Failure to complete reclamation	800.00
12/20/96	OC-97-05	Operating outside of Contract area, no bond, failure to provide erosion and sediment control	950.00
02/13/97	OC-97-06	Mining without Contract	350.00
09/11/97	OC-97-07	Mining outside of Contracted Area	600.00
12/01/97	OC-97-08	Mining outside of contracted area without obtaining an amendment	
12/07/97	OC-97-09	Mining site prior to issuance of contract	700.00
01/23/98	OC-98-01	Failure to reclaim within time and failure to reclaim slopes to 3:1	450.00
01/23/98	OC-98-02	Failure to amend contract for most salvage soils and post additional bond	1,000.00
06/02/98	OC-98-03	Mining outside of Contract Area without amendment	750.00
06/02/98	OC-98-04	Mining outside of Contract area, loss of topsoil, construction of water impoundment without approval	1,000.00

All violations in the Opencut Program are discovered through inspections as shown in Table 18.

Table 18. Method of Discovery of Opencut Violations

	Violations Discovered, by method, FY97 and 98				
Group	Total	Agency Review of Monitoring Reports	Self-Reporting of Violation	Inspection	Citizen Complaint
Opencut Miners	18	0	0	18	0

Source: Burke, Furois 1998.

5. Noncompliances

For each violation listed above, DEQ has issued a warning letter, a notice of violation with proposed penalty, and a findings of fact, conclusion of law and order. The Opencut program uses a "point" system to assess civil penalties. Points are assigned based on history seriousness, negligence and good faith, as described below.

1. Operator's History of Noncompliance (no maximum number of points):
   A. Four points for each similar violation (e.g., soil salvage, failure to reclaim, etc.) over the last three years.

2. Seriousness of Violation (maximum 18 points; includes actual and/or potential harm):

3. Negligence (maximum 18 points):
   A. Ordinary Negligence (maximum 4 points),
   B. Irresponsible Negligence (maximum 8 points), or
   C. Gross Negligence (maximum 18 points).

4. Good Faith (potential of 8-point maximum credit).

The bureau's manual provides guidance in calculating points. Penalty amounts are $50 per point, with a minimum of $100 and a maximum of $1,000 per day. A "day" is a day the action occurred that resulted in the violation (e.g., failure to submit a report is a one-time occurrence, this is considered one day of violation, even if it takes two weeks to correct). Penalties for subsequent days that the violating activity occurs are assessed at the same rate.

Resolution of Noncompliances. There is no data recorded in this category, but as noted on previous pages, most violations are for operating without a contract, failure to reclaim, or failure to salvage soils. Usually the violator secures a contract, reclaims or has a bond forfeited, begins to salvage soils correctly, and/or corrects other problems.

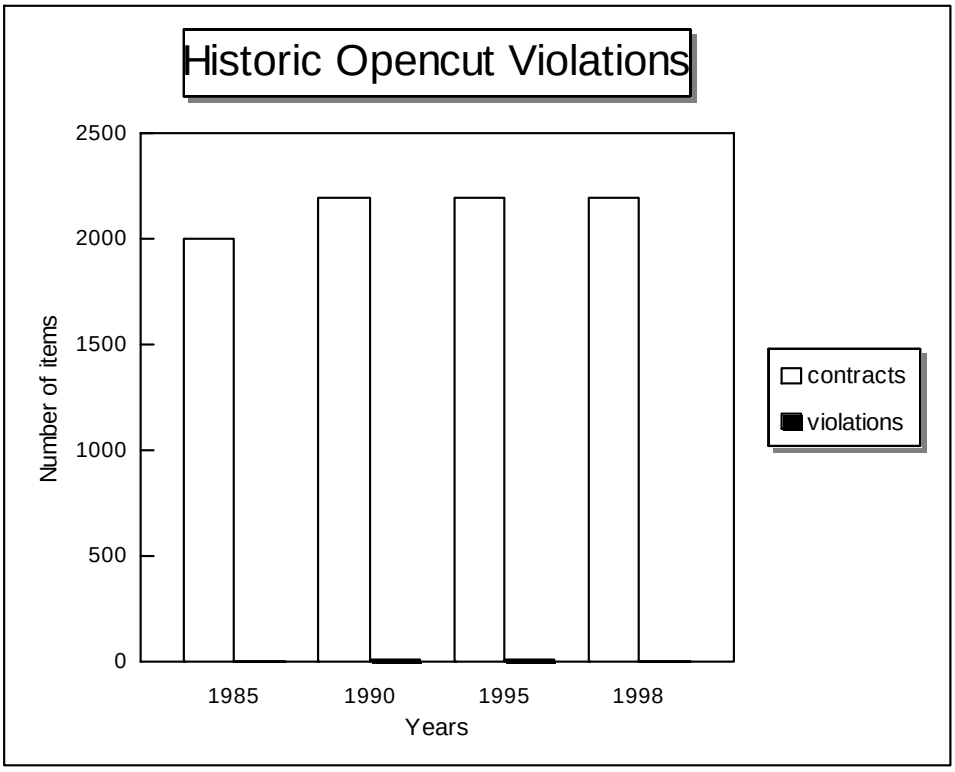
6. Quantitative trend information

Generally, operators comply with opencut regulations, especially those who have been in the business for a number of years and/or operate multiple sites in response to road construction projects. There are, however, a large number of new opencut operators taking part in the increasing commercial, residential, and infrastructure development in many areas of the state. With many of these operators, the process becomes one of education. In some cases, there is adamant objection to any degree of compliance with mining regulations; these are more difficult cases to bring into compliance. Often the only tool that will work is the Notice of Violation and concurrent civil penalties.

The Opencut Program generally issues 12-15 violations annually. To date, the program has forfeited 26 bonds, most due to financial difficulty situations (i.e., bankruptcy).

Trends in compliance with opencut rules and requirements are illustrated in Table 19. As shown, the number of contractees has remained relatively constant, and the number of noncompliances has remained relatively low. As shown in this figure, there were over 2,000 contractees in 1985 and one noncompliance; in 1990 there were over 2,200 contractees and 17 noncompliances; and in 1995, there were about 2,200 contractees and 10 noncompliances. Program staff feel that both numbers and types of violations are stable. They note that it is possible that with the increasing number of operators supplying subdivision and infrastructure development, that some will be reluctant to comply with applicable mining and reclamation statutes.

Table 19. Trends in Compliance with Opencut Rules and Requirements



The Opencut Program is responsible for making mine permitting decisions (approval, denial or modification) on permit applications, for operation monitoring, and for providing reclamation oversight on all mining of sand, gravel, scoria, clay, bentonite and phosphate rock. The Opencut Mining Program is organized around a central office in Helena with satellite offices in Billings and Kalispell. Reclamation Specialists are stationed in the Billings and Kalispell offices, with a Reclamation Program Supervisor stationed in Helena (see Table 20). The Supervisor is responsible for reviewing recommendations from the satellite offices, as well as reviewing applications for the central portion of the state.

Table 20. Summary of Opencut Program Funding, Staffing and the Size of the Regulated Community

Program Activities	FY98 Budget	FY98 FTE[1]	Avg. Years Staff Retention	FY97&98 Issued Projects/Sites Contract/Amend.	Avg. Acres/ Site	Avg. No. of new Proj/yr[2]
Billings	62,604.00	1	11	87/17	16.30/48.22	60
Helena	154,211.00	2.15	20	73/10	11.78/17.77	50
Kalispell	77,781.00	1	8	72/21	8.05/15.27	60
TOTAL	294,596.00	4.15	13	245/49	12.15/27.62	170

Notes: 1. Includes 0.25 FTE Administrative Support and 0.3 FTE Bureau Chief.
2. Refers approximately to last 5 years.
3. 32,476 total acres under contract, divided by 2,135 contracts.

Source: Burke, Furois, 1998.

Montana Strip and Underground Mine Reclamation Act, 82-4-201

1. Program description

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial of development. Coal and uranium mining regulations include provisions for permit revocation for a pattern of violations. This is the most stringent of the regulatory provisions. Furthermore, enforcement is primarily mandatory, with very little discretion of whether or not to initiate enforcement.

The Coal and Uranium Program has identified the following program goals:

a. Administer and enforce the Montana Strip and Underground Mine Reclamation Act, the Montana Strip and Underground Mine Siting Act, the Montana Environmental Policy Act, and their respective administrative rules, to the extent provided by law, to allow mineral development while protecting the environment.
b. Administer and enforce a reclamation program which complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977.
c. Administer the law in a fair and unbiased manner.
d. Maintain and improve Montana's clean and healthful environment for present and future generations.
e. Protect environmental life-support systems from degradation.
f. Provide for the orderly development of coal resources, through strip or underground mining, to assure the wise use of the state's resources and to prevent the loss of coal resources through coal conservation.

g. Prevent undesirable land by protecting surface and groundwater conditions detrimental to general welfare, health, safety, ecology, and property rights.
h. Prevent unreasonable degradation of Montana's natural resources.
i. Restore, enhance and preserve Montana's scenic, historic, archaeologic, scientific, cultural and recreational sites.
j. Achieve effective reclamation of all lands disturbed by the taking of coal or uranium.
k. Maintain state administration of the coal mining regulatory program.
l. Strive to make permitting decisions in a timely manner.
m. Promote effective, efficient and economic program management.

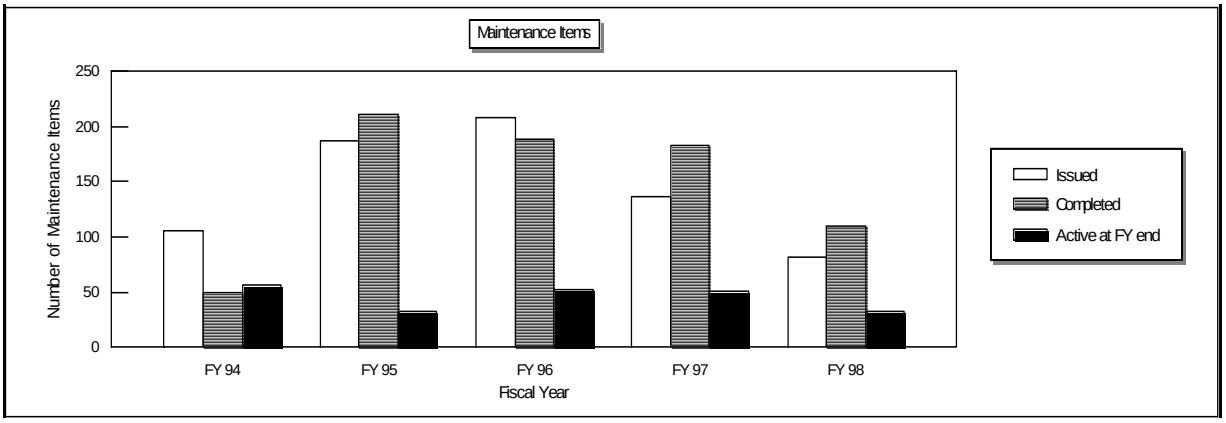
2. Activities to promote compliance

The Coal and Uranium Program inspects mining operations on a schedule mandated by the Administrative Rules. In FY98, for a regulated community of 13 active and 5 inactive (reclamation only) sites, the program performed 96 complete inspections and 100 partial (some discipline-specific) inspections.

Based upon staff interpretation of legislative history, DEQ philosophy is that coal mining in Montana is intended to be regulated, not prohibited. Staff feel that permit conditions and regular inspections are very effective in promoting compliance. Additionally, the blend of individuals knowing both permitting and on-the-ground provisions is highly effective in preventing noncompliance. As staff share information from mine to mine and stay current with the best technology available, many technical assistance opportunities occur. Staff try to head off violations through effective permit conditions, knowledge of potential problems, technical assistance, frequent site inspections, and familiarity with permit conditions. They do not hesitate, however, to issue a violation when one is discovered and cannot be corrected while the inspector is on site.

Compliance Tools Available and Used. The Coal and Uranium Program's formal inspection and enforcement procedures are documented in its Policy and Procedures for Inspection and Enforcement, in place since 1991, and currently (August 1998) under revision. Inspection kits have been used since the beginning of the program. These kits have included field maps, mine-specific conditions lists, discipline-specific inspection procedures, and general processing procedures. Air Quality inspection guidelines were formalized in a manual in 1994, which is available for the inspectors to use. During inspections, maintenance items -- items which could lead to a noncompliance if not rectified -- are noted and the company informed of the items. Some are completed while the inspector is still on site, others are checked on a monthly basis during subsequent inspections. A chart showing the history of maintenance items over the past five fiscal years is shown.

Table 21. History of the Number of Maintenance Items Addressed at Coal Mines from 1994 through 1996



Incentives for Compliance. According to program staff, the greatest incentives for compliance with coal and uranium rules and regulations are violation provisions which define a pattern of violations which may result in permit revocation, an escalating process of violation processes (violations, cessation orders, suspensions, revocations), and enforcement which occurs on the ground. Additionally, due to a nationwide tracking system for violators of coal mining regulations which directly blocks violators from obtaining permits if violations have not been resolved, permittees are likely to resolve violations more readily. Such permit blocks, tracked in a nationwide system, affect major corporate activities such as buying and selling mines, thus making compliance a highest priority, not a choice.

In general terms, staff effort is 70% permitting and 30% inspection and enforcement, but many enforcement actions involve permitting actions as well; budgeting is not directly driven by this percentage. These activities are described in Table 22.

Table 22. Summary of Coal and Uranium Program Funding, Staffing and the Regulated Community

Program Activities	FY98 Budget	FY98 FTEs*	Avg. Years Staff Retntn.**	1997 Ongoing Projects/Sites	Avg. Acres/Site***	Avg. # of proj./yr**
Permitting	$801,588	13.2	6.25	17 permitting 7 bond release	NA	6
Inspection/ Enforcement	$219,872	4.45	6.25 16 inspection units	18 violations	NA	15 (violations)

*Includes 1.7 FTE administrative; .5 FTE attorney; .5 FTE Enforcement Specialist and .7 FTE Bureau Chief;.1 FTE Administrator.
**Refers approximately to last 5 years; Also, staff retention is typically driven by market conditions for discipline-specific positions. Managers and supervisors remain in positions approximately 10 years or more; engineers 1-3 years; hydrologists and geologists 2-8 years; biologists 3-5 years, soil scientists as much as 8 years.
***As of August 1998, 55,293 acres of coal mines are permitted in Montana.
Source: Furois, 1998.

3. Regulated communities

Consistent with the activities noted above, the Coal and Uranium Program interacts with one primary regulated community; (prospectors, strip miners, and underground miners are considered all the same). This community is described below.

There are six major coal development companies active in Montana, most of which are located in southeastern Montana. Of these, one company holds six permits (Western Energy), other companies hold one or two permits. Active mines range from 857 acres to over 20,000 acres. Surface-mined coal is typically extracted via dragline or shovel, processed on site, then shipped to other locations via rail. The typical production life of a coal mine averages 20-plus years. There is currently no uranium mining in Montana; restrictions on deposition of radioactive substances in 75-3-303, MCA, limit the mining methods which can be used in Montana.

Prospecting/exploration activities in Montana are generally conducted by mine companies operating in the state and typically address continued mining as an expansion of existing mines. New area prospecting, while it occurs, is limited.

4. Violations

As noted, coal and uranium operators may be out of compliance, but if the problem can be corrected in the field and no resource was lost (such as soil lost to runoff), they will not be issued a violation nor penalized. The Coal and Uranium Program defines a "violation" upon issuance of a Notice of Noncompliance (NON). "Major or Significant" violations would be issued Cessation Orders (COs) and would meet the definition of imminent harm or other criteria described above.

During FY97 and FY98, the Coal and Uranium Program issued 17 NONs and six (6) COs (see Table 23). None were issued to prospector operations, and 17 were issued to mining operators. None of these violations were vacated. There were three repeat violators in that time period, Western Energy Company (2), Big Sky Coal Company (2), and Mountain Inc. (12 NONs and 6 COs). As shown for this time period, violations are typically of the following types: (1) actual on-the-ground violations which require equipment to perform work, (2) monitoring or reporting violations, (3) practice or method violations which require a revision to the permit to implement the practice, and (4) the violations which cannot be abated because a resource was lost or data was not collected.

Of the pending violations listed in Table 24, all those with an identifier of *-06-* are pending in District Court, Roundup, MT as is 87-82244R-01. Those identified with *-09-* have a deceased permittee, and bond has been forfeited on the site. Those identified with *-10-* have also had their bond forfeited. The surety for both companies is defunct and in receivership. The distribution of funds has not yet been made. DEQ is researching methods for clearing the above-referenced violations.

Discovery of Violations. Over the long term, most violations in the Coal and Uranium Program are discovered through on-the-ground inspections. Many others are discovered through review of monitoring reports as shown in Table 23.

Table 23. Method of Discovery of Violations at Coal Mines for FY97 and FY98

Group	Total	Agency Review of Monitoring Reports	Self-Reporting of Violation	Inspection	Citizen Complaint
Mines	18	11	1	6	0
Prospecting	0	0	0	0	0
TOTAL	18	11	1	6	0

Source: Furois, 1998.

Considerations in Calculating Penalties. The Coal and Uranium Program uses a "point" system to assess civil penalties. Points are assigned based upon seriousness, negligence, history and good faith, as described below.

1. Operator's History of Noncompliance (no maximum number of points):
   One point is assessed for each NON (uncontested violation) or FFCLO (contested violation) in past year; including prospecting and mining, if carried out by same operator. Five points are assessed for each Cessation Order issued in past year.
2. Seriousness of Violation (maximum 30 points):
   Harm to public health, safety or environment:
   1. Probability of Harm Occurring (maximum 15 points)
   2. Seriousness of Potential or Actual Harm (maximum 15 points)

   OR

   Administrative Impairment (maximum 30 points)
3. Negligence (maximum 25 points)
   1. Ordinary Negligence (maximum 12 points), or
   2. Gross Negligence (13-25 points)
4. Good Faith (potential of 10-point maximum credit)

The program's manual provides specific guidance and examples, by category, in calculating points. Penalty amounts corresponding to total points are set in rule, with a daily maximum of $5,000 per day. A "day" is a day the action occurred that resulted in the violation (e.g., failure to submit a report is a one-time occurrence, thus is considered one day of violation, even if it takes two weeks to correct). Penalties for subsequent days that the violating activity occurs are assessed at the same rate. The program also keeps a database of all issued violations, with point assessments, ARM or MCA citation, and justification for number of points issued. This database is researched by each inspector when the inspector is ready to assess points for a new violation so that consistency may be maintained for each type of violation. Either the Compliance Specialist or Compliance Supervisor will assist the inspectors in excerpting the proper information from the database.

Table 24. Strip and Underground Mine Reclamation Act Violations in FY97 and FY98

DATE ISS.	N.O.N.#	VIOLATION	POINTS	Penalty	Status
Pending in 1997					
April 85	85-06-01	Failure to submit Annual Report	13	8,060	Pending
April 85	85-06-02	Construction of Building without Department review and approval	28	24,800	Pending
Nov. 85	85-06-05	Removal of coal after issuance of Cessation Order	60	3,300	Pending
Apr. 86	86-06-01	Failure to design, construct and maintain sediment control structure	20	12,400	Pending
July 86	86-06-02	Main sediment pond full and overflowing; overflow pipe plugged	15	9,300	Pending
Feb. 87	87-06-01	Failure to maintain sediment traps	40	62,000	Pending
Mar. 87	87-06-02	Failure to submit annual Pond Certification reports	26	18,600	Pending
Mar. 87	87-06-03	Failure to submit quarterly surface water monitoring reports for 1986	26	18,600	Pending
June 87	87-82244R-01	Prospecting without a permit		15,000	Pending
June 88	1	Mining in excess of 250 tons of coal without permit	55 x 30 days	127,500	Pending
July 88	88-06-01	Leaking of oil onto regraded spoil	24	480	Pending
Nov. 88	88-06-02	Late filing of renewal request			Pending
Apr. 90	90-06-01	Failure to file annual report	13	260	Pending
July 90	90-10-01	Failure to reinstate bond, permit, or pursue proper reclamation	55	127,500	Pending
Aug. 90	90-06-02	Failure to maintain appropriate sediment control (small pond)	43	2,300	Pending
Aug. 90	90-06-03	Failure to maintain appropriate sediment control (large pond)	41	2,100	Pending
Sept. 91	91-09-01	Failure to reclaim mine site as approved in permit and under agreement	55	3,500	Pending
July 92	92-09-01	Sediment from disturbed area deposited off permit area	21	420	Pending
Sept. 92	92-10-01	Failure to maintain security of fan house, mine portal and vent adit	55 x 30 days	127,500	Pending
Sept. 92	92-10-02	Failure to secure access as in 92-10-01	55 x 30 days	127,500	Pending
June 94	94-10-01	Imminent danger to public health and safety -- unsecured adit	55 x 30 days	127,500	Pending
July 94	Bond Forf.	Company no longer able to operate in compliance with MSUMRA (Union Reserve)	N/A		Pending
July 94	94-10-02	Failure to abate NON/CO 94-10-01	55 x 30 days	127,500	Pending
Oct. 95	Bond Forf.	Company no longer able to operate in compliance with MSUMRA (Coal Creek)	N/A		Pending

DATE ISS.	N.O.N.#	VIOLATION	POINTS	Penalty	Status
Violations issued in FY97 and 98					
Jul. 96	96-04-01	Failure to submit 1994 and 1995 Pond Certifications as per the approved schedule	29	900	Done
Aug.96	96-17-01	Ash stockpiled in unapproved areas	37	1,700	Done
Oct. 96	96-17-03	Failure to carry General Public Liability Insurance	54	3,400	Done
Oct. 96	96-17-02	Failure to pay Abandoned Mine Land Reclamation Fees for 2 quarters	33 x 2 days	6,500	Done
Oct. 96	96-17-04	Failure to remove and properly dispose of prep-plant fire-related debris	26	600	Done
July 97	97-03-01	Implementation of unapproved minor revision (Change of PMT)	30	1,000	Active
July 97	97-17-01	Inadequate sediment control and diversion berm not constructed	36	1,600	Active
Aug. 97	97-17-02	Failure to collect semi-annual groundwater samples	38	1,800	Active
Sept. 97	97-17-01CO	Failure to abate NON 97-17-01	47 x 30 days	81,000	Active
Sept. 97	97-03-02	MPDES effluent limitations exceeded at 4 traps	18	360	Done
Oct. 97	97-17-04	Failure to submit information required by 17.24.413(4) following issuance of Cessation Order	47	2,700	Active
Oct. 97	97-17-03	Failure to pay Abandoned Mine Land Reclamation Fees	42	2,200	Active
Nov. 97	97-17-03CO	Failure to abate NON 97-17-03	48	84,000	Active
Nov. 97	97-17-05	Failure to submit Annual Report	48	2,800	Active
Dec. 97	97-17-05CO	Failure to abate NON 97-17-05	52 x 30 days	96,000	Active
Dec. 97	97-17-04CO	Failure to abate NON 97-17-04	57 x 30 days	111,000	Active
Dec. 97	97-04-01	Failure to reclaim and revegetate lands disturbed by the livestock waterline	19	320	Done
Jan. 98	98-17-01	Failure to conduct wildlife monitoring as required in permit	49	2,900	Active
Feb. 98	98-05-01	Failure to blast during period of sunrise to sunset./Blasts were recorded after sunset	7	200	Done
Mar. 98	98-17-02	Failure to submit MPDES reports since June 1997	39	1,900	Active
Mar. 98	98-17-03	Failure to submit 1997 Semi-Annual Hydrology report, failure to submit all information with 1996 Hydrology report	43	2,300	Active
Apr. 98	98-17-02CO	Failure to abate NON 98-17-02	39 x 30 days	57,000	Active
May 98	98-17-03CO	Failure to abate NON 98-17-03	48 x 30 days	84,000	Active

Source: Furois 1998; Unabated Cessation Orders (CO) counted for 30 days for computation of penalties

5. Resolution of noncompliance

As discussed above in discovery of violations, violations may require on-the-ground work, such as filling in rills and gullies, building a sediment control structure, or mending a structure which failed to work. Others may require a permitting action, typically a minor revision, to implement a new way of doing something: a new practice or using a new piece of equipment. Violations which involve monitoring practices may need to be resolved by minor revisions to a monitoring plan, or may be such that data was not collected and cannot be replaced. Some violations specifically address reclamation practices, such as regrading of the surface, soil replacement or seeding. Resolution would involve abatement practices which provide the best scenario for reclamation to succeed. Violations which involve a water effluent problem would address water treatment and sediment control structures being in place and functioning.

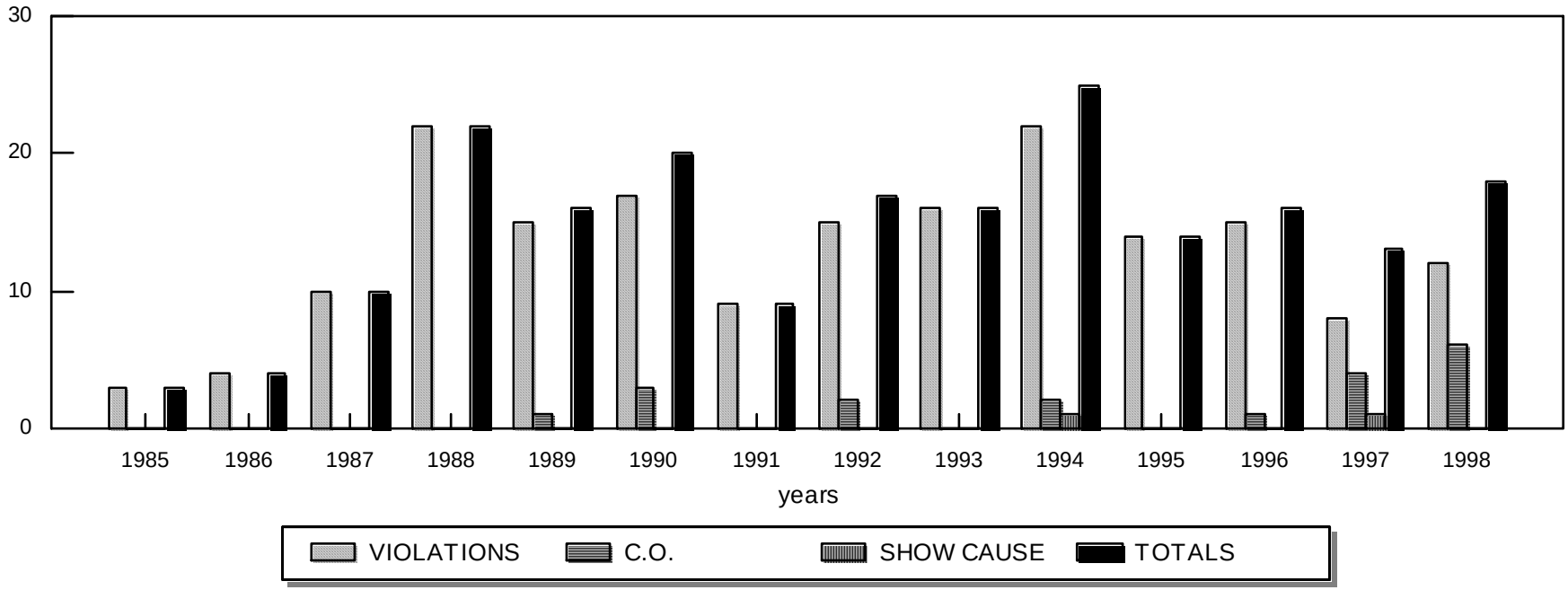
Current Compliance Priorities. Agency staff have identified the following priorities for the Coal and Uranium Program:

- Assuring that offsite damages do not occur
- Assuring that contemporaneous reclamation occurs
- Assuring the health and safety of citizens as associated with the concerns of blasting practices and structural integrity of sediment control features (dams and embankments)
- Assuring that coal conservation practices are implemented (all marketable and minable coal is recovered in the mining operation)
- Assuring that long-term hydrologic impacts are minimized.

6. Trend information

Table 25 shows the trend in compliance for the Coal and Uranium Program. Trends in compliance with Coal and Uranium Program rules and requirements are illustrated below. Over the last 10 years, violations are issued at a typical rate of 10 to 25 violations per year. An unusually high number of Cessation Orders were issued to one company in the past two fiscal years. Cessation Orders are typically issued to operations which are not operating and are not maintaining reclamation bonds. Two show cause orders have been issued by the program; one was issued to Western Energy Company and was resolved, the other was issued to Mountain Inc. and resulted in permit revocation.

Table 25. Trends in Compliance at Coal Mines



Water Protection Bureau

Montana Water Quality Act, 75-5-101

1. Program description and the regulated community

The Water Quality Permit Program typically regulates discharges of pollutants to state waters, both surface and ground water. The Montana Pollutant Discharge Elimination System (MPDES) Program issues permits to public and private facilities. These include cities and towns with wastewater plants that discharge to state waters (which many do) and various industries -- e.g., refineries, mines, oil producers, confined animal feeding operations (CAFOs), power plants, construction activities such as dewatering and hydrostatic testing, meat packers, fish farms, railroad facilities, remediation facilities, air conditioning and heating and cooling discharges, etc. The MPDES permits generally contain numeral limits for certain pollutant parameters in the discharges.

The Storm Water Program issues permits to certain classes of industrial activity (carried out by public or private entities) that have runoff to state surface waters. These permits generally contain "best management practice" requirements.

The Groundwater Pollution Control Program issues pollution control permits to "sources" of pollutants having the potential to contaminate state groundwaters. Typical groundwater sources of pollutants are waste piles, waste holding ponds, wastewater infiltration systems, and land application of waste.

The program reviews dredge and fill projects for Clean Water Act, Section 401, to certify that water quality standards will be maintained, and wetlands will be protected or replaced if destroyed. The program also authorizes short-term changes in water quality in accordance with §75-5-308, MCA.

As of the close of 1997, there were approximately 700 active waste discharge permits (surface, municipal and industrial, storm water and groundwater discharges) on file with the bureau.

2. Promoting compliance

A. Information/Education/Technical Assistance

All of the Water Quality Permit Program staff expend a good deal of effort in technical assistance and promoting compliance. Countless phone calls are fielded wherein the caller has a proposed development project and requires information and assistance on what permits are necessary and the requirements of the permits. Program staff contribute information to the permitting guide booklets distributed by the EQC and DNRC. Program information is also placed on the Internet. Program staff speak to various groups from the regulated community or agencies, advising and providing program information. Some past examples are livestock producers, highway contractors, mining associations, engineering consultants, state and county highway departments, conservation districts and county sanitarians. Public meetings and

hearings are held during the regulation development process for all of the programs. The Storm Water Program provides a quarterly program update newsletter to all permittees.

B. Inspections

Compliance inspections are performed in all of the water quality permit programs. In FY97 and FY98, the bureau performed 170 MPDES, 128 ground water, and 174 storm water inspections. Some of the facilities are targeted at random, but most are selected for inspection due to self-monitoring violations or complaints received. Some facilities request inspections to clarify application of the rules or to obtain advice on staying in or returning to compliance. Most of the inspections result in the opportunity of one-on-one technical assistance and compliance advice. A few result in discovery of violations where enforcement action is initiated.

C. Enforcement Actions

Where, for one reason or another, compliance assistance or attempts to get a facility to voluntarily return to compliance fail, staff request some form of enforcement from the Enforcement Division. Enforcement Request forms are filled out and may result in Administrative Orders being issued or civil or criminal court actions being taken. Most of these actions are accompanied by penalties.

3. Size of the regulated community and estimated portion in compliance

The size of the regulated community is discussed above and numbers of permits are given in Table 26. The estimated portion in compliance depends upon the severity of noncompliance. It is not uncommon for permittees to have occasional effluent violations. There may be a hundred or more of these per year. However, in most cases the permittees make adjustment and quickly return to compliance. Very serious or chronic violators are referred to the Enforcement Division as discussed above. Typically, the programs may have 10-12 formal enforcement requests submitted at any one time.

4. Number, description, method of discovery, and significance of noncompliances

The number of permits with violations and the method of discovery are listed in Table 26. The types of permit violations include violations of effluent limitations, monitoring requirements, reporting requirements, compliance responsibilities, general requirements, and discharge without a permit.

The permit violations detected by self-monitoring are violations of effluent limitations and/or monitoring and reporting requirements. Inspection and complaint reports detect the same types of violations as self-monitoring plus violations of operation and maintenance requirements at wastewater treatment facilities and discharges without permits.

All permitted or unpermitted violations have potential to impact human health or the environment to some degree. When violations are detected, consideration is given to the degree of potential impact to human health and the environment in regards to compliance action.

However, determination of an actual threat to human health or the environment is not typically evaluated.

Table 26. Number of MPDES Permits in FY97 and FY98 with Violations and the Method of Discovery

Type and total number of Permits	Method of Discovery			
	Self Monitoring Report	Inspections	Complaint Reports	Other
MPDES - Private-107	22	17	6	2
MPDES - Public-147	71	65	6	1
CAFO-56	N.A.	4	20	0
Storm Water-364	297	16	9	0
Groundwater-23	5	3	2	0
Unpermitted-N.A.	N.A.	8	66	1

5. How the department has addressed the noncompliance listed above including the noncompliances that are pending

In response to permit violations in FY97 and FY98, the bureau has sent compliance letters (violation letters and warning letters) as indicated in Table 27. The goal of the bureau is to send compliance letters in response to self-monitoring data on a quarterly basis. Due to the workload, this goal is not always met, as some delay may occur in sending compliance letters. Compliance letters in response to inspections are sent within 30 days of laboratory data completion. Sending compliance letters in response to complaints is typically accomplished within 30 days of completing the complaint investigation. Completion of the complaint investigation varies greatly from days to months due to the workload and the significance of the alleged violation.

If the bureau determines compliance is not being achieved in a timely manner, the noncomplying permit would be referred for enforcement action as listed in Table 27. All permits with violations not referred for enforcement action are either back in compliance or pending further compliance/enforcement action.

Table 27. Department's Response to MPDES Permits with Violations in FY97 and FY98

Type of Permit	Compliance Letters (VL, WL)	Technical Assistance/ Information (Letter, phone, meeting)	Inspection	Enforcement Action Referred
MPDES - Private	63	66	4	5
MPDES - Public	99	84	0	6
CAFO	24	20	20	1
Storm Water	835	824	114	1
Groundwater	9	38	9	0
Unpermitted	52	32	24	3

Sanitation in Subdivisions Act, 76-4-101

1. Program description

The Subdivision Section in the Water Protection Bureau reviews plans for proposed subdivisions to ensure adequate water supplies, sewage treatment, storm water drainage and solid waste disposal; makes nonsignificance determinations for proposed sewage systems pursuant to the Water Quality Act; and prepares environmental assessments.

2. Activities and efforts to promote compliance and assistance

The section provides technical assistance and training on the requirements of the Sanitation in Subdivisions Act and the nondegradation standards of the Water Quality Act to local health departments, county commissioners, and to developers and their consultants. Most technical assistance is provided by phone or in the office. However, within budget constraints, the section has increased efforts to provide more formal training to county sanitarians and consultants. During FY98, the section began distributing a quarterly newsletter to boards of health and county commissioners. To address a specific noncompliance issue of building prior to subdivision approval, the subdivision application form was revised to clearly notify property owners of that prohibition and a letter was sent to all subdivision consultants and county health departments.

The section reviewed the plans and specifications for 2,930 subdivisions in FY97 and FY98, and made nonsignificance determinations for more than 10,000 sewage systems to ensure compliance with the Sanitation in Subdivisions Act and the Water Quality Act.

3. Size and description of the regulated community

The more than 2,900 applicants during the reporting period represent the actively regulated community. Most subdivision applications were for minor subdivisions of five or fewer lots and from owners of small parcels.

Because every subdivision is approved with conditions related to the type and location of water supply and sewage treatment facilities, each subdivision lot approved by DEQ remains subject to the requirements of the Sanitation in Subdivisions Act. Data are not available for all years since passage of the first law regulating subdivisions in Montana. However, available records indicate that more than 150,000 lots have probably been created since 1961. Although a significant proportion of these lots probably have not been built on, the total number of lots and individuals subject to regulation is undoubtedly very large.

4. Number, description, method of discovery, and significance of noncompliances

METHOD OF DISCOVERY

	INSPECTION	CITIZEN COMPLAINT	COUNTY H.D.
FY97	0	2	3
FY98	0	0	0

DEQ may not use subdivision review fees to conduct inspection or enforcement activities. DEQ discovers noncompliances through citizen complaints or notification by county health departments. (Local boards of health contracted to review minor subdivisions of five or fewer lots may also enforce the Sanitation in Subdivisions Act within those subdivisions.) The Subdivision Section refers all complaints and potential enforcement actions directly to the Enforcement Division.

COMPLIANCE

	WARN LTR	NOV DONE BY ENF.	SENT TO ENF.
FY97	0	7	5
FY98	0	0	0

5. How addressed

When a violation of the Sanitation in Subdivisions Act is discovered, the Enforcement Division usually sends a warning letter (WL) or Notice of Violation (NOV). Seven NOVs were sent out in FY97.

Environmental Management Bureau

Metal Mine Reclamation Act, 82-4-301

1. Program description

The Hard Rock Program (HRP) of the Environmental Management Bureau administers the Montana Metal Mine Reclamation Act (MMRA), the Montana Environmental Policy Act (MEPA), administrative rules on hard rock mining, and reclamation plan evaluation and activity compliance. Functions of the HRP are: (1) regulation of hard rock mining activities; (2) regulation of reclamation activities at hard rock mining sites; (3) reclamation of abandoned mining sites with forfeited reclamation bonds); (4) implementation of environmental analysis provisions of MEPA and the hard rock mining and reclamation statutes; and (5) administration of the Small Miners Exclusion and Exploration programs. Activities which implement the HRP's functional responsibilities include permit evaluation and maintenance; inspection; enforcement; resource management for surface and groundwater, biological, cultural, and other resources; information and data management; and training.

2. Describe the activities and efforts taking place to promote compliance and assistance:

Plan of Study: Identification and analysis of the baseline or affected environment is the first step in preparing an application for an Operating Permit under the Metal Mine Reclamation Act (MMRA). A Plan of Study to produce the baseline report is not required by law but provides an opportunity for the program to work with the mining company to “do it right the first time.” The HRP performs a courtesy review of the plan to provide guidance on completeness and scope. Companies will communicate with staff during collection of baseline data to make sure they are complying with the Plan of Study.

Application for an Operating Permit: The MMRA defines a review period for assisting companies in producing an application that: is accurate, understandable, and complete; has sufficient detail for bonding; and that will provide adequate information to support either an environmental assessment or environmental impact statement. During this time staff work with the companies to produce a mine plan that should comply with the mining, air and water laws. This effort includes coordination with other agencies to assist in identifying the diverse resource areas that may be affected.

Montana Environmental Policy Act: Two court decisions have interpreted MEPA as having more substantive authority in mitigating significant impacts in an interdisciplinary manner. The HRP staff work with the applicant to identify appropriate, cost effective mitigation for incorporation into the mining proposal. The control of fugitive road dust is an example. Measures such as sprinkling, dust suppressants, or rock armoring may be committed to or stipulated in the permit.

Compliance assistance continues once a permit is issued. HRP staff perform several inspections of the permit area each season to ensure that the provisions in the permit are adhered to. Lead

staff, hydrologists, soil specialists and engineers know the projects and assist the mining companies in recognizing potential violations in the field and correcting them before a noncompliance occurs. An example is trend analysis on water quality. An upward trend in a particular parameter must be detected early so that its source can be identified and eliminated before the applicable standard is reached.

HRP staff review various reporting and monitoring information from permitees including water quality samples and analysis and final facility designs. This information may come in the form of an Annual Report or required monitoring program submittal.

Another example of compliance assistance in the field is monitoring of soil stockpile volumes through the Annual Report. If volumes appear to be falling behind the benchmark identified in the permit, the company can be alerted to a potential shortfall and work toward making up the shortage. If compliance is achieved no violation would occur.

Enforcement Assistance: The Notice of Violation copied to the Enforcement Division assists in coordination between the two divisions. It opens up communication with the mining companies in order to assist in their compliance as in the soil example above.

Education Assistance: In a joint effort with the Forest Service, Bureau of Land Management, Montana Tech, consultants, industry sponsors, Haskell Indian Nations Univ., Salish-Kootenai College, EPA, and MSE, Inc., host the Mine Design, Operations & Closure Conference every year. This conference provides a forum in which industry and regulatory agencies can keep abreast of state-of-the-art reclamation practices. The conference promotes compliance by introducing new technologies and providing the opportunity for interaction with the regulated community and interested groups.

Several other symposia, conferences and workshops are attended by HRP staff including the Northwest Mining Association Convention, the High Altitude Vegetation Work Shop and various geochemistry and geotechnical workshops.

3. Size and Description of the Regulated Community and . . . Compliance/Noncompliance:

Currently the Hard Rock Program has 86 Permits covering 72 mines. Twenty-three are precious metal mines including placer; four are actively mining. There are seven base metal mines; six are actively mining. There are 24 quarry rock (building stone, aggregate, etc.) operations; 13 are actively mining. Seven are limestone operations with three actively mining. There are five talc mines, four are actively mining, and two of three soil excavation operations are active.

Seventy (70) mines are in compliance, leaving approximately 2% out of compliance (see no. 4).

4. Number, description, method of discovery, and significance of noncompliances, including those that are pending:

Database records of recent noncompliances go back to January 1, 1989. Noncompliances before this are in another database but not used in this compilation. The Table shows 57 noncompliances (1989 - June, 1998), 2 of those are active (Table 1). Probably 3 or 4 could be judged to be significant. None of these threatened human health.

Table 1

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
124	CABLE MOUNTAIN MINE	I	134	MINING OUTSIDE PERMIT BOUNDARY	R01/17/89	SUBMIT PLAN OF SURVEY
125	CABLE MOUNTAIN MINE	I	134	UNAUTHORIZED DISCHARGE	R5/30/89	CEASE DISCHARGE
126	RONCOR INC.	I	36-056	MINING IN EXCESS OF 5 ACRES	R8/28/89	
127	BLUE RANGE MINING	I	341	5 DRILL SITES WITH OPEN HOLES & CUTTING PILES	R9/19/89	RECLAIM 5 HOLES
128	GIGUERE INDUSTRIES INC.	I	102	EXCEED DISTURBANCE AREA	S9/28/89	CHANNEL RUNOFF
129	GIGUERE INDUSTRIES INC	I	102	EXCEED DISTURBANCE AREA	S9/28/89	CHANNEL RUNOFF
130	GOLDFIELDS	I	230	EXPLORATION BEFORE APPROVAL	R11/3/90	
131	CHICAGO MINING	I		EXPLORATION WITHOUT A LICENSE	S06/14/91	SUBMIT EXPL. & RECLAMATION PLAN FOR 4 ADITS ETC.
132	IPCO PETROLEUM CORP	I	446		R11/22/89	
133	PLACER RECOVERY INC.	I	412	FAILED TO COMPLETE RECLAMATION WORK	11/17/89	BEGIN RECLAMATION WORK ACCORDING TO PLAN
134	QUINTO MINING CORP	I		NO EXPLORATION LICENSE	S11/15/89	APPLY FOR LICENSE
135	PANGEA MINING	I	132	CN OUTSIDE AREA	R12/4/89	CONTROL CN RUNOFF

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
137	GOLDEN SUNLIGHT MINE	I	65	CONDUCTING EXPLOR. WITHOUT AN APPROVED PLAN	S01/11/91	SATISFY ALL BLM REQUIREMENTS
139	EL DORADO GOLD INC.	I	25-040	SEDIMENT POND OVERFLOWED	S5/9/90	
140	EL DORADO GOLD INC.	I	25-040	SEEP & SPRING WATER DISCHARGED INTO BROWNS GULCH	S5/9/90	
141	PEGASUS GOLD CORP	I	237	DISTURBED ACREAGE NOT STATED ON ORIGINAL PLAN	S7/6/90	PLUG ARTESIAN HOLE
142	EL DORADO GOLD INC.	I	25-040	SEDIMENT POND OVERFLOWED	RECLAMATION NOT DONE	
145	CURATOR GOLD INC	I		FAILURE TO CONTAIN DRILL CUTTINGS & IL DISCHARGE	R06/02/92	PLUG HOLE
146	FMC CORP.	A		FAILURE TO CONTAIN DRILL CUTTINGS & IL.DISCHARGE	R05/21/92	
147	RONCOR INC.	I	36-056	EXPLOR ON 4 SITES W/O LICENSE	R10/9/90	
148	WRIGHT, JOHN	I		ILLEGAL DISCHARGE	R10/12/90	
149	MT MINING & TIMBER	I	311	FAILURE TO RECLAIM	R10/31/90	RECLAMATION PLAN & TIMETABLE
150	BLUE RANGE MINING	I	141	TAILINGS SEEPAGE COLLECTION	R1/14/91	SEEPAGE COLLECTION
151	BLUE RANGE MINING	I	141	PUMPBACK SYSTEM NONOPERABLE	R1/14/91	PUMPBACK SYSTEM IN OPERATION
152	BLUE RANGE MINING	I	141	FLOTATION TAILINGS BEING DEPOSITED IN HEATH MINE	R1/14/91	SUBMIT REPORT
154	BALTRUSH WILLIAM C.	I	43-034	AN EXCESS OF 15 AC DISTURBED UNDER SMES	S/13/91	
155	MONTANA MINING & TIMBER	I	133	FAILURE TO RECLAIM DISTURBANCE	S2/1/91	RECLAM PLAN WITH TIME TABLE

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
156	C.R. KENDALL	I	122	CN RELEASE	R2/9/91	SUBMIT REPORT
157	LIEKAM, EDWARD	I	46-015	CONTAMINATION OF THE STREAM WITH GRAVEL MATERIAL	2/28/91	
158	WILLISON, GENE L.	I		DISTURBANCE IN EXCESS OF 5 ACRES	R04/02/91	
159	GULF-TITANIUM INC.	I	129	FAILURE TO POST BOND ETC.		SUBMIT $53,650 BOND OP & RECLAMATION PLAN
160	DILLON EXPLORATION	I	125	DUMP MATERIAL IN WASHOE CREEK	06/11/91	PROVIDE PLAN TO REDUCE DUMP SLOPE
161	SEAHAWK INC.	I	145	MINING W/O PERMIT	R6/17/91	
162	NORANDA MINERALS CORP.	I	429			
163	SEAHAWK INC.	I	145	2 EXPLOR TEST PITS EXCAVATED W/O PERMIT	S8/12/91	BACKFILL & REVEGETATE DISTURBED AREAS
164	2900 DEVELOPMENT CORP.	I	25-038	DISTURBED LAND IN EXCESS OF 5 ACRES	S8\15\91	REDUCE DISTURBANCE TO NOT MORE 5 AC & RECLAIM DISTURBED GROUND OUTSIDE OF BONDED 5 ACRES.
165	REYKDAL, MERVYN	I	43-024	DISTURBED & LEFT UNRECLAIMED 3 AREAS UNDER HIS SMES	S9/13/91	
166	NEWMONT MINERALS	I	CN-019	CN SPILL	S9/13/91	PROVIDE/ MAINTAIN PERMANENT CATCHMENT TANK AT THE OUTFLOW OF THE LEAK DETECTION SYSTEM.
167	ADAMS, STEVE	I	43-003	MINING W/O POSTING RECLAM BOND	S9/13/91	

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
168	ADAMS, STEVE	A	43-003	CAUSED POLLUTION OF STREAM	R12/12/91	
170	BIG HORN LIMESTONE	I	8	SOIL MATERIAL WAS WASTED & NOT SALVAGED	R12/12/91	SUBMIT PLAN
171	CLAYTON, BILL	I		MINING W/O PERMIT	S12/3/91	
172	NORANDA MINERALS CORP.	I	429	EXCESS AMOUNTS OF NITRATES TO SURFACE & GROUND H20	S12/4/91	CEASE THE ADDITION OF NITRATES TO SURFACE & GROUND WATER IN EXCESS LIMITS SET UNDER EXPLOR LICENSE
173	BLUE RANGE MINING	I	141	CN SPILL	R3/20/92	CONTROL CN & MONITOR
174	BEAL MOUNTAIN MINING	I	135	FAILURE TO REPORT CYANIDE LEAK	R05/28/92	PROVIDE CAUSE OF LEAK & MIT. ACTIVITIES
175	GOLDFINGER INVEST	I	5-017	DISTURBANCE IN EXCESS OF 5 ACRES	R07/01/92	RECLAIM TO 5 ACRES
176	GEM RESOURCES	I	5-078	LEFT 27 ACRES UNRECLAIMED	6/4/92	CEASE MINING OPERATIONS & RECLAIM
177	RLTCO	I	131	DISTURBANCE IN EXCESS OF 30 ACRES	R07/21/92	REGRADE & SEED
178	DILLON EXPLORATION	I	124	RUN OFF WATER CAUSING EROSION	R7/31/92	RECLAIM ERODED SLOPE
179	COX, WADE	I	13-004	DISTURBANCE IN EXCESS OF 5 ACRES	R07/15/92	
180	SCARF, BRUCE	I		OPERATING WITHOUT BOND	R07/24/92	
181	SEAHAWK INC.	I	145	NOT PROVIDING WATER SAMPLING FOR MERCURY	S7/22/92	PROVIDE ANALYSIS
182	CLUTIS, WAYNE	A		CUSTOM MILL WITHOUT PERMIT	R08/28/92	
183	ADAMS, STEVE	A	43-003	DIVERSION DIKE FAILED	REFUSED	

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
184	PETERSON, DONALD	I	4-060	DISTURBANCE IN EXCESS OF 5 ACRES	R09/14/92	
185	WASHINGTON GULCH MINING	I	146	UNAUTHORIZED DISTURBANCE	R11/02/92	
186	SKRANAK, HENRY	I	516			
187	BEAL MOUNTAIN	I	135	FAILURE TO COMPLY WITH STIPULATION #2	R10/22/92	SUBMIT MONTHLY CONSTRUCTION REPORTS
188	BOLINGER H.A.	I	51-137	OPERATION EXCEEDED 5 ACRES	9/30/92	
189	BULLOCK	I	42	OPERATOR EXCAVATED EXPLORATION PIT	R10/16/92	BACKFILL
190	DEL RIO CORP.	I		DISTURBANCE IN EXCESS OF 5 ACRES	R10/09/92	RECLAIM TO 5 ACRES
191	SWANSEA GOLD	A		DISTURBANCE IN EXCESS OF 5 ACRES	R10/02/92	RECLAIM TO 5 AC. & SUBMIT O.P.
192	RLTCO	I	131	UNAUTHORIZED MINE ACTIVITY	S10/7/92	RECLAIM (GRASS
193	DELMICAH	A		FAILURE TO RECLAIM EXPLORATION	R04/05/93	SUBMIT NEW RECLAM.PLAN IN '93
194	MONTANA RESOURCES	I	527	NO SUMP USED TO CONTAIN & DISPOSE DRILLING FLUIDS	S10/8/92	REMOVE & BURY DRILLING EFFLUENTS AS STATED IN PERMITTED EXPLORATION PLAN.
195	RLTCO	I	131	UNAUTHORIZED MINING ACTIVITY	R10/16/92	RECLAIM & SUBMIT PLAN
196	HANOVER GOLD	I	531	OPENING NEW ADIT W/O APPROVED PLAN	R10/22/92	PROVIDE DEPT NEW PLAN AND ADDITIONAL BOND TO COVER DISTURBANCE
197	PETERSON, DONALD	I	4-060	POLLUTION OF A STREAM	R92/11/24	
198	BRUMIT, LAWRENCE	I		OPERATING WITHOUT PERMIT	R12/12/92	

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
199	VALENTINE GOLD CORP.	A		FAILURE TO RECLAIM EXPLORATION	S01/05/92	
200	BEAL MOUNTAIN	I	135	UNAPPROVED FERTILIZATION	R04/09/93	REVERT TO APPROVED PLAN OR SUBMIT NEW PLAN
201	MARK V P & M	A	365	FAILURE TO RECLAIM	S02/01/93	
202	BEAL MOUNTAIN MINING	I	135	UNPERMITTED DIVERSION OF SPRINGS	R04/09/93	CEASE DIVERTING & RECLAIM ETC.
203	ELLIS/DAY CREEK RESOURCES	I		DISTURBANCE IN EXCESS OF 5 ACRES	R04/23/93	CEASE
204	WILLIAMS, DAWSON G.	I	494	FAILURE TO RECLAIM	R04/23/93	
205	VORTEX MINING	I		OPERATING WITHOUT LICENSE & BOND	R05/23/93	
206	ZORTMAN MINING	I	96	UNAUTHORIZED ROAD CONSTRUCTION	R6/10/93	RESTORE SURFACE FLAW
207	ZORTMAN MINING	I	96	ACID ROCK DRAINAGE	R06/10/93	SULFIDE IN WASTE DUMP
208	SEAHAWK INC.	A	145	FAILURE TO SALVAGE TOPSOIL	R06/29/93	ADHERE TO WQ SAMPLING
209	HANOVER GOLD	I	531	CONST. OF DETOUR ROAD	S8/6/93	PROVIDE NEW BONDING
210	RLTCO	I	131	EXPLORATION WITHOUT A LICENSE	S08/23/93	RECLAIM AREAS IN QUESTION
211	RLTCO	I	131	SEDIMENT IN CREEK	S08/23/93	CEASE DISCHARGE
212	HOLLAND, TOM	I		SMES PLACER WITHOUT BOND	R09/17/93	
213	ROCKY MOUNTAIN MINING	I	SMES	DISTURBANCE EXCEEDED 5 ACRES (10-12)	S09/30/93	
214	JOMAC INC.	I	88	FAILURE TO RECLAIM OPERATING PERMIT	S11/18/93	
215	SEAHAWK INC.	A	145	FAILURE TO COMPLY WITH WQ PROVISIONS	R12/20/93	PROVIDE WQ ANALYSIS

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
216	LIVINGSTON M&G	I	23	DISTURBANCE OUTSIDE PERMIT AREA	R12/24/93	CEASE MINING & RECLAIM 2 QUARRIES
217	SEAHAWK INC.	A	145	EXPLORATION WITHOUT A LICENSE	R12/20/93	RECLAIM TRENCH
218	SEAHAWK INC.	A	145	FAILURE TO BACKFILL WHILE MINING	R12/20/93	POST $15,875 ADDITIONAL BOND
219	SEAHAWK INC.	A	145	PERMIT AREA NOT CLEARLY MARKED	R12/20/93	STAKE PROPOSED DIS. AREA
220	SEAHAWK INC.	A	145	FAILURE TO CONTROL SPOTTED KNAPWEED	R12/20/93	REMOVING KNAPWEED & SEEDING
221	SEAHAWK INC.	A	145	UNSUCCESSFUL REVEGETATION	R12/20/93	RECLAIM NORTH PIT
222	SEAHAWK INC.	A	145	MERC.CON. WATER INFILTRATING INTO GROUND	R12/20/93	CEASE HG USE & DISPOSE HG WASTE
223	SEAHAWK INC.	A	145	FAILURE TO RECLAIM ORIGINAL TAILINGS PONDS	R12/20/93	RECLAIM OLD TAILS & STOCKPILE
224	ZORTMAN MINING	I	95	CYANIDE LEAK FROM PROCESS AREA	R1/11/94	INSTALL MONITORING WELLS
225	KING OF KINGS MINES INC.	I	419	RECLAMATION OF EXPLORATION WORK NOT DONE	S1/31/94	
226	C.R.KENDALL	I	122	SOIL STOCKPILE VOL NO REPORTED ANNUALLY	R3/22/94	SUBMIT SOIL VOL OR SUBMIT NEW OP FOR REVIEW & APPR.
227	C.R.KENDALL	I	122	SOIL VOLUME IS APPROX 55% OF PERMITTED DEPTH	R3/21/94	REVISE PERMIT-SOIL SHORTAGE & REPLACEMENT
228	BASE METALS & ENERGY	I	387	RECLAMATION HAD NOT BEEN COMPLETED	S04/25/94	REVOCATION OF PERMIT
229	LIVINGSTON M&G	I	23	ROAD & RUBBLE OUTSIDE PERMIT AREA	R06/16/94	CEASE OPERATIONS

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
230	GOLDEN SUNLIGHT MINE	I	65	PIPELINE BREAK ALONG SLURRY LINE ROUTE TO IMPOUNDMENTS	R07/15/94	CLEAN UP SPILL & REVEGETATE
231	WASHINGTON GULCH MINING	I	146	24 UNAUTHORIZED MINE PITS OUTSIDE OF PERMIT AREA	R08/12/94	RECLAIM MINE PITS
232	SPOKANE MINERALS LTD	I		DISTURBED 8 ACRES MINING UNDER SMES	R08/22/94	IMMEDIATE CESSATION OF OPERATIONS-RECLAIM DISTURBED ACRES TO NOT MORE THAN 5 UNCLAIMED ACRES
233	SKALKAHO GRAZING INC.	I	44	MINING ACTIVITIES STARTED PRIOR TO MINING	R10/24/94	CESSATION OF MINING ACTIVITIES UNTIL DISTURBED AREA IS BONDED
234	CHRISTIANSON, ROY	I	CN-019	200CY OF OFFLOADED IN A LOCATION NOT APPROVED OR PERMITED.	R11/02/94	
235	GOLD EXPRESS CORP.	I	305	DELAYED RECLAMATION		COMPLETE RECLAMATION
236	VORTEX MINING	I	546	EXPLORATION W/OUT PLAN OF OPERATIONS FILED WITH DSL	S11/28/94	SUBMIT TO DSL PLAN OF OPERATIONS
237	GIGUERE INDUSTRIES INC.	I	102	REMAINS UNCLAIMED	R01/17/95	
238	GEM RESOURCES	I	413	VEGETATION HAS NOT BEEN EXTABLISHED	S01/10/95	
239	SINDOR	A	451	FAILURE TO RECLAIM	S3/21/95	SUBMIT RECLAM PLAN
240	NUMBER NOT USED					

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
241	GEM MOUNTAIN SAPPHIRE	A	46-095	DISCHARGE OF TURBID WATER FROM GEM NOUNTAIN'S SEDIMENT POND CAUSING POLLUTION OF THE WEST FORK OF ROCK CREEK.	S5/09/95	ABATE OF THIS NON HAS BEEN COMPLETED
242	MONTANA RESOURCES	I	00030A	ROAD CONSTRUCTION	R05/30/95	NONE ARE NEEDED
243	NEW GOLD INC.	A	51-148	CN LEACH POND OVERFLOWING	S06/08/95	
244	RONCOR INC.	I	36-056	EXCEEDED 5 ACRE LIMITATION	EXCAVATED TEST TRENCHES	
245	NEW GOLD INC.	I	51-148	FAILED TO REPLACE RECLAM BOND	S06/13/95	
246	HEMPHILL BROTHERS	I	54	RECLAMATION WORK NOT DONE	S09/19/95	SEE FILE
247	NEW GOLD INC.	A	51-148	RECLAMATION NOT DONE	S09/25/95	
248	GOLDEN STAR MINING	I	74	FAILURE TO RECLAIM	S10/12/95	
249	US GRANT GOLD MINING CO.	A	414	CONDUCTING EXPLORATION OPERATIONS	S10/13/95	POST BOND
250	AMERICAN GEM CORP.	I	555	DISCHARGING TURBID WATER	S10/16/95	DEWATER POND
251	NEW GOLD INC.	A	51-148	CN ESCAPED LAD LINE & CONTAMINATED GOLCONDA CR.	S10/24/95	
252	TVX MINERAL HILL	I	100	SURFACE DISTURBANCE	R01/23/96	RECLAIM PIT
253	PROMETHEUS GOLD INC.	A	129	FAILURE TO RECLAIM ALL MINING DISTURBANCES	S06/17/96	RECLAIM ALL MINING DISTURBANCES
254	STEVE DOBSON	A		DRILLING WITHOUT AN EXPLORATION LICENSE OR APPROVED PLAN OF OPERATION	S07/29/96	PLUGGING DRILL HOLES
255	JAMES COLLINS	A	43-013	FAILURE TO RECLAIM MINE SITE	S08/14/96	RECLAIM MINE SITE

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
256	SEAHAWK INC.	A	145	FAILURE TO RECLAIM SITE AFTER CLOSURE	S07/23/96	COMPLETE RECLAMATION OF THE SITE
258	PAUL KURTH MINING CO.	I	154	INCREASED WATER USE MAY EXCEED POND CAPACITY	S02/06/97	REFER TO NON FILE (SEE #4)
259	HARRELL MINING CO.	A	421	UNCLAIMED EXPLORATION TRENCH & DRILL PAD	R03/06/97	RECLAIM SITE
260	JOMAC INCORPORATED	A	88	FAILURE TO RECLAIM	R05/25/97	SEE NOTICE OF NONCOMPLIANCE (04/18/97)
261	RLTCO	A	461	FAILURE TO RECLAIM WITHIN THE TWO-YEAR LIMIT	S8/11/97	COMPLETING RECLAMATION OF EXPLORATION DISTURBANCES
262	NOVA GOLD INC.	A	362	FAILURE TO RECLAIM WITHIN THE TWO YEAR LIMIT	S08/11/97	
263	UNITED REEF LIMITED	I	393	EXPIRED LICENSE	FAILURE TO RECLAIM WITHIN THE 2 YEAR LIMIT.	R08/21/97
264	RALPH HUCKABA	A	51-167	EXPLORATION W/O BOND OR MAP SUBMITTED TO DEQ	S10/21/97	POST BOND
265	EARL WOODRING	A	7002	EXCEEDS THE 5 ACRE LIMIT	S10/23/97	RECLAIM DISTURBED ACREAGE
266	NEW BUTTE MINING INC.	A	138	WEED SPRAYING NOT DONE	PORTIONS OF THE SOIL ARE ERODED	RELIME, RESOIL & RESEED, REPAIR THE EROSION, FILE ANNUAL REPORT, SPRAY AREA FOR NOXIOUS WEEDS
267	BILL BAHNY CONSTRUCTION	I	147	SOLID WASTE ON SITE	03/06/98	REMOVE DISPOSE OF WASTE/SOILED MATERIAL

NON #	COMPANY NAME	STATUS A=Active I=Inactive	PERMIT #	VIOLATION DESCRIPTION	NON COMPLIANCE	ABATEMENT DESCRIPTION
268	C.R.KENDALL	A	122	FAILURE TO SUBMIT HYDRO REPORTS/CONDUCT WEEKLY EFFLUENT SAMPLING/COMPLY WITH EFFLUENT QUALITY LIMITS/ANALYZE EFFLUENT SAMPLES	S03/10/98	LATE REPORTS

5. Describe how the department has addressed the noncompliances listed above including the noncompliances that are pending:

Table 1 shows the abatement defined in the noncompliance. The table shows the 2 pending.

Montana Major Facility Siting Act, 75-20-101

1. Program description

The Major Facility Siting Program includes: (1) regulation of the siting, construction, and operation of large energy facilities such as generating plants, hydroelectric dams, electric transmission lines and pipelines; (2) performing as lead state agency on the relicensing of federal facilities; and (3) production and oversight of environmental documentation in support of permitting efforts under the Major Facility Siting Act and MEPA.

2. Describe the activities and efforts taking place to promote compliance and assistance

a. Washington Water Power (WWP) will be applying for a new license(s) from the Federal Energy Regulatory Commission (FERC) to continue to operate their hydropower facilities at Noxon Rapids and Cabinet Gorge dams. For hydroelectric facilities which fall under the Major Facility Siting Act, DEQ is required to file a state recommendation to the commission. The report must be based on its study of the federal application and other material gained through intervention in the FERC relicensing process.

New FERC rules allow applicants to use a consensus-based process to design environmental baseline studies and formulate appropriate protection, enhancement and mitigation measures. Staffs from the Permitting and Compliance Division and the Planning, Prevention and Assistance Division have been actively involved in WWP's collaborative relicensing process for about two years, along with about 40 other interested landowners and environmental groups, state and

federal agencies, and Indian tribes. It is hoped that these discussions will result in a settlement agreement and early implementation of mitigation and enhancement measures. The settlement agreement would become part of the application submitted to FERC by WWP.

b. The Major Facility Siting Act (MFSA) Certificate of Public Need and Environmental Compatibility for Colstrip Units 3 and 4 require that Montana Power Company submit annual monitoring reports regarding leakage from the "closed loop" ash disposal system. Staff members review results of the monitoring reports and MPC's proposed cleanup measures for leaks and spills, and suggest alternative and additional cleanup and prevention measures. Over the years this has involved replacement of an aging pipeline system used to move slurry from the power plants to the ash disposal facility; decommissioning of leaking brine ponds; rehabilitation of failing brine leakage interception systems; and addition of alarm and backup pump and interception systems to collect leakage from ash processing and disposal ponds. We have facilitated electronic submission of monitoring data rather than voluminous paper reports and are now working with MPC to identify application material necessary to apply for an amendment to their certificate to allow marketing of ash and ash byproducts.

c. Express Pipeline was certified by the Board of Environmental Review in 1996. The greater than 300-mile project in Montana was constructed that fall. Final cleanups took place in 1997 with a few problematic areas of inadequate revegetation being readdressed during the spring and fall of 1998. DEQ participated in orientation of contractors prior to the beginning of construction to inform them of the requirements of the certificate. We are now monitoring the project to see that areas disturbed during construction are adequately reclaimed. During construction Express Pipeline employed their own environmental inspectors and construction activities were checked (often jointly) by Express Pipeline inspectors as well as those on a contract to DEQ.

3. Regulated community

The regulated community consists of owners of large facilities covered by MFSA. The following table indicates the facilities operating under certificates, or in the case of federally- owned projects, those which have been found to be in substantive compliance with MFSA.

Table 28. Facilities operating under a MFSA certificate (or authorization for federally-owned facilities)

Project	Owner	operating in compliance with the certificate?
Colstrip units 3 and 4	MPC and others	no
Express Pipeline	Express Pipeline	no
Laurel to Bridger B line	MPC	no
Laurel to Bridger A line	MPC	yes
Central Montana transmission line	MPC	yes
Conrad to Shelby transmission line	WAPA	yes
Great Falls to Shelby transmission line	WAPA	yes
Fort Peck to Wolf Point transmission line	WAPA	yes
Fort Peck to Havre transmission line	WAPA	yes
Colstrip to Broadview A and B transmission lines	MPC	yes
Broadview to Townsend A and B transmission lines	MPC	yes
Townsend to Garrison transmission line	BPA	yes
Garrison to Taft transmission line	BPA	yes
Clyde Park to Dillon transmission projects	MPC	yes
Missoula to Hamilton transmission line	MPC	yes

4. Number, description, method of discovery, and significance of noncompliances, including those that are pending

See number 3 for the number of noncompliances. Noncompliances are found through onsite inspections, review of required monitoring reports, response to spills reported on the spill hotline or through citizen reports.

Description of violation:

Colstrip Units 3 and 4. The certificate requires that the facilities be operated as a closed-loop system so that there would be no leakage from the wet process ash disposal system. Groundwater

monitoring or spills reported to DEQ indicated where the facilities are not operated as a closed-loop system. The environment (groundwater) is being adversely affected by the release of water with elevated Total Dissolved Solids.

Express Pipeline. Express Pipeline may be violating noise standards set by DEQ at the Edgar Pump Station. Express Pipeline is in the process of responding to a notice of violation. Although the level of sound produced by the pumps is not much above the standard set, the pumps are operating below current installed capacity and Express Pipeline has plans to install additional pumps in the future.

Express Pipeline also is not in complete compliance with revegetation standards that require 30% ground cover of perennial non-weedy species within one growing season after completion of construction. In some areas (about 25% of the rangeland and Conservation Reserve Program land crossed) they have attained more than 90% ground cover which is not required until after year five. We are now in year one or two following reseeding which occurred at the end of construction. Express Pipeline is being conscientious in addressing this concern.

Laurel to Bridger transmission line. A relatively small area at the southern end of the line has not attained the required 90% ground cover of perennial species. Cheat grass has taken over the small disturbed areas where crane landings had been built. We requested that the area be reseeded and MPC obliged. However, the landowner is using sheep and goats to heavily graze the pasture in an effort to control a serious existing leafy spurge problem. Between the highly constrained site conditions (clayey soils on a south aspect) and livestock use, the reseeding efforts have been unsuccessful.

Remediation Division

Technical Services Bureau

Underground Storage Tank Act, 75-11-501
Underground Storage Tank Installer, Licensing and Permitting Act, 75-11-201

1. Program description

The Technical Services Bureau (TSB) is responsible for managing the leak prevention program for underground storage of petroleum and other hazardous substances. Underground storage tank (UST) owners and operators are required to obtain permits from DEQ for any work on their UST system. DEQ licenses UST contractors and inspectors. DEQ conducts inspections of UST facilities to determine if the USTs are in compliance with UST management and operation regulations, and as needed to verify that permitted work is conducted according to the regulations to prevent releases of hazardous substances.

The TSB routinely conducts public outreach and educational activities, compliance reviews and permitting of UST work. All USTs in the state must meet certain design criteria by December 22, 1998. Therefore, the program has been extremely busy the last two years assisting owners

with understanding the upgrade requirements, obtaining permits, compliance reviews for eligibility for cleanup funds, and general UST management and operation questions.

Most violations are identified during inspection activities. Routine follow-up to inspections includes a letter to the UST owner explaining the violations and requiring correction within a specified period of time. Failure to respond could jeopardize eligibility for cleanup funds and lead to an enforcement action. DEQ adopted administrative penalties in June 1998 to help speed up enforcement and encourage compliance. The TSB also developed a strategy to encourage compliance with the 1998 UST upgrade requirements.

2. Activities and efforts to promote compliance and assistance

The TSB spends a considerable amount of time promoting compliance and providing assistance to UST owners and operators. In the fall of 1997, owners and operators were sent a self-inspection checklist to evaluate compliance with UST regulations. This checklist promoted compliance and generated numerous assistance calls and educational/inspection requests. Seventeen workshops were conducted throughout the state in FY98 to explain UST regulations and the 1998 upgrade requirements. Each attendee received a comprehensive owner/operator manual prepared by the TSB. The manuals are also being distributed during state inspections and by local inspectors.

The TSB also obtained an EPA grant to survey UST owners on their plans to upgrade to meet the 1998 deadline. This survey led to numerous requests for compliance assistance. TSB responded to these requests and assisted the UST owners with compliance issues.

Additional assistance was provided to UST owners through presentations at numerous conferences and meetings, including Montana Petroleum Marketers Association, Montana Environmental Health Association, Montana Association of Counties, League of Cities and Towns, Williston Basin Corrosion Engineers, Environmental Consultants Day, Realtors, Banking and Funding Associations.

Three UST contractor refresher courses were conducted by DEQ in FY98. DEQ also organized two corrosion courses to provide continuing education for corrosion protection testers.

A newsletter was prepared for circulation to UST owners and operators in the summer of 1998. The TSB is planning public service announcements to begin in early FY99.

3. Regulated community and compliance status

The regulated community for the Underground Storage Tank Leak Prevention Program includes owners and operators of underground storage tank systems. As of January 1, 1998, the number of UST facilities regulated stood at 2,147, 976 of which were gas stations selling gasoline to the general public. As of August 1, 1998, this number had been reduced to 2,093 facilities (961 gas stations), with most closures being attributed to efforts to comply with the EPA and Montana requirements that USTs must be upgraded to meet certain design standards or closed prior to December 22, 1998. Based on surveys of the regulated community, an additional 500 to 800

facilities (150 to 300 gas stations) will close during 1998 in order to comply with the EPA and Montana requirements.

The MT UST/LUST Performance Measures Report (Appendix A) describes the status of the 4,719 federally regulated UST systems. The state also regulates underground piping systems attached to above ground storage tanks and heating oil tanks (except small residential tanks), neither of which are federally regulated. Therefore, the state-regulated active UST systems actually number 5,347.

The Performance Measures Report indicates that approximately 67% of the UST systems are equipped to meet release detection requirements. The percentage may actually be higher than indicated because these numbers are based on owner and operator notifications. The TSB is in the process of checking each facility record, including all previous inspections, to update this information as necessary.

The report also indicates that approximately 53% of the UST systems are upgraded to meet the 1998 design standards. Approximately 850 permits to install, modify or close UST systems were issued during FY98; an equal number is expected to be issued during FY99. Through completion of these permitted activities, a significant portion of the remaining UST systems will be brought into compliance before the upgrade deadline. The remaining UST systems will be placed into temporary closure, abandoned, or will be kept in operation illegally. Enforcement efforts will be concentrated on those noncompliant systems which continue in operation .

4. Noncompliance table and history

The attached table of UST Compliance Inspections (Appendix A) indicates the number of inspections conducted, the violations identified, and the actions taken to correct the violations. This compliance information was compiled using a new compliance database provided by EPA that was not in use prior to January 1, 1998. Of the 279 actions which took place during the reported period, 101 have been resolved.

The TSB has also sent six warning letters and notices of noncompliance to licensed UST installers that have not conducted UST installations or removals in accordance with the regulations.

A compliance history from September 1997 through July 1998 relating to the 1998 upgrade requirements is included in the MT UST/LUST Performance Measures Report, in a table labeled Montana Performance Measures Over Time (Appendix A). During that period, the number of UST systems equipped to meet the requirements for leak prevention has increased from 2,121 to 3,301, and the number of UST systems equipped to meet the 1998 upgrade requirements has increased from 1,372 to 2,627.

Hazardous Waste Site Cleanup Bureau

Montana Underground Storage Tank Act, 75-11-501

1. Program description

The Petroleum Release Section (PRS) is comprised of the Leaking Underground Storage Tank (LUST) Trust Fund Program and the Petroleum Tank Release Compensation Fund (PTRCF). Technical staff implement corrective action required of the Montana Underground Storage Tank Act and ARM Title 17, Chapter 56, Sub-Chapter 6. It oversees, requires, and sometimes performs the investigation and cleanup of sites contaminated by releases of regulated substances from underground storage tanks.

2. The regulated community

The regulated community for UST Corrective Action includes any person who owns or operates an underground storage tank system, and who has been identified as having a suspected or confirmed release of a petroleum product or hazardous substance. The universe of UST owners and operators consists of federal, state and local governments, schools, hospitals, railroads, service stations, utilities, convenience stores, farms, and other industrial and commercial enterprises. A total of 3,308 releases have been identified since the inception of the program in 1988.

The regulated community can be sorted into various categories based on their compliance and ability to investigate and clean up petroleum releases:

a. known owners/operators in compliance with requirements;

b. known owners/operators financially unable to afford to have their release investigated and cleaned up. This group includes entities who cannot even afford the Petroleum Tank Release Cleanup Fund (PTRCF) co-payment or one-half of the first $35,000 in costs;

c. known owners/operators unwilling to conduct required investigation and cleanup;

d. unknown source(s) of releases.

3. Philosophical approach to compliance

By the time a LUST has been identified, some level of pollution/contamination has already occurred. The PRS centers its efforts at obtaining compliance by identifying the environmental harm, and compelling corrective action to mitigate the risks to public health, safety and the environment.

The program utilizes an escalating enforcement strategy designed to use the least resource-intensive enforcement activities first in most instances. Initial efforts focus on informal enforcement actions, such as warning letters, informal notices of violation, requests for

additional information or corrective action plan submittal, staff field visits or follow-up telephone calls in order to achieve voluntary compliance. These efforts are initiated by the PRS case managers. Cases are referred to the Enforcement Division for more resource-intensive actions, such as formal Notices of Violation and Order, judicial actions, etc. only when a lower level of enforcement action fails to achieve the desired response.

The type of enforcement response selected depends on the seriousness of the violation and the potential threat it poses to human health and the environment. Also considered is the current operational status of the source of the release (operational vs non-operational), the owner's cooperation and financial ability to conduct the required release investigation and corrective action.

4. Compliance tools available and used

The program uses a number of informal "enforcement tools" to encourage UST owners and operators to comply with corrective action requirements. These informal enforcement tools include warning letters, personal meetings, informal notices of violations and the option of using the LUST Trust designation in cases of recalcitrance.

Staff first attempt to gain UST owners' voluntary compliance with the corrective action requirements of law. The program works closely with owners of leaking USTs to determine if they can qualify for partial remediation cost reimbursements through the PTRCF. If the tank owner is/was in compliance with the UST program laws and rules when the release was discovered, the Petro Tank Release Compensation Board is authorized to reimburse a portion of the eligible leak investigation, remediation and third-party damage costs up to $1 million per release. The first $35,000 in costs are split with the tank owner. In general, the PRS has not needed to take strong enforcement measures to achieve compliance with the corrective action requirements due to the availability of the Petro-Fund and the rules for access to the fund.

Once a release is reported to the program, its status is tracked on the program's database. The Montana UST Administrative Rules specify time periods and required actions for the investigation and corrective action phases of an UST release. If these time periods are exceeded, or if specific investigation or cleanup actions are not taken as required by DEQ, the violation becomes apparent on the database and to the project manager. The UST owner or operator is then contacted directly by the project manager to initiate follow-up action and enforcement action if necessary.

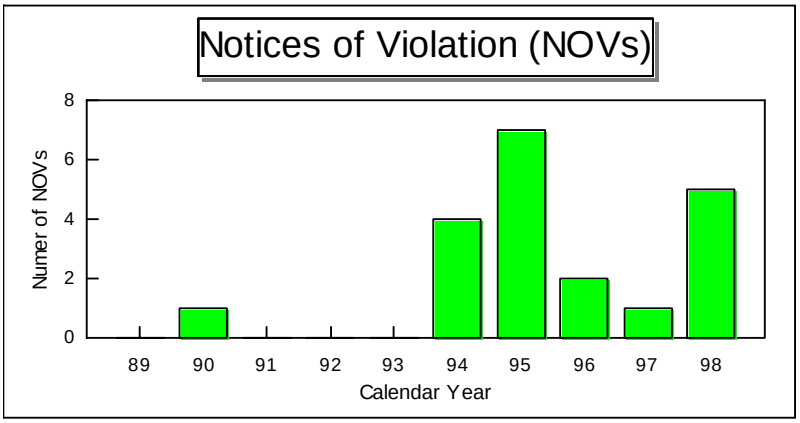
5. LUST Trust

In the event (1) a release that cannot be linked to a specific tank source, (2) an identified UST owner/operator cannot afford cleanup, or (3) an identified UST owner/operator refuses to conduct cleanup, the PRS may take unilateral state investigation and remediation action utilizing LUST Trust funds. These actions are funded 90% by a federal grant which is matched by 10% in state monies. State action is cost recoverable, plus up to twice the actual costs for damages, against the responsible party(s) in accordance with the provisions of CECRA. The agency utilizes these provisions to encourage responsible parties to conduct their own

investigations/remediations in accordance with program requirements. Legal enforcement against insolvent or bankrupted responsible parties is not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs.

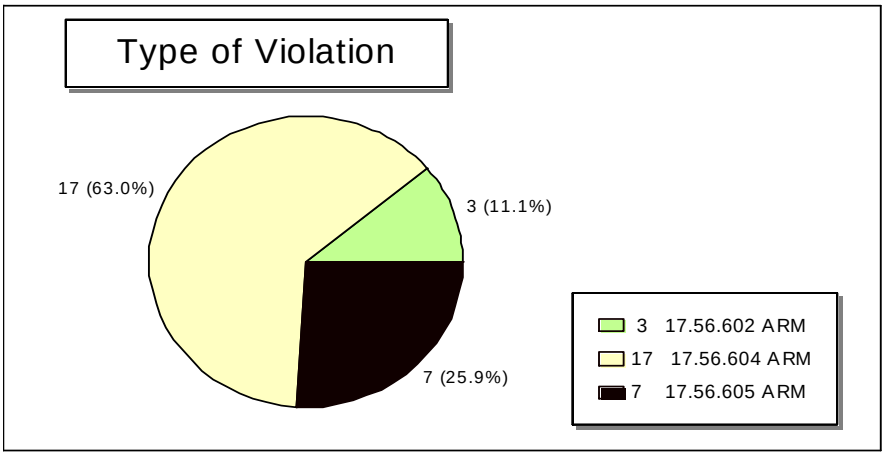
6. History of compliance

DEQ has issued a total of 20 notices of violation (NOVs) for 27 violations of corrective action provisions of the Underground Storage Tank Act since 1989.



These notices are categorized into three major violation types:

a. failure to conduct initial response and abatement measures, 17.56.602 ARM;
b. failure to conduct remedial investigation, 17.56.604 ARM; and
c. failure to conduct remedial actions, 17.56.605 ARM.



As reflected by the above data, compliance has not been necessary at the majority of the 3,308 LUSTs in Montana. Notices of violation issued by the program were necessary at only 0.6% of the known releases. This overall compliance is credited to the availability of PTRCF funding, ability for the state to take unilateral corrective actions through the LUST Trust, and the collaborative approach taken by PRS case managers.

Mine Waste Cleanup Bureau

Comprehensive Environmental Cleanup and Responsibility Act, 75-10-705

1. Program description

Congress created the federal Superfund program in 1980 under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to address the nation's most contaminated sites. In 1989, the Montana Legislature passed the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) for investigation and cleanup of those sites not being addressed by the federal Superfund law.

The federal and state Superfund laws apply to sites where a release or a threatened release of a hazardous substance exists. In Montana, the majority of these releases have occurred at sites where mining, smelting, wood-treating, railroad fueling and maintenance, petroleum refining, landfilling, and chemical manufacturing/storage activities were conducted. Historic waste disposal activities at these sites caused contamination of the air; had caused or may cause public health impacts, such as contaminated drinking water; and ecological impacts, such as loss of fisheries.

2. Describe the activities and efforts taking place to promote compliance and assistance efforts

The following list includes several of the methods used to promote compliance. These have been divided into two subcategories: (1) Disincentives for Noncompliance, and (2) Incentive for Compliance. Staff believe the disincentives for noncompliance have a stronger effect than the incentives for compliance.

A. Disincentives for Noncompliance:

1. Noncompliance with terms of notice letters or orders can result in the entity being required to reimburse the state for its costs in conducting the required action plus two times the amount of the state's costs.

2. Statutory penalties available to the state include administrative penalties of $1,000/day and civil penalties of $10,000 day/violation. Willful violation of a CERCLA order at a federal Superfund site carries a penalty up to $25,000 per day for each violation. In addition, orders typically have stipulated penalties for noncompliance with particular terms of the order, such as deadlines for documents required by the order.

3. Because the liability scheme under CECRA is explicitly strict, several and joint responsible parties initially focus resources on cleaning up sites rather than litigating over culpability/responsibility.

B. Incentives for Compliance:

1. Superfund technical and legal staff provide meeting opportunities and written comments to assist responsible parties in understanding requirements. Orders require DEQ or EPA approval of key elements of planned cleanup action by responsible parties.

2. A “no further action” letter is available to entities successfully conducting DEQ-approved voluntary remedial actions in compliance with the new Voluntary Cleanup and Redevelopment Act.

3. Both Superfund programs have general guidance on remedial investigations/feasibility studies and risk assessments that assist responsible parties in conducting these activities.

4. Parties that clean up facilities in compliance with terms of Superfund laws and orders have a legal right of contribution against other responsible parties for an equitable share of the costs.

5. Compliance with Superfund laws and orders allows a responsible party contribution protection from other responsible parties that did not settle with the state.

6. Educational Efforts:

   a. Superfund staff give formal presentations at meetings, conferences, annual meetings, and workshops to explain the requirements of Superfund.

   b. Public meetings and comment periods are advertised and held frequently throughout the Superfund investigation and cleanup process.

   c. Testimony is provided at legislative committee hearings.

   d. News releases and articles for the news media are prepared, released and distributed for public information purposes.

   e. Fact sheets are provided for large sites undergoing multi-year remedial actions at critical phases in the Superfund process, such as completion of remedial investigation, feasibility study, risk assessment, or proposed plan.

   f. A database is maintained to provide general information on all facilities.

   g. Every two years, a Superfund Basics booklet is produced to explain the Superfund process and to summarize progress on specific sites.

3. Size and description of the regulated community and the estimated portion of that community that may be in compliance

Under CECRA and CERCLA, the following entities can be responsible parties at sites where hazardous substances have been released:

- current owners or operators (unless certain defenses apply);
- those who owned or operated the property at the time of disposal of the hazardous substance;
- those who arranged for the disposal of the hazardous substance on the property; or
- those who transported the hazardous substances to the property for disposal.

Therefore the categories of responsible parties under CECRA and CERCLA are based on the relationship of the party to the property which poses the threat.

Of the eight (8) federal Superfund sites, five (5) are mining and three (3) are wood-treating sites. There are approximately 300 state Superfund sites to be addressed by the CECRA Program.

The following is a breakdown of the types of sites that comprise the regulated community: 10% miscellaneous chemical/hazardous waste (plating, battery, spills, etc.), 12% mining/smelting, 11% wood treating, 10% railroad, 10% landfills/dump, 9% old refineries, 7% pesticide sites, 6% miscellaneous petroleum sites, 5% drum/barrel sites, and 15% other (outdoor asbestos, solvent, radioactive wastes).

4. Number, description, method of discovery, and significance of noncompliances, including those that are pending

Traditional violations aren't applicable to the Superfund programs because the problems are usually historic. Sites are "discovered" in a variety of ways including reports from the public and other government agencies. Sometimes they are uncovered by other regulatory programs as they go about their regular inspection functions.

The significance of the individual sites addressed under the federal program is determined by the US EPA. All NPL sites in Montana are currently being addressed. Sites under the state program are grouped as high, medium or low, and are addressed accordingly.

5. Describe how the department has addressed the noncompliances listed above and include the noncompliances that are pending

The Superfund programs don't operate in the traditional regulatory manner in that there are no permits issued or compliance inspections performed that would result in issuance of NOVs, etc. Rather, the responsible parties are usually given orders by DEQ to perform certain things. If the responsible party doesn't comply with the orders, DEQ can go to court to have the orders enforced.

6. Quantitative trend information

The DEQ has historic information up to July 1, 1993. Since that time personnel have not been available to track and compile this type of information. It is anticipated that the Remediation Division will hire a person whose duties will include managing a database that will have enforcement-related information.

Section 3. Enforcement Division

1. Citizen complaints and spill reports

All citizen complaints and spill reports received by DEQ are routed to the Enforcement Division complaints clearinghouse for processing. The clearinghouse was established to ensure that all citizen complaints are recorded and addressed in a timely manner and to eliminate duplicate investigation of citizen complaints.

Complaints are investigated to determine if a statute or rule administered by DEQ has been violated. Enforcement Division staff attempt to resolve and close all minor complaints. If a documented violation is related to a permitted facility or an activity that requires a permit, it is referred to the DEQ Permitting and Compliance Division. If the violation constitutes a major cleanup effort, it is referred to the DEQ Remediation Division. Complaints that are under the jurisdiction of another agency, such as the Department of Fish, Wildlife and Parks or a county health department, are referred to the appropriate agency. Complaints are considered closed if the matter has been resolved, if it was determined that no violation occurred, or if the information provided was not adequate to investigate.

A summary of the type of complaint and spill reports for the FY97-98 reporting period and the current status of these complaints is presented below. During the reporting period, 1,947 complaints and spill reports were received. The majority of the complaints were associated with reports of water quality problems. Complaints about air quality and dust were also numerous during the spring of 1998 due to an inversion which trapped particulates in the air. It currently takes an average of 50 days to close a complaint.

Table 29. Number of Complaint/Spill Reports by Type - FY97 and FY98

Spills	490	Opencut Mining	13
Air Quality	335	Coal/Uranium Mines	2
Asbestos	18	Metal Mines	15
Surface Water (MPDES) Permits	103	Abandoned Mines	1
Non-Point Source Discharges	97	Junk Vehicles	16
Groundwater (MGWPCS) Permits	19	Solid Waste	121
Hazardous Waste	98	Septic Pumpers	3
Waste Oil	7	Subdivisions	29
Pesticides	2	Underground Storage Tanks (UST)	38*
Municipal Waste Water Treatment Systems	14	Superfund	0
Sewage	21	Water Quality	330
Public Water Supply Systems	59	Other (Outside DEQ Authority)	116
			1,947

*Note that these are UST complaints only. The Hazardous Waste Site Cleanup Bureau also recorded UST leak reports during this reporting period.

Table 30. Status of Complaint/Spill Reports - FY97 and FY98

Active under investigation by Enforcement Division (ENFD)	120
Active Referred (to other DEQ programs for investigation and follow up)	163
Active Enforcement Case (complaints that lead to enforcement action)	36
Closed (resolved by ENFD)	645
Closed No Violation (ENFD investigation determined no violation occurred)	244
Closed by Program (resolved by other DEQ programs)	434
Closed Referred (referred to outside agency for resolution)	246
Closed Not Enough Information (not enough information was provided to investigate)	59
	1,947

2. Enforcement cases

DEQ staff provide technical assistance to the regulated community to help maintain compliance. Enforcement actions occur when assistance fails to obtain compliance, when a violator is recalcitrant, or when the violation poses an imminent threat to human health or the environment. Enforcement cases are initiated when an enforcement request form is completed and submitted to the Enforcement Division. The following table summarizes the enforcement case information for the reporting period.

Table 31. Analysis of Enforcement Actions by Action Type - FY97 and FY98

Statute	Case Load	Enforcement Action Type		
		Administrative	Civil	Criminal
Air Quality Act	18	10	8	0
Asbestos Control Act	8	1	7	0
Strip and Underground Mine Reclamation Act	17	17	0	0
Hazardous Waste Act	7	5	2	0
Metal Mine Reclamation Act	11	11	0	0
Motor Vehicle Recycling and Disposal Act	7	1	6	0
Opencut Mining Act	25	25	0	0
Public Water Supply Act	41	37	4	0
Solid Waste Act	3	2	1	0
Underground Storage Tank Act	2	1	1	0
Water Quality Act	27	22	4	1 [1]
Total	166	132	33	1

[1]This continuing criminal action was initiated in 1997 by a county attorney upon the request of DEQ.

The majority of enforcement actions issued by DEQ are administrative actions as shown in Table 31. DEQ's approach to enforcement is to take action before a violation becomes severe by issuing administrative penalty orders with small penalties. However, DEQ also assesses large penalties through civil actions against major violators who cause significant violations. The most active administrative enforcement area has been under the Montana Public Water Supply Law with 37 administrative orders or administrative penalty orders issued to public water suppliers. Other active areas include enforcement under the Opencut Mining Act with 25 orders and the Strip and Underground Mine Reclamation Act with 25 orders. Most of these orders also assessed

an administrative penalty. The fact that written administrative penalty regulations are in place for these programs aids in the efficient processing of administrative penalty orders. Enforcement under the Air Quality Act was also active with 10 administrative cases and 8 civil cases. Civil actions were necessary because many of the violators were classified as major facilities and because the proposed penalties exceeded the administrative penalty cap of $80,000 specified in the Clean Air Act of Montana.

Table 32 shows that 146 new cases were initiated during FY97, 52 cases were settled and closed, and 74 violators are still under enforceable orders with compliance requirements. A summary of penalty information is presented in Table 33. Over 1.1 million dollars in penalties have been assessed by DEQ enforcement actions. However, only $329,606 has been collected. The reason that not all of the assessed penalties have been collected are that some were assessed in FY98 and are not due until FY99 and are therefore not included in the total for the period covered by this report. Also, some penalty orders are still being negotiated, others have been appealed, and several have been default judgments awarded by the court against violators who are likely unable to pay the penalty. Increased enforcement in the areas of water quality and underground storage tank is expected in the future. Administrative penalty regulations were promulgated in 1998 that will provide DEQ with increased flexibility to issue administrative penalty orders.

Table 32. Status of Enforcement Actions by Statute - FY97 and FY98

Statute	Case Load (FY97 FY98)	Origin of cases					
		Cases continuing from prior years	Actions requested during FY97 & FY98	Case Development[1]	In Litigation[2]	Under Order[3]	Closed[4]
Air Quality Act	18	1	17	2	5	4	7
Asbestos Control Act	8	0	8	1	6	0	1
Strip and Underground Mine Reclamation Act	17	0	17	2	1	13	1
Hazardous Waste Act	7	1	6	3	1	1	2
Metal Mine Reclamation Act	11	1	10	0	0	5	6
Motor Vehicle Recycling and Disposal Act	7	1	6	1	2	4	0
Opencut Mining Act	25	1	24	3	0	6	16
Public Water Supply Act	41	11	30	1	1	28	11
Solid Waste Act	3	0	3	0	1	1	1
Underground Storage Tank Act	2	0	2	0	0	2	0
Water Quality Act	27	4	23	9	1	10	7
Total	166	20	146	22	18	74	52

[1]**Case Development.** Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.
[2]**In Litigation.** Defendant and DEQ are engaged in pre-complaint settlement negotiations; e.g. a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.
[3]**Under Order.** Violator is subject to a legally-enforceable administrative or judicial order.
[4]**Closed enforcement case.** Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 33. Amount of Penalties Assessed (in dollars) - FY97 and FY98

Statute	Orders with Penalties	Penalties Assessed	Penalties Suspended	Penalties Collected	Bond Forfeitures	Supplemental Environmental Projects
Asbestos Control Act	2	$20,852				
Air Quality Act	10	$376,827		$245,189		$66,342
Strip and Underground Mine Reclamation Act	13	$386,280		$880	$428,500	
Opencut Mining Act	15	$8,550		$8,050		
Public Water Supply Act	22	$49,351	$2,970	$26,537		

Statute	Orders with Penalties	Penalties Assessed	Penalties Suspended	Penalties Collected	Bond Forfeitures	Supplemental Environmental Projects
Motor Vehicle Recycling and Disposal Act	2	$205,900				
Hazardous Waste Management Act	2	$19,900				
Metal Mining Reclamation Act	7	$13,050		$13,050	$2,025	
Solid Waste Management Act	1	$23,250		$23,250		
Water Quality Act	1	$25,300		$12,650		
Total	75	$1,129,260	$2,970	$329,606	$430,525	$66,342

Section 4. Response to HJR10 Compliance and Enforcement Study: General Follow-up Questions

A. Enforcement Policies

1. Does your agency have a written compliance and enforcement policy and procedures manual for each program reviewed today? Please describe (including any specific components related to information, technical assistance, incentives, penalties, etc.).

The DEQ Director adopted the former Department of Health and Environmental Sciences, Water Quality Division Compliance and Enforcement Manual in October 1995. Although this manual was intended for the water programs, DEQ enforcement activities generally follow the procedures described in this manual. Forms contained in the DHES manual, such as complaint report forms and enforcement request forms, have been consolidated, refined and updated for use in DEQ. Use of the process to numerically rank cases for enforcement that was prescribed in the old manual has been discontinued. Since the hiring of bureau chiefs in January 1997, department management has been working to identify the consistencies and inconsistencies in the variety of enforcement authorities administered by DEQ. Model enforcement procedures with standardized terminology and steps have been developed and DEQ staff were trained on the model procedures in the fall of 1997.

Work on a final DEQ enforcement procedures manual has been delayed pending the negotiation of a consolidated cooperative enforcement agreement with EPA. Instead of five individual enforcement agreements for the delegated programs (air, drinking water, public water, hazardous waste, and underground storage tanks), DEQ drafted one consolidated agreement. The draft agreement was submitted to EPA in August 1998 for review. A final DEQ enforcement manual

that incorporates the terminology and procedures in the draft enforcement agreement is nearly ready for internal review and approval. Also, DEQ anticipates development of legislation for the 1999 Legislative Session that will standardize enforcement authorities and procedures for over 15 different environmental laws.

Penalty calculations are conducted using a variety of methods depending upon the statutory authority. Several statutes, with administrative penalty and rule-making authority, have rules in place to describe how penalties are calculated. EPA penalty policies are followed for civil cases under the EPA-delegated programs. Appendix B lists the existing penalty rules and policies used by DEQ.

B. Use and Balance of Enforcement Tools

1. Please describe how your program balances "compliance assistance" efforts with traditional enforcement activities (if any). Does your funding scheme adequately support this balance? Are you making any efforts to shift this balance (e.g., working to implement BMPs where there were none before, etc.)?

Regulatory programs in DEQ attempt to work with the regulated community to maintain compliance. This compliance assistance is provided through field investigations, instructional materials and correspondence. If a violation poses a significant threat to human health or the environment or if the violator is recalcitrant, an enforcement action is typically initiated to force the violator to comply. Opportunities to "balance" assistance with enforcement are limited as programs strive to meet the statutory mandates to implement regulatory controls.

Compliance assistance in most programs is generally adequately funded for the current scope. The exception to this is DEQ's request for three additional compliance specialists: one in the Water Protection Bureau and two in the Air and Waste Management Bureau. Compliance assistance would also be improved by supplementing the asbestos control staff with one additional FTE, as this program has grown. These FTEs have been requested in DEQ's budget package to the 1999 Legislature.

Additional BMPs are not being developed in the regulatory programs because the types of requirements that might be identified as BMPs are already either developed and adopted or incorporated into existing regulatory requirements.

2. Does your program have written assistance and outreach goals? How do you integrate participation of the regulated community in program and rule development?

The Permitting and Compliance Division does not have written outreach goals beyond what is required under the statutes being implemented and what is defined in our performance goals under federal grants. These activities typically include training and seminar opportunities, and regularly scheduled meetings with advisory councils and local government representatives.

C. Record-Keeping/Measuring Success/Legislative Oversight

1. If you have not already done so, please describe and/or demonstrate how your programs keep records of compliance and enforcement activities. Do you provide annual summaries of these records? How are these records made available to the public?

Each regulatory program is required to track violations and the individual response to those violations. EPA-delegated programs use national databases to track permit compliance information. Information on citizen complaints, spills, and enforcement activities are recorded in DEQ's Enforcement Compliance Information System (ECIS). This enforcement information is summarized and reported to the public via press releases and the DEQ home page every six months. Information on the DEQ response to noncompliances is reported to the public and the legislature via the biennial report required in §75-1-314, MCA. DEQ file information is always open for public review.

2. In your opinion, what information (i.e., "indicators") might be best to judge the effectiveness or success of each of your compliance/enforcement programs, in relation to the relevant statutory goals? How might such information be collected, maintained, and reported? Is such information currently being collected? If not, what would it take to collect it?

Although it is difficult to quantify the effectiveness of compliance/enforcement programs, assistance efforts that are specifically directed toward a regulatory requirement can be evaluated. For example, DEQ is reaching out to buried fuel tank owners through letters and informational meetings to inform them of the December 1998 upgrade deadline. If the majority of tanks are brought into compliance within the prescribed time frame, this assistance effort will have been a success. Similar assistance efforts are targeted toward dry cleaners and auto body shops that may generate small quantities of hazardous waste.

Other than tracking information on noncompliance and enforcement statistics, other specific indicator information is not collected or recorded. An organized, funded effort would be required to collect and manage data on indicators. DEQ is currently evaluating its fundamental information technology capabilities and needs. Development of a centralized DEQ database, which includes basic permittee data, may be an outcome of this evaluation. It is likely that compliance indicator information could be included in the database. Possible compliance indicators might include looking at the number of inspections vs the number of violations or the number of violations per number of facilities. Changes in the number of significant noncompliances that occur would be an indicator of the level of compliance. The number of enforcement actions and penalty amounts could also be an indicator.

D. Seriousness (Risk) of Violation

1. Is there an emphasis in your programs and policies on preventing and correcting violations that pose the greatest risk to human health and the environment? If so, please describe how this is emphasized.

One of DEQ's guiding principles states that "We recognize that most environmental regulations and standards are intended to protect the public health by preventing serious injury or illness." Whenever an existing or potential violation is discovered, DEQ staff automatically judge the risks to public health and safety. Violations that pose a threat to public health have a higher priority and are addressed more immediately than threats to the environment. Several programs use technical review criteria or enforcement response criteria to classify the significance of the violation. A violation that poses a greater risk to human health or the environment usually constitutes a more significant violation. For example, in the MPDES permit program the threshold for significance for exceeding a permit effluent limit is lower for toxic parameters than for a conventional parameter. Also, under several statutes DEQ has the authority to immediately issue an order or assess a penalty if there is an imminent threat to human health or the environment.

E. Staffing/Resources/Contracting

1 When issuing contracts, does your agency retain in-house all regulatory decision-making and quality control functions? Do contract stipulations protect against conflict of interest?

DEQ contracts do not delegate regulatory decision-making and quality control.

2. Please comment as to whether you feel funding is sufficient to carry out your programs' statutory obligations.

Additional funding is needed in the areas of staffing for present level workloads in various air and water programs including subdivisions, as reflected in DEQ's budget requests. Secondarily, funding increases are needed to provide for effective maintenance and upgrading of program databases that support the effective implementation of statutes. These, too, have been included in DEQ's budget requests.

3. Do any of your programs suffer from inability to retain staff? How has or will these problems be addressed?

Staff retention is always of concern. However, if all DEQ staff stayed with the agency an average of six years, there would still be an average of one turnover a week. Ability to retain staff is dependent on many factors, including rate of program change, salaries, longevity, and stress levels related to workload and the nature of regulatory work. Most of these factors hinge on legislative actions through time and there is little DEQ can do to address these problems. Department experience is that smaller programs are periodically subject to high rates of change when one or more of these factors impact a program concurrently. These programs then experience a period of stability before such a change again occurs.

Actions DEQ can and does take include regular review of position classification to ensure compensation is appropriate for duties that may change or accrue with a position over time, submission of budget requests for additional resources, and development of clear and consistent rule guidance. In addition, we are in the process of trying to ensure each program has adequate

operating guidelines to ensure consistent application of program standards so that disruption is minimized as turnover occurs.

F. Primacy

(This topic is being addressed in separate EQC efforts.)

G. Further Recommendations

1. How is your agency improving coordination with local jurisdictions regarding delegated or overlapping regulatory functions?

DEQ coordinates with multiple federal, state, and local agencies in its response to citizen complaints. The new DEQ complaint clearinghouse has centralized and streamlined communication between these entities. In addition, complaint management staff communicate directly with outside agency personnel to better coordinate investigations of alleged violations. Implementation of the DEQ complaint clearinghouse has minimized duplication by establishing one central DEQ point of contact for response to reported violations.

To maintain and improve coordination with local government, DEQ publishes newsletters such as the Subdivisions Newsletter. Advisory councils, work groups, and task forces further facilitate the process of coordination as these groups work to develop solutions to common problems.

2. How quickly does your agency respond to citizen complaints regarding how those complaints have been resolved?

All citizen complaints and spill reports are immediately entered into the Enforcement Compliance Information System. ENFD staff investigate the allegations and often conduct field investigations to determine if a violation of a law or rule administered by DEQ has occurred. If no violation has occurred or if adequate information cannot be obtained, the complaint is closed. If the alleged violation is under the jurisdiction of an outside agency, the violation is formally referred to that agency. If a violation of a law or rule administered by DEQ is validated, the violation is referred to the appropriate DEQ bureau for follow up. Follow up usually includes requiring the violator to obtain a permit or to conduct cleanup. ENFD will close the complaint when it has received verification from the regulatory bureau or the outside agency that the compliant has been resolved. Currently, it takes an average of 50 days to close a complaint.

3. Is all statutory-required rule-making complete for the programs included in this review?

Not all required rule-making is complete and rule-making is an ongoing process. DEQ developed a flow chart to organize and guide the rule development process and prioritize the agency's rule-making needs. The priorities were established on the basis of factors which include but are not limited to impact and scope, public comment, and significance of the problem being resolved by the new rule-making. Rules mandated by statute which have not been promulgated are not complete because the total number of required changes dictate that DEQ prioritize its rule

writing. In addition, DEQ has made an effort to streamline the rule writing effort by incorporating non-statutorily driven changes to the extent practical.

Rule-making is not complete for megalandfills. This is a very low priority given the current lack of interest in any party to permit a megalandfill. Infectious waste rules are also not complete. However, they are in the process of going through a final legal review prior to publishing.

4. What does your agency have to recognize environmental protection efforts, including public/private cooperative efforts?

The DEQ's Pollution Prevention Bureau participates in three partnerships that recognize the environmental achievements of businesses. Bureau staff meet with representatives from the U.S. Small Business Administration (SBA) and the Montana State University Pollution Prevention (MSU P2) Program each year to nominate candidates for and select a winner of the Excellence in Environmental Achievement Award for Small Business, which is awarded by the Governor at the SBA's annual Small Business Dinner.

The MSU P2 Program recognizes environmental achievements by small businesses through its EcoStar Program. The EcoStar Program evaluates the environmental achievements of small businesses and recognizes those that meet a set of criteria with a press release, certification and window displays. DEQ's Pollution Prevention Bureau participates in nominating candidates for this program and in selecting its recipients.

The Pollution Prevention Bureau is currently developing a Helena Area Smart Business Directory with a group of citizens and business people. The directory will feature businesses that practice pollution prevention, energy efficiency and conservation, and will be distributed throughout the community as information for consumers.

5. Has DEQ developed Ombudsman-like programs for pollution prevention media other than air quality?

Yes and no. The Small Business Ombudsman and Small Business Assistance Program (SBAP) functions were placed in the DEQ's Pollution Prevention Bureau during DEQ's reorganization. This has helped the SBAP provide information about waste management and water quality issues to small businesses by linking them with the appropriate personnel in the Pollution Prevention Bureau and the rest of DEQ. However, the bureau has not yet secured the resources necessary to offer Ombudsman-like services for media other than air quality. However, this is a priority that the SBAP and the bureau intend to pursue.

Electronic copies of appendices A and B are not available for the DEQ Enforcement Report. For paper copies, please contact the EQC Office.

Appendix C

REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL

STATUS OF COMPLIANCE WITH, AND ENFORCEMENT OF, MONTANA'S NATURAL RESOURCE AND ENVIRONMENTAL LAWS

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
SEPTEMBER 1998

INTRODUCTION

The new Department of Natural Resources and Conservation (DNRC) was established on July 1, 1995, as a result of SB 234, which reorganized three natural resource and environmental agencies and shifted certain natural resource management functions. The department retained the Water Resources Division, Conservation and Resource Development Division, Reserved Water Rights Compact Commission, and Oil and Gas Conservation Division. It received the Forestry and Trust Lands Management Divisions from the former Department of State Lands. It also consolidated services staff from both agencies into the Centralized Services Division.

Duties and Responsibilities

The duties and responsibilities of the Department of Natural Resources and Conservation were significantly revised as the result of this reorganization.

The department is responsible for sustaining and improving the benefits derived from our water, soil, and rangeland; managing the State of Montana's trust land resources to produce revenues for the trust beneficiaries; protecting Montana's natural resources from wildland fires through regulation and partnerships with federal, state, and local agencies; promoting the conservation of oil and gas and preventing resource waste through regulation of exploration and production; and managing and assisting in the management of several grant and loan programs, including the renewable resource, reclamation and development, treasure state endowment, and wastewater revolving fund programs. The department is also responsible for promoting the stewardship of Montana's water, soil, forest, and rangeland resources and for regulating forest practices.

Department Organization

The director of the Department of Natural Resources and Conservation is Arthur R. "Bud" Clinch.

Eight boards and commissions are attached to the department. Four of them -- the State Board of Land Commissioners, the Reserved Water Rights Compact Commission, the Board of Oil and Gas Conservation, and the Board of Water Well Contractors -- have decision-making authority. The other four -- the Resource Conservation Advisory Council, Rangeland Resources Committee, Grass Conservation Advisory Committee, State Water Plan Advisory Council, and Drought Advisory Committee -- act in an advisory capacity only.

The department has been organized into seven divisions:

- Centralized Services Division
- Conservation and Resource Development Division
- Forestry Division

- Oil and Gas Conservation Division
- Reserved Water Rights Compact Commission
- Trust Lands Management Division
- Water Resources Division

Two of the divisions -- the Oil and Gas Conservation Division and the Reserved Water Rights Compact Commission -- are attached to the department for administrative purposes only.

Philosophy of Compliance

The department's philosophy of compliance is that information, education , and assistance are means by which most resource protection will be obtained. Aggressive enforcement actions are used for cases when the natural resource has been threatened and information and education did not bring the desired results. Three of the department's seven divisions have programs that report under HB 132. They are:

Forestry Division
    Service Forestry
Oil and Gas Conservation Division
    Oil and Gas Conservation Program
Water Resources Division
    Water Operations Program - Dam Safety
    Water Measurement Program
    Water Rights Program
    Board of Water Well Contractors

FORESTRY DIVISION
SERVICE FORESTRY PROGRAM - HB 132 COMPLIANCE REPORT

. Promoting Compliance:

The following are ongoing programs to assist regulated communities with Service Forestry Regulation Compliance.

Information/Education:

BMP literature: Law requires the state to provide BMP information to people applying for a Hazard Reduction Agreement (HRA). The packet of information sent include the Montana BMP publication; a 33-page full color discussion of BMPs relating to roads, SMZ law and management, timber harvest, stream crossings and more. Two thousand to twenty-five hundred of these publications are distributed annually.

BMP audits: The 1998 audits collected information on 55 harvested sites throughout the state. The audit effort evaluates how well BMPs are being applied and how effective they

are at protecting soil and water resources. The results are published and approximately fifteen hundred copies will be distributed. Besides the results providing education information, the process is educational too. Fifty to sixty audit team members from many backgrounds and interests become intimately familiar with how BMPs are applied on the ground. Moreover, landowners, agency professionals, loggers and others are encouraged to attend field audits to learn more about BMPs, when and how to properly apply them. The audits are a biennial effort.

Other workshops/training: Every year DNRC partners with the Montana Logging Association (MLA) to train logging professionals, forest landowners, and others about BMPs. In 1998, nine such works were provided. DNRC provides annual in-house training to achieve consistent legal interpretation and enforcement of regulations statewide.

NIPF landowners received broad natural resources education through the forest Stewardship program. Landowners learn about state law as part of this curriculum. This USFS program is administered by DNRC and taught through MSU Extension Service. Six workshops were provided this year.

The Department is assisting the Montana Forest Owner's Association to bring a new workshop series to landowners this fall. The four workshops, known as 'Loop of Knowledge' seminars will focus on landowners actively managing their forest resources. Information will include state regulations and where to secure help in managing forests and complying with state law.

Technical Assistance:

Forester Assistance: Service foresters in 15 unit offices and the state headquarters in Missoula are available to provide technical assistance. Assistance includes on-site visits, phone or office visits literature and consultant referrals. Literature distributed includes:

- BMP booklet (33-page color)
- SMZ regulation booklet (35-page color)
- Voluntary Wildlife Guidelines (4 page)
- HRA fact sheets (2-page)
- consultant directories (27 pages)
- other literature not directly related to regulatory programs.

Substantial on-site assists totaled 133 in FY98 and all technical assists equaled 1271.

Alternative Practices: Another form of assist is an SMZ Alternative Practices. These are formal requests to engage in activities that may technically violate the SMZ law. However, the action(s) would meet the intent of the law and not significantly diminish the functions of the Streamside Zone.

Requests for alternative practices ("alternative" to management standards stated in 77-5-3051 MCA) are given technical review and site visits. The merits of the request are evaluated along with the proposed mitigation measures. Environmental Assessments are completed and reviewed. If a request is granted, it is often with conditions that help protect the integrity of the SMZ. Fifty-two alternative practices were issued in FY98.

Enforcing violations: Enforcement actions take on many forms but almost always involve technical assistance to help mitigate a problem.

Inspections:

When a Hazard Reduction Agreement (slash HRA) is applied for, it is evaluated for possible pre-and/or post-harvest inspections. Low hazard sites, with low fire hazard risk and low risk of SMZ damage, may not be inspected at all. Conversely, high hazard sites may receive multiple visits.

Sites inspected for HRA compliance must meet the "four-foot flame length" standard. SMZ inspections typically occur in conjunction with an HRA inspection or when a possible violation is reported to the Department.

Enforcement Actions:

Hazard Reduction (Slash): HRA violations result when hazard reduction work does not meet state standard or fees are not paid. Inadequate hazard reduction work may result in bond forfeiture, billing to have work done and/or penalty assessment. These consequences result when the Department "takes over" HRAs that are in non-compliance.

The HRA law has a unique system where the landowner is watching the operator to ensure hazard reduction compliance and the operator is watching the mills to ensure fee compliance. When the operator (logger) delivers logs to the mill, money is withheld on a per-unit basis for fees and a performance bond. When compliance is achieved, the bond is refunded to the operator. If the "slash" account has discrepancies, the operator generally notifies DNRC of a potential fee compliance problem at the mill. The Department's accounting system verifies the problem. If discrepancies or delinquent payments are taken care of promptly, the matter is settled. If not, a process ensues to recover fees which may result in a fine or even a mill audit.

SMZ law**:** SMZ enforcement actions include:

- warnings: letters documenting violations which may or may not include damage repair requirements.
- orders: letters requiring stoppage of prohibited activity and repair order. Orders may or may not be accompanied by fines.

Fines levied require substantial documentation and legal processes, which may include formal court cases. To date, no fines have been challenged in court proceedings. The details of current enforcement actions are detailed in the "Noncompliance Section." The various forms of violations and accompanying Department responses included:

Administrative Notices/Orders:

Verbal Warnings	Issued when the forester discovers a minor technical problem with little or no damage or mitigation required, and the forester is reasonably certain that corrective and/or preventive action will be taken in the future.
Formal (written) Warning	Issued to document violations and damage and instruct mitigation/work. Generally, they are given to *first*-time offenders, those unaware of the laws, and for minor damage or easily correctable conditions.

Administrative Penalties/Sanctions:

Notice of Violation	Issued upon serious offenses, or with significant damage, to repeat violators, or when warnings have expired and *repair* actions have not been completed in a reasonably timely manner. Typically includes an Order to Mitigate or an Order to Cease and Repair. There were three issued in FY98.
Order to Mitigate for Damage	When the Department determines that an owner or operator has violated the SMZ law and has caused damage to watershed or wildlife resources, the Department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable, stated time frame. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation. There were three issued in FY98.
Cease Order	The Department may include in an order a provision that the owner or operator immediately ceases causing further damage and take immediate action to alleviate the damage or to prevent future damage.

Opportunity for Hearing

The order becomes final unless, within 30 days after the notice is mailed, the person named requests in writing a hearing before the Department. Upon receipt of such a request, the Department schedules a hearing.

Rescinding of Order

If the Department finds that a violation has not occurred, or that site rehabilitation is not warranted, it rescinds the Order.

Civil Penalties

Penalties may be assessed for any and all violations, and are generally sought when Orders are issued. The maximum penalty amount is $1,000 per violation, with each day of violation considered a separate violation.

II. The Regulated Community

Service Forestry typically deals with three regulated communities, each subject to different legislation, but with overlap between them. These regulated communities are:

The regulated community under the **Hazard Reduction** Act includes anyone (1) clearing rights of way (except temporary logging roads), (2) cutting forest products, building haul roads, and/or carrying out timber stand improvement activities on private lands. Purchasers of such forest products are also part of the regulated community in that they must insure the persons they are purchasing forest products from have complied with hazard reduction regulations.

Persons encouraged to use **Best Management Practices** are those involved in timber sale planning and harvest, associated road construction, and other related activities. The Department estimates there were approximately 6,000 persons engaged in such activities in 1995, mostly in western Montana.

Persons subject to the requirements related to **Streamside Management Zones** include those conducting timber sale activities in areas where such activities should be modified due to potential effects on aquatic resources. The Zone extends at least 50 feet (slope distance) from the ordinary high water mark of a water body, and further where there are wetlands or where steep or erosive soils require additional width.

III. History of Compliance

Trends in compliance with Service Forestry program rules and requirements are described and illustrated below.

Compliance with **Hazard Reduction** requirements has shown improvement over the last 15 years, as the number of state takeovers of hazard reduction activities has stayed relatively constant or declined, while the number of active HRAs more than doubled in the same time period. Relevant data for **calendar years** are shown below.

	CY1985	CY1990	CY1995	10-yr. Avg.
Million Board Feet Harvested (private lands)	561.3	611.9	693.2	634.8
Active HRAs	1,790	2,681	4,555	2,779
State takeovers	69	66	54	68

As of July 1, 1998, there were 4083 active HRAs. Harvest volume and state takeovers are about the same as the 10-yr. Average.

Compliance with **Best Management Practices** requirements has improved over the last five years, as shown below.

	1990	**1992**	**1994**	**1996**
Number of sites evaluated	44	46	46	44
Application of practices that meet or exceed BMP requirements	78%	87%	91%	92%
Application of high-risk practices that meet or exceed BMP requirements	53%	72%	79%	81%
Number of sites with at least one major departure in BMP application	61%	43%	37%	27%
Average number of departures in BMP application per site	9	5.6	3.9	3.0
Number (proportion) of practices providing adequate protection	80%	90%	93%	94%

Number (proportion) of high-risk practices providing adequate protection	58%	77%	83%	86%
Number (proportion) of sites having at least one major/ temporary or minor/prolonged impact	64%	37%	28%	34%
Average number of impacts per site	8	4.6	3	2.3

Source: Montana DNRC

SMZ violations over the four-year history of enforcement do not yet establish a clear trend. The most severe enforcement actions which include fines in the order are listed below:

Fines Collected:

Tony Pearson	9/21/94	$ 1,075
Lee Rost	1/11/96	17,450
Ron Myrstol	2/16/96	237
John Wemble	7/25/96	9,512
Intermountain Res. Inc.	3/97	1,800
Richard Schmaus	4/98	4,000
Total		$ 37,074

The balance of unspent funds as of 7/1/98 was $24,634. Because these funds have been de-ear-marked, it will no longer be possible to compare collections versus expenditures in the statewide accounting system.

Fines Pending:

McCloud	$12,075 billed but not collected
Total	$46,149

IV. Noncompliance

HRA:

The two areas of non-compliance are hazard reduction and fee collections. The measure of hazard reduction non-compliance is the number of HRA agreements the Department must take over because the HRA holder hasn't completed the terms of their HRA. In FY97, there were 62 takeovers and 61 in FY98. There are approximately 50 wood producing manufacturers that are occasionally or habitually non-compliant with fee payments. The state took a variety of steps to encourage compliance. One formal mill audit was conducted in 1997.

SMZ Law:

Violations result in some form of either a warning or a violation. The following table details the number and type of the warning and orders issued in FY97 and FY98:

	FY97	FY98		FY97	FY98
# WARNINGS ISSUED	28	34	**# ORDERS ISSUED**	4	3
RULE VIOLATED			**RULE VIOLATED**		
SMZ WIDTH	10	26	SMZ WIDTH	0	3
BURNING	0	0	BURNING	0	0
EQUIP OPER	21	26	EQUIP OPER	2	2
CLEAR CUT	6	12	CLEAR CUT	1	1
ROAD CONST	7	4	ROAD CONST	2	1
HAZ MAT	0	0	HAZ MAT	0	1
SIDE CAST	0	1	SIDE CAST	0	0
SLASH IN STREAM	9	9	SLASH IN STREAM	2	2
TOTAL PROHIBITED ACTS AFFECTED	**53**	**78**	**TOTAL PROHIBITED ACTS AFFECTED**	**7**	**11**

BMPs:

Because the BMP program is non-regulatory, there are no official violations of BMPs. The BMP audits give us some idea of how well BMPs are applied over time. There has been steady improvement in the 10-year history of audits. The 1998 audit results have not yet been compiled.

WATER RESOURCES DIVISION

WATER OPERATIONS PROGRAM - HB 132 COMPLIANCE REPORT

Promoting Compliance

Over the past two years, the Dam Safety Program has undertaken the following to promote compliance with the statutory goals of the program:

1. Enforcement Tools

   The existing database of dams was modified to keep track of deadlines and permit conditions. This database is referred to on a regular basis to assist the Program in sending out reminders of upcoming deadlines (see attachment).

2. Enforcement Actions

   Enforcement actions are usually on a case by case basis, depending on the threat to life and property. Although the Dam Safety Act gives authority to levy a fine or place a lien on property, this has not been done to date. Generally, we have been able to work with dam owners in violation of a permit condition to resolve any conflicts. In most instances, a reservoir level restriction eliminates safety concerns until the violation has been resolved. All reservoir level restrictions currently in place have been agreed to voluntarily by the dam owners. Currently, we have voluntary restrictions on Bair Dam, in Meagher County and Nevada Creek Dam, in Powell County. Both restrictions are due to concrete deterioration in the spillways. We also have a complete reservoir drawdown with Northern Pacific Reservoir Dam in Jefferson County, due to stability problems.

3. Technical Assistance/Outreach

   Currently, the Program's primary outreach effort is to get seepage monitoring plans implemented on all high hazard dams. This requires careful coordination with the owners and the owner's engineers. We have had great success in this area. When explained properly, dam owners understand the importance of monitoring seepage. Implementing a proper seepage monitoring plan can be expensive, if drilling is necessary. We are trying to use a phased approach to avoid economic hardship on the dam owners.

   In April of 1998, a significant problem developed at Tin Cup Dam, in Ravalli County. The Dam Safety Program provided extensive technical assistance in dealing with this serious emergency.

4. Information/Education/Training

   Public education and training is one of the primary emphasis of the dam safety Program. In 1997, we held a seminar in Helena regarding the installation of drains and filters in dams. In April, 1998, we held a conference on a wide variety of topics in Missoula. Specific training was also given to forest service engineers in March of 1998 and to a large dam owner in Missoula, in June, 1998.

The Dam Safety Program also updated an informational brochure the spells out in layman's terms the Dam Safety Act. In 1997 two issues of the "Dam Safety Outlet" newsletter were issued.

The Dam Safety Program has been taking the lead in getting training for the Helena and Regional office engineers on dam safety engineering issues. In order to have effective enforcement in the many technical issues associated with dams, there needs to be adequate training. For example, the Program, with assistance of federal funds, sent all regional engineers to the last Association of State Dam Safety Officials (ASDSO) conference in Boise in May, 1998.

The Regulated Community

Over the past few years, one newly constructed dam and 3 existing dams have been added to the Program's regulatory authority. Figure 1 shows are break down of types of dams that are regulated by the Program.

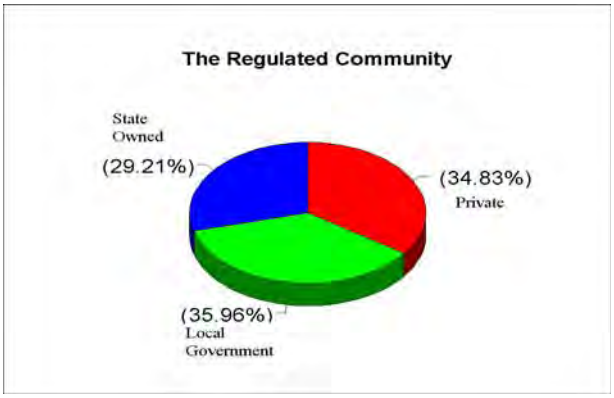


Figure 1.

Even though Federal dams are not regulated by the Program, we keep involved with the federal agencies that deal with dams. On April 29, 1998, the Dam Safety Program met with Bureau of Reclamation, the Bureau of Indian Affairs, the Natural Resource Conservation Service and the Bureau of Land Management. The purpose of the meeting was to discuss relevant dam safety issues such as sharing dam safety training and to maintain communications between State and Federal Agencies.

History of Compliance

The Dam Safety Law required that operation permits be submitted for all high hazard dams by July 1, 1995. This was achieved. Several dams were permitted prior to this date and renewals are now necessary. No permits have been denied to this date, although as discussed above, some reservoir level restrictions are in place.

Noncompliance

Currently, there is the possibility that some dams currently classified as not high hazard have become high hazard due to recent development below the dam. We do not have an adequate means of determining if this is happening, although it is something the Program intends to address in the near future. A good example is Little Sleeping Child Creek Dam, located in Ravalli County. The Program's initial involvement was through a complaint on the dam. Since there was a new subdivision in development below the dam, a hazard classification was conducted. The dam was then reclassified as high hazard and is currently in the process of obtaining an operation permit.

An annual update of emergency action plans is required. This requires coordination with the dam owner, local Disaster and Emergency Services and the sheriff, and can be a considerable amount of bookkeeping. Although it is ultimately the responsibility of the dam owner, the Program has found that without Program involvement, updates do not occur on a regular basis.

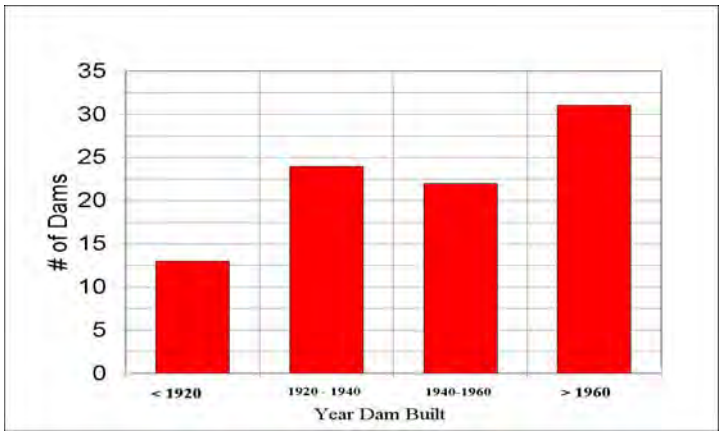
With many operation permits, specific conditions are attached to the permit with deadlines specified. Several of these conditions are past due. The Dam Safety Program generally has to work with dam owners to address these conditions. This will be the primary emphasis of the Program over the next year.

Additional Comments

The Dam Safety Program believes that overall compliance is very good. It is the opinion of the Program that in order to achieve compliance with the Dam Safety Act, considerable outreach is necessary by the State. When a dam owner realizes the importance of properly maintaining monitoring and inspecting their dam, they go out of their way to stay in compliance.

One of the biggest problems the Program is faced with is the fact that most of the dams are old. For example, in the 1930's most dams were constructed with metal outlet pipes. In general, a metal conduit has a useful life of 40-50 years. An increasing number of deteriorated outlets are being identified, requiring immediate repair. Repairing a dam can be very expensive. This can place extreme economic hardship on dam owners. It is important to realize that although the primary purpose of a dam is to impound water for irrigation, more often than not, these reservoirs also play an important role in community recreation. However, the dam owner is typically responsible for the entire cost of the repair. Figure 2 presents the distribution of regulated dams in the state with respect to age.

Figure 2. Distribution of Dams according to year built



WATER MEASUREMENT PROGRAM - HB 132 COMPLIANCE REPORT

PROMOTING COMPLIANCE

Over the last two years, the Water Measurement Program has undertaken the following measures to promote compliance with the statutory goals of the program.

Information and Education

In 1997 and 1998, informational meetings were held in towns within the Musselshell and Mill Creek basins. Water Measurement Program requirements were reviewed; measuring device vendors were present to display and discuss installation of measuring devices. Information regarding record-keeping, submittal of records, and possible grant sources was distributed.

Also in 1997 and 1998, all water users in the affected areas were mailed notification of the Water Measurement Program requirements.

Technical Assistance

Contacts for technical assistance were also distributed during the informational meetings. Contacts included State employees, NRCS and Bureau of Reclamation employees. Additionally, staff from the Water Measurement Program and Water Resources Regional offices have assisted water users in determining type and installation of measuring devices. This has taken place both through telephone conversations and site visits within the affected basins.

Inspections

Inspections by Water Measurement staff have occurred during the 1997 and 1998 field seasons. The Program approach has shifted from strictly a public-meeting format in 1997, to a public-meeting and individual inspection/assistance format in 1998. The individual inspections are a more effective approach to gaining compliance, however the general education and public meetings still provide vital background information.

Fines
Enforcement actions in the manner of fines for non-compliance have not yet been undertaken. Water users in the affected basins have been notified of the penalty for non-compliance, which may be up to $1000 per day of non-compliance.

THE REGULATED COMMUNITY

Currently there are two watercourses listed as "chronically dewatered" by the Water Measurement Program: the Musselshell River, and Mill Creek, which is a tributary of the Yellowstone River in Paradise Valley.

Musselshell River Basin
All diversions from the mainstem Musselshell River and from the lower reaches of the North and South forks of the Musselshell River are required to have measuring devices. This ruling was made in March, 1995, giving water users a deadline of April, 1997 to install and operate the measuring devices, and begin record-keeping.

State water projects exist within this basin. The primary purpose of the projects is to store water for irrigation use. Water contracts are bought by irrigators for water stored and delivered from the state water projects. The Lower Musselshell Water Users Association, with approximately 100 shareholders, is supplied water from Deadman's Basin Reservoir in the lower Musselshell basin. The Association requires shareholders to operate measuring devices on their diversions.

The Upper Musselshell Water Users Association, with approximately 54 shareholders, is supplied water from Bair Reservoir and Martinsdale Reservoir in the upper basin.

In addition to the water contracts, there are many decreed natural-flow rights, which are rights claimed for water that is not stored by reservoirs. There are approximately 350 owners of natural flow rights which divert from the Musselshell River mainstem. The requirement of measuring devices was necessary to facilitate a comprehensive water management system in the basin.

Mill Creek
This is a relatively small stream, which is a tributary to the Yellowstone River near the town of Pray. All diversions from the mainstem of Mill Creek are required to have measuring devices. The ruling took place in April, 1994, giving water users a deadline of April, 1996 to install measuring devices and begin record-keeping.

A pipeline/canal diversion exists in the Mill Creek watershed. This project, designed and built by the NRCS (formerly SCS) in 1992, supplies water to the vast majority of acres irrigated by Mill Creek. Approximately 30 water users now use the pipeline water. In addition to the pipeline system, there are seven major diversions from Mill Creek. Montana Dept. Of Fish, Wildlife and Parks also has water leases in this watershed.

HISTORY OF COMPLIANCE

The Water Measurement Program is relatively new, having been established in 1991. Since there are only two watercourses which have been designated "chronically dewatered", the history of compliance shall begin with the date of the Mill Creek designation, which is April, 1994.

Mill Creek

On this watercourse there are eight major diversions on which measuring devices should be installed, maintained and monitored. During the period between the order and the installation deadline dates (April 1994 to April 1996), the only known measuring device on any of the Mill Creek diversions was a Parshall flume located on the pipeline delivery canal. The flume was installed during completion of the project in 1992. No records have yet been submitted from the pipeline water users.

By the summer of 1997, three of the eight diversions possessed measuring devices, and in the fall of 1997, one set of records was received by the Water Measurement Program.

In the spring and summer of 1998, measuring devices were installed on six of the eight diversions. Water users have until December 15, 1998 to submit records for the 1998 season.

Mill Creek Compliance Summary

Although the Water Measurement Program has received records for only one of the eight diversions from Mill Creek, the trend is very positive. Two years ago, only one of the eight diversions possessed a measuring device. Now six of the eight diversions have measuring devices.

Overall compliance is still only 12.5 percent (one out of eight diversions). However, measuring devices have now been installed on 75 percent of diversions, owners of which are expected to submit records by the end of 1998. Program efforts in the manner of technical assistance and water measurement education have been effective.

Musselshell River Basin

In the Musselshell Basin there are three general groups of water users for which compliance to Water Measurement Program statutes is sought. The groups are: Upper Musselshell Water Users Association; Lower Musselshell Water Users Association; natural-flow (decreed right) diverters.

Both the Associations require all shareholders to operate measuring devices on their diversions. The records from these diversions are maintained by the Associations, and are also submitted to the Water Resources Regional Office in Lewistown.

It is difficult to arrive at a robust compliance figure. Since the Associations require measuring devices on shareholder diversions, a substantial majority of shareholders are in compliance.

Natural flow, or decreed water right users so far have a very low rate of compliance, about five percent. The concentration of measuring devices is especially low in the upper part of the basin.

Musselshell Basin Compliance Summary
A current basinwide compliance estimate of all mainstem water users would be approximately 50 percent. The Program plan is to field check 10 to 20 percent of the diversions per year over the next five years.

Again, the trend is positive. Due to site visits, direct assistance, field inspections and information dispersal regarding technical and financial assistance, more measuring devices are being installed in 1998, especially in the upper basin.

ENFORCEMENT POLICIES

Use And Balance Of Enforcement Tools
Thus far, the Water Measurement Program has not enforced violations in the traditional manner of issuing fines. One reason for this is that the Program is relatively new and, as in the case of the Musselshell Basin, has the potential to cover large areas. The enforcement activities involving technical assistance and education in both group and individual meetings have been effective so far in progressing toward Program goals.

In the last two years, the Program approach has been to educate water users concerning the benefits of installing measuring devices and to offer technical assistance in device installation. Generally, funding has been adequate to utilize this approach of assistance and outreach.

Record-Keeping/Measuring Success/Legislative Oversight
Records of compliance are maintained by keeping a database listing of water users who have submitted their diversion records. The database is updated according to new information. As of this time, there have not been annual summaries of compliance.

Success of the Water Measurement Program would likely best be measured in terms of the percentage of water users in the affected areas who install measuring devices and submit diversion records. Increases in the percentage of records received would be a measure of the success of actions taken to increase compliance.

Seriousness of Violation
This program is not concerned with factors which threaten human health or safety. However, the emphasis in the last two years has been to concentrate on compliance within the Mill Creek watershed, for several reasons. First, because Mill Creek is an important Yellowstone Cutthroat trout spawning stream, environmental concerns of dewatering are a larger factor here than in the Musselshell basin. The fact that the Montana Dept. Of Fish, Wildlife and Parks has several leases to senior water rights is also a factor on Mill Creek. Also, although Mill Creek supplies water to many water users, it is a small enough system that program success may be attained relatively quickly.

Staffing/Resources/Contracting
Funding seems to be adequate to carry out the statutory obligations of the Water Measurement Program. However, as more streams are added to the list, a larger travel budget must be developed.

The Program consists of one person to manage the budget and program, conduct field verifications, collect water flow data, assist water users in installation of measuring devices, research streams for potential listing to the program, and conduct public meetings. Some assistance is provided to the program by Water Resources Regional Office staff.

Retention of a Program Manager has been a concern throughout the short history of this program. This problem should be addressed by allowing for and providing funding for continued training and development in related technical areas, such as hydrology, hydraulics, agriculture, etc.

Further Recommendations
The Water Measurement Program has begun using alternate approaches in addition to those established by statute in order to assist water users in installing measuring devices. This includes working with watershed groups, such as the Big Hole Watershed Committee, and local water user associations, as well as other state agencies.

The program needs to remain flexible in order to be effective. Previous efforts have proven that in some instances an "assistance" approach is far more effective than an enforcement approach.

Summary of Water Measurement Program Promotional Activities

Musselshell River Basin

April 1, 1998: Send notification to mainstem water users that measuring devices are required and that information meetings will be held at Roundup and Harlowton.

April 29 & 30, 1998: Informational meetings are held at Roundup and Harlowton to display and demonstrate measuring devices, disperse information regarding program requirements and general water rights information.

June 9, 10 & 23, 1998: Work with individual water users to help install or advise for the installation of measuring devices, and inspect installed devices.

Mill Creek Watershed (Tributary to the Yellowstone River)

January 20, 1998: Send notification to Mill Creek water users that measuring devices are required and that an informational meeting will be held near Pray, Montana.

February 5, 1998: Informational meeting is held to discuss measuring devices, disperse information regarding program requirements and general water rights information. Representatives from Montana Dept. of Fish, Wildlife & Parks, and the Bozeman office of the Water Resources Division also attend.

June 3, 4 & 24, 1998: Meetings with individual ditch owners and operators on Mill Creek to discuss program purposes and requirements, advise location and type of measuring devices, and assist in device installation.

WATER RIGHTS PROGRAM - HB 132 COMPLIANCE REPORT

Regulated Community

Montana water law applies to a variety of interests. It encompasses the general public or anyone who might want to "throw a pump" into a river or lake. It also encompasses almost 200,000 water users who have water right permits, claims, certificates, or reserved rights and compliance means conforming to the limits of these water uses.

Over the past two years, the water right program has undertaken the following to promote compliance with the statutory goals of the program:

Information/Education

Water right staff have spent hundreds of hours educating the public and sister agencies such as title companies, real estate professionals, attorneys, water right consultants, bankers on water rights and specifically the requirement to properly file ownership updates with the DNRC when property changes ownership. We are pursuing becoming a part of the real estate training program in Montana and feel that by educating real estate professionals about water rights we will have a better educated group of new water right holders.

Water rights staff has updated and published our informational booklet *Water Rights in Montana* which is made available to the pubic. Water right staff in the regional offices have a large amount of public contact. Statewide it is likely that they discuss water rights with at least 80 people each day.

Activities Promoting Compliance

Compliance with Montana Water Law is encouraged in many ways.

Water Right Ownership Updates

85-2-424 requires that although water rights transfer with property, the DNRC ownership records must be updated. 6,476 Water Right Ownership Updates were receive during the FY97-98 biennium. We have developed a system to remind those new owners where water rights have been disclosed to update our records if we have not received an update from them within 90 days.

Groundwater Development -- 35 gpm and 10 af per year or less

During the FY97-98 biennium 5,442 Notices of Completion of Groundwater Development were received by water right staff, in addition to thousands of well logs. When we receive a well log and the Notice of Completion does not follow, we send a reminder letter advising the well owner of the requirement to file this document with our office. Hundreds of these reminder letters are sent and we regularly see an increase in the filing of these documents.

Permit and Change Notice of Completion -- Project Completion

At the time a new permit or change is issued, the permittee is give a reasonable time period in which to complete the project. Within a few months of the completion deadline, we send a reminder that they must file their Notice of Completion of their project. If the project isn't

complete, they must apply for an extension of the deadline. If we don't receive the notice or the extension, we take action to terminate the permit or change. During the FY97-98 biennium, we terminated 64 permits and changes for this reason.

Permit and Change Notice of Completion -- Report Due

Many water use permits and changes are issued with measurement requirements. These requirements differ depending on the unique situation, but for those permits where the water user is required to submit reports annually, we send a letter at the beginning of the irrigation season, so they will remember to measure throughout the season, and then in the fall after the season has ended, we send a letter reminding them to submit the report of their water use. These reports are then analyzed and compared to permitted limits and follow-up contact is made with those water users who have not complied with the limits of their permits. If we don't receive a report we follow-up with the permittee and in those cases where they refuse to comply, we terminate their permits. Noncompliance in this area is rare.

Water Use Complaints

It is estimated the regional offices may annually receive 500 phone calls or letters alleging violations of the water use act. However the bulk of the complaints are resolved by telephone simply by educating the involved parties. A small number -- approximately 150 this past biennium have required additional follow-up, investigations, or correspondence. It is through this mechanism that we typically become aware of unauthorized water uses. Someone complains and we work with the involved parties to bring them into compliance by filing the appropriate applications.

Noncompliance

As mentioned above, most of our "regulated community" are faced with termination of their permits for noncompliance issues. Others who use water in violation of the water use act can face fines up to $1,000 per day. During this biennium, we did not have occasion to levy such fines.

BOARD OF WATER WELL CONTRACTORS - HB 132 COMPLIANCE REPORT

1. Activities and efforts to promote compliance
   a. Review of oral and written complaints to determine potential standards violations
   b. Communication with licensee and well owners to resolve complaint
   c. Investigation of allegations
   d. Board review of violation complaints
   e. Continuing education program expanded to include designated METC courses. Teamed with METC to provide continuing education classes annually beginning January 1997.
   f. Licensing and bonding continual review
   g. Periodic unannounced inspection on drill sites

2. Size of regulated community as of July 2, 1997 (Date to July 1, 1998 will be available September 30, 1998)
   118 water well contractors (plus 6 MWC license)
   52 water well drillers (plus 68 MWC license)
   93 monitoring well constructors
   263 Licensed persons - 337 licenses issued
   11 licenses not renewed
   12 licenses - new water well drillers
   3 licenses - new water well contractors
   9 licenses - new water monitoring well constructors

   Estimate of those out of compliance none

3. License year June 30, 1997 to July 1, 1998
   64 complaints
   41 complaints investigated
   11 complaints reviewed for Board action
   1 license suspension
   1 license suspension reinstated
   2 probation
   2 faulty wells repaired
   0 non-compliance pending

4. Description of how complaints are addressed.

   All complaints are immediately reviewed by the Program Manager for well construction violations. A majority of complaints are resolved by explaining the Board regulations and authority, to the complainant. Those complaints, that allege construction violations, are investigated to determine if Board disciplinary action or faulty well repair is required. Normally the complaint is resolved by getting the two parties together to resolve issues that are not related to financial considerations. The Board does not hesitate to order a licensee to repair a faulty well. Most unresolved complaints are a misunderstanding of the costs

involved. There are no unresolved complaints outstanding that are within the Board's authority to resolve.

5. Trend information - after two years of steady reduction of complaints from 1994 - 1996, there were 94 in 1995 - 1996 and complaints rose to 122 in the 1996-1997 license year, 64 in 1997-1998. The complaints were mostly of a minor nature such as well log submittal, disputes over payment or inability to contact a licensee. Well construction complaints remained at a consistent number (30 to 40) and investigations led to repair of two faulty wells. The total number of wells drilled in the state remained at a high level (4500) although distribution of the wells changed from decreases in Flathead , Missoula and Ravalli counties to increases in Yellowstone and Gallatin counties. Well log data is available at the Montana Bureau of Mines and Geology database in Butte.

BOARD OF OIL AND GAS CONSERVATION

Oil and Gas Conservation Division – HB 132 Compliance Report

Program Description:

The Oil and Gas Conservation Division is the staff of the Board of Oil and Gas Conservation and is attached to the Department of Natural Resources and Conservation for administrative purposes. The Board is the entity charged with enforcement of oil and gas conservation laws. The Division staff implements Board policy and perform enforcement and compliance activities using delegated authority from the Board. Significant non-compliance issues are brought to the Board for resolution; routine minor compliance actions and the initial attempts to resolve more serious compliance problems are generally handled by staff. The Board and staff are responsible for administration of the Underground Injection Control Program (UIC) under a delegation of primary enforcement authority from the U.S. Environmental Protection Agency effective November 19, 1996. This program requires enforcement and compliance activities, which are subject to periodic federal review and oversight.

Promoting Compliance

Information/Education

Because of the make-up of the Board of Oil and Gas Conservation, relationships with professional/technical organizations, land and mineral organizations, and oil and gas associations are somewhat built-in. One or more Board members participate in the currently active state land and mineral owners associations, the Montana Geological Society, the Society of Exploration Geophysicists, Association of Professional Landmen, and the state's oil and gas associations. In addition to the informal information/education relationships that arise from Board and staff participation in organizations, attempts are made to provide information about the Board's programs through direct contact with organizations, providing Internet accessible information at the Board's Website, and by soliciting public involvement at the Board's periodic meeting and hearings. In the past two years, the Board's administrator has made presentations or attended in an official capacity meetings of the Montana Petroleum Association, Northern Montana Oil and Gas Association, Northeast Montana Land and Mineral Owners Association, and the BLM National Fluid Minerals Conference (which the Board co-sponsored).

Technical Assistance

Most technical assistance is provided on a one-to-one basis with the operator. Although many field inspections are done without operating personnel present, inspectors are available to meet with operators to discuss compliance issues. Office staff frequently provides direction for operators in interpreting and complying with field orders and rules, preparing for Board hearings, and reviewing technical information for compliance with the Division's requirements. Guidance documents for the UIC program are posted on the Website as is the full text of the

Board's administrative rules. A link is provided to the Legislative Branch Website for access to the appropriate statutes.

Inspections

One third of the Board's staff is dedicated to the field inspection program. Inspectors are assigned to geographical areas of the state and have responsibility for performing both regulatory and UIC inspections. The UIC program requires testing of injection wells for mechanical integrity at least every five years. A test must also be performed every time the injection packer is unseated. Other priority inspections include witnessing of well plugging, witnessing of surface casing cementing, and review of oil and gas properties for regulatory compliance before approval of an ownership change. The Board has five full time inspectors and one chief inspector. Field inspectors also supervise the plugging of wells by companies under contract to the Board, under the ongoing orphan well plugging program. Field inspectors performed approximately 4900 well inspections during FY98.

Enforcement Actions

Enforcement actions are initiated by staff and if not resolved at the staff level are brought to the Board for enforcement action. Most enforcement actions take the form of a "show cause" hearing before the Board. The Board also has authority to bring actions in civil court, and for willful pollution, to recommend criminal prosecution. Other enforcement actions include forfeiture of reclamation bonds for failure to properly plug and restore abandoned wells, monetary penalty assessments for non-compliance, and "pipeline severance" - an order preventing the sale of oil produced in violation of the rules.

The Regulated Community

Montana has about 350 active oil and gas operators. Some operators produce only oil and some only gas, but many produce both products. In addition, the Board has some regulatory authority over seismic exploration operations. Seismic exploration permits are issued at the county level, and the Board regulates shot hole plugging, setbacks from springs or water wells, cleanup of seismic lines, and similar requirements. There were nine seismic contractors active in 1997. About 38 separate projects were permitted that year.

The Board staff issue drilling permits for all oil and gas exploratory and development wells except wells on land held in trust for Indian Tribes or Indian Allotees. Staff issued 484 drilling permits in 1997, including permits for 91 new horizontal wells. Underground injection permits are issued for all wells except those within the exterior boundaries of Indian Reservations. During 1997 the Board issued 19 new injection well permits and 2 new area (multiple well) permits. Staff approved 15 new wells in previously approved area permits.

There are approximately 6500 wells in active status in the state; some wells are seasonally affected and do not produce all of the time. For example, some gas wells are only produced during the winter months where gas demand is high. Some remotely located oil wells are shut-in

during winter months when operating costs are too high to justify production. Oil price also affects the number of wells that produce. Marginally economic wells are typically shut-in or produced for only a few days each month during times of low price.

History of Compliance

Using the docketed show cause hearings as a yardstick, incidents of significant non-compliance are relatively rare. In 1996 ten cases were docketed for hearing; in 1997 seven cases were docketed. With two more hearing dates still scheduled in 1998, there have been four cases docketed for hearing to date. The apparent decrease in cases over the three year period may have no statistical meaning as the numbers of cases reaching the Board are relatively small under any circumstance. For planning purposes, we estimate seven show cause hearings constitutes an average enforcement year.

Noncompliance

Most violations are discovered by field inspection, some through review of (or failure to file) required reports and a few by public or landowner complaint. The following table lists noncompliance issues that were docketed during calendar year 1997 and to date in 1998.

Calendar Year 1997

Docket Number	Operator	Violation	Penalty	Current Status
1-97	J.B. Appling	Failure to plug wells	Reclamation bond forfeiture	Closed - bond proceeds received
12-97	Nerdlihc Co. Inc.	Failure of cleanup fire site, excessive shut-in wells	Doubled reclamation bond	Closed - operator complied
93-97	Hawley Companies	Spill cleanup, no well identification numerous housekeeping violations	Monetary penalty, shut-in order	Pending - Penalty collected in court, shut-in order invalidated by District Judge, being appealed to Supreme Court
94-97	West Gas, Inc.	Failure to properly plug wells	Bond forfeiture	Closed- bond proceeds received
131-97	Samedan Oil Corp.	Improperly plugged well	Operator required to monitor and periodically report well status	Closed - Operator in compliance
176-97	Ballard & Associates	Unauthorized injection	Monetary penalty, operator ordered to plug or permit wells	Closed - operator in compliance
177-97	Jack Ihli, Neilco	Failure to file operator change	Set deadline for compliance	Closed-operator complied

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12-98	Yellowstone Oil Co.	Failure to reclaim location	Order to reclaim or Bond forfeiture	Closed- operator's heirs reclaimed site
71-98	Ronald Sannes	Required cleanup not performed, unused well not plugged	Monetary penalty	pending
72-98	Nor-Am Exploration	Failure to plug well	Bond forfeiture	Closed- bond proceeds received
73-98	Sherman Holt	Failure to plug wells	Bond forfeiture	Closed-bond proceeds received

The following information is provided as requested in a document entitled Compliance/Enforcement --General Follow-up Questions, Second Draft-- September 1997. The subject headers are as suggested in that document.

Enforcement Policies

The enforcement/compliance polices for the UIC program are set by the Memorandum of Agreement between the Board and EPA, the Board's Civil Penalty Policy, and EPA guidance contained in a memorandum dated December 4, 1986 entitled "UIC Program Definition of Significant Noncompliance". All of these documents are part of the primacy application package submitted to and approved by the U.S. EPA. These documents explain the nature of significant violations, expected staff response and timelines, and guidance for recommendations by the staff for penalties to be assessed by the Board.

The enforcement policy under the regulatory program for non-UIC violations consists of a delegation of authority to the Board Administrator for assessment of monetary penalties within the range established by the Board, procedures for resolution and the timeframe for expected compliance action, and the procedure for referring unresolved issues to the Board. These policies have been in effect for a number of years and the regulated community is generally familiar with the process.

Field inspection staff have received formal training in key aspects of both UIC and regulatory program compliance procedures; two formal training session have been held for inspection personnel in the preceding four years. Management staff meets periodically with U.S. EPA staff to review aspects of the UIC program, including enforcement and compliance activities. These meetings occur at least annually.

Timelines set for correction of violations are set for the UIC program through the previously mentioned agreements with EPA and the program requirements applied nationwide. Generally, significant non-compliance (SNC) must be resolved within 90 days of a finding that an enforcement action is necessary. A quarterly exception report is provided to EPA officials if any SNC exceeds the 90-day period. The regulatory program uses a more flexible approach to violations. Typically, operators are allowed a period of time to correct deficiencies before a formal notice of violation is

issued. The field inspector through either a written or oral notice to the operator undertakes this initial compliance effort. Inspection personnel, including the supervisory inspector have discretion to establish deadlines commensurate with the nature of the violation and the estimated time needed for correction. Formal notices are issued if the initial warning is has not resulted in compliance. This notice indicates the staff's intention to review the incident(s) with the Board to determine if a show cause hearing will be scheduled if the operation is not brought into compliance before the next Board meeting. If the Board agrees that a violation requires the operator to appear to show cause at a hearing, the Board will issue a formal notice to appear. In some cases a subpoena may be issued, but in most cases a certified mail notice has proved adequate. This process allows a minimum of 30 days up to approximately 60 days after the formal notice. Violations that require emergency response, such as cleanup of spills or leaks, or situations involving safety or health will have a shortened response time. There are provisions in statute for emergency orders, including emergency shutdown notices.

Compliance tracking is formalized in the UIC program. The Division is using a Risk Based Data Management System (RBDMS) to track UIC permitting, monitoring, and compliance issues. This database, running under Microsoft Access™, was developed through a U.S. Department of Energy grant for the specific purpose of performing data management for the UIC program. RBDMS is capable of operating the entire oil and gas program and it is the Divisions intent to migrate its data management needs to RBDMS within the next three years. One improvement that this effort will make is the more consistent tracking of the field inspector issued notices, which are not now tracked by supervisory personnel unless the incident results in a formal violation resolution action by the Board.

The administrative chain of command for enforcement and compliance actions starts at the field inspector, progresses through the Chief Field Inspector, to the Administrator (and/or UIC director for UIC violations). The Board of Oil and Gas Conservation is the final authority for enforcement decisions. Decisions of the Board may be appealed to District Court.

Use and Balance of Enforcement Tools

Both the Board and staff make efforts to promote cooperative approaches to compliance. Compliance assistance takes first priority but occasional enforcement actions are necessary. The Board is composed by statute of industry members, landowner representatives and public representatives; this composition establishes contacts within the regulated community, land and mineral owners associations, and the general public that might not otherwise exist under a different administrative structure. Written assistance or outreach goals have not been developed, nevertheless, both Board and Staff are available to interested parties and the public through participation in associations, professional societies, and attendance at meetings as invited guests.

The Board typically forms ad-hoc subcommittees to provide recommendations for significant rulemaking efforts. Public meetings are held to receive public input and to discuss issues and possible solutions. The Board's most recent effort in this regard was the recently enacted changes to bond requirements for reclamation of wells. The ad hoc bond committee met regularly over 14 month period in informal sessions prior to final rulemaking. This committee included Board

members, landowner representatives, a county commissioner, representatives of both large and small oil companies, and both oil and gas associations.

Record-Keeping/Measuring Success/ Legislative Oversight

Field inspectors prepare the initial record of inspection activities, including any regulatory or UIC violations found in the course of an inspection. Each inspector is responsible for tracking violations to the point that they are either resolved, or the issue is passed to supervisory personnel if resolution is unsatisfactory or violation is ongoing. Once a compliance action has been referred to the Board and a show cause hearing set, the case is given a docket number and a permanent file is established. Until the matter is finally resolved, the docket is kept open. Docket files are available for inspection and copying by the public. Evidence or written testimony is placed in the file. All hearings are taped and copies of the tape are available to the public. Board orders issued as a result of the hearing and any subsequent orders are also placed in the docket file. Quarterly summaries of UIC inspection and compliance/enforcement action are prepared (electronically) for submission to EPA on EPA Form 7520. An annual summary of enforcement actions in the regulatory program is not prepared. Copies of docket files are kept in both Helena and Billings offices.

The UIC program requires tracking program activities through reporting of statistics for inspections, enforcement actions, permits issued and modified, quarterly exceptions report and related statistical reporting. EPA sets tracking and reporting requirements. Similar tracking requirements have not been applied to the regulatory program because there has been little demand for such information. The Division does track a number of program indicators in depth, including well activities, annual production, drilling permits issued, etc. These indicators are adequate to reflect the overall workload and program efforts.

Seriousness (Risk) of Violation

Both the regulatory and the UIC program emphasis is on elements that are risk based. For example, field inspectors priority efforts include witnessing of well abandonment, the setting and cementing of casing to protect aquifers, and inspections to ensure proper cleanup of spills or leaks. The UIC efforts include a scheduled mechanical integrity test each five year period to demonstrate good well mechanical condition for ongoing injection activities. These tests are scheduled and witnessed by the inspector.

Staffing/Resources/Contracting

The Division does not contract for inspection or enforcement services. All regulatory decision making is reserved to Board or staff. Staff retention has been relatively good in the program, all but two of the current personnel involved in enforcement or compliance work have more than five years experience with the division. One field inspector was hired following a vacancy caused by retirement of the predecessor inspector. The UIC program director is a new position created when primacy was delegated to the Board in 1996. Primary funding for the Division and Board is the Privilege and License Tax, a 0.3% tax on oil and gas production. Revenues vary with oil price. An annual injection well fee and an operating grant from EPA fund the UIC program. Funding is

reliable and adequate in UIC, and somewhat less reliable in the regulatory program. Current revenues are approximately 25% less than needed to fully fund the approved regulatory budget.

Further Recommendations

The Board of Oil and Gas Conservation's programs do not overlap local government authority and coordination of functions with local governments is generally not required. The Board and staff receive a number of complaints from land and/or mineral owners depending in large part on the level of industry activity. Some complaints involve activities covered under specific statutes that address damage payments and land use agreements that the Board has no jurisdiction to resolve. Field inspectors investigate complaints involving pollution or potential rule violations. Response time varies, but the Division attempts to have an inspector on the ground within 24 to 48 hours of the compliant.

Rulemaking for the Board and Division is ongoing in those areas impacted by changing technology (e.g.: horizontal drilling) and by changing circumstance (e.g.: reclamation bond increases). There are no statutorily mandated rules that have not been adopted.

The Board and Division have no formal program to recognize outstanding efforts to protect the environment. The Board is an active participant in the Interstate Oil and Gas Compact Commission, which recognizes outstanding environmental stewardship with an annual Chairman's award.

Respectfully Submitted

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Administrator, Oil and Gas Division

August 31, 1998

Electronic copies of appendices D and E are not available for this report. For paper copies, please contact the EQC Office.