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ENVIRONMENTAL QUALITY

Report to the Montana Environmental Quality Council

Environmental Enforcement and Compliance

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A. INTRODUCTION

Compliance and Enforcement Overview

The Department of Environmental Quality (DEQ or Department) implements an escalating approach to compliance and enforcement. The initial step is to provide compliance assistance to inform the regulated community of the statutory and regulatory requirements and to help maintain compliance. Programs in the DEQ Permitting and Compliance Division, Remediation Division and Enforcement Division provide compliance assistance through education and training, communications at seminars, conferences, and meetings, and through publications, inspection reports, routine correspondence, and telephone conversations. The DEQ Planning, Prevention and Assistance Division implements business and community assistance programs and technical and financial assistance programs that help maintain compliance or assist in returning an entity to compliance.

Noncompliances or violations are discovered in three ways: inspections, review of self-monitoring reports, and citizen complaints or spill reports. Once a violation is documented, a warning letter is usually sent in response to a minor violation and a violation letter is always sent for significant violations. Most programs have established criteria to determine when a violation is considered significant. The purpose of the warning or violation letters is to notify the responsible party that the DEQ believes a violation has occurred, to explain the circumstances of the alleged violation, to describe what is required to return to compliance, and to invite the person to discuss the allegations.

The Enforcement Division operates a complaint clearinghouse to track and manage the response to citizen complaints and spill reports submitted to the DEQ. The Enforcement Division manages about 1,000 complaints and spills each year. Approximately 17% of the complaints are associated with permitted facilities or sites subject to permit requirements and are therefore referred to the appropriate DEQ regulatory program for resolution. Eighty-eight percent of the reports received are determined to be valid. The Enforcement Division issues warning or violation letters as appropriate and provides compliance assistance to help responsible parties return to compliance. Only 1% of violations discovered during a complaint investigation result in formal enforcement.

Formal enforcement actions are initiated when compliance assistance has been unsuccessful in achieving compliance and when the violations are deemed significant. Most formal enforcement actions are requested by the regulatory programs to address the most significant violations through an Enforcement Request process. Once a request is approved by the Director, the Enforcement Division staff work with DEQ attorneys to draft orders, calculate penalties, negotiate settlements and monitor compliance with DEQ orders. Over 90% of the department's enforcement actions are administrative in nature where an order is issued that may include corrective action and/or a penalty assessment. Administrative orders issued by the DEQ may be appealed before the Board of Environmental Review. Court complaints are filed in district court but are generally reserved for the most recalcitrant violators.

During the reporting period, the Enforcement Division managed 771 formal enforcement cases. Three hundred sixty-four (364) cases were carried over from the previous reporting period and 407 were new cases initiated during this reporting period. Most of the DEQ's enforcement actions included a penalty and more than $2,036,430 was collected in penalties during the reporting period. Penalties are deposited into the General Fund or specific State Special revenue accounts as designated by statute.

This report is submitted to the Montana Environmental Quality Council pursuant to Section 75-1-314, MCA. The report is organized by bureau name and the statutes that are administered by each.

B. Air Resources Management Bureau

Clean Air Act of Montana, 75-2-101, MCA

Description of Statute and Program
The Permitting and Compliance Program (Program) in the Air Resources Management Bureau is responsible for administering the Clean Air Act and the corresponding administrative rules. Under the authority of these regulations, the DEQ protects and maintains air quality in Montana. The DEQ's efforts result in the protection of human health and the environment, and to the greatest extent possible, the promotion of public welfare.

Description of Regulated Community
The regulated permitted community for air quality generally consists of stationary sources that have the potential to emit greater than 25 tons per year of any one regulated pollutant and portable sources that have the potential to emit greater than 15 tons per year of any one regulated pollutant. The type of sources making up the regulated community is diverse and includes such industries as wood products, oil and gas, mining, power generation, incinerators, asphalt plants, etc.

Currently, the DEQ has approximately 665 facilities with active air quality permits, with approximately another 40 sources with active permits at the county level, for a total permitted universe in Montana of about 705 sources. The regulated permitted community is split almost evenly between stationary sources and portable sources.

In addition to the regulated permitted community, a regulated registered community exists. The regulated registered community for air quality generally consists of stationary oil and gas production sources that have the potential to emit greater than 25 tons per year of any one regulated pollutant. Approximately 810 sources are registered with the DEQ.

The total number of sources regulated by the DEQ, or by a county in lieu of the department, is approximately 1,515 sources. On average, the air quality program processed approximately 200 permitting actions each year, approximately 50 of these for new facilities. The registration program processed approximately 382 registrations per year, approximately 138 of these for new facilities.

Compliance Assistance and Outreach
The DEQ provides compliance assistance and outreach in a variety of ways to both the regulated community and the public. The department assists the regulated community during facility inspections, the annual emissions inventory process, report review and response process, the permitting process, through responses to verbal and written requests for information, and in other forums. DEQ staff use such opportunities to explain regulatory requirements, to remind sources of upcoming deadlines, and to discuss issues of potential concern.

The program also provides information to the public through verbal information requests/comments, through responses to written information requests/comments, and via other forums. Many times program staff can alleviate public concerns by describing the applicable rules and authority, explaining the reviews that are conducted by the department, and by explaining the permitting processes that apply.

In addition to the outreach efforts mentioned previously, program staff members routinely make presentations to various groups on a variety of air quality topics (the Clean Air Act, NESHAPS, Title V, NSPS, mercury, oil and gas production, permitting process, etc.). Whether making presentations to concerned local residents, special interest groups, college students, or affected industry representatives, the program is always looking for opportunities to use its staff as a resource for public and industry outreach.

The program also focuses its efforts on sources that may not be aware of their regulatory obligations or sources that are not traditionally subject to regulation. Program staff developed and distributed several compliance assistance publications addressing compliance requirements. The business sectors targeted by the DEQ for outreach included residential and commercial construction, dry cleaners, auto body shops, hospitals, wood product users, pesticide applicators, educational institutions (both K-12 and universities), student transportation providers, and other governmental agencies. Furthermore, the department reached out to tribes with pollution prevention/best practices information and assistance.

The program sponsored and/or participated in several training and outreach events. Specific examples of the training/outreach provided include: Asbestos Contractors of Montana's annual meeting, C&D Recycling/Reuse certification, MEHA, MTAEYC, Compete Smart, UM's Air Toxics Under the Big Sky, as well as other events such as Earth Day, America Recycles Day, and CNR's Sustainability Fair. Substantial effort also focused on planning several large conferences including the NW Industrial Energy Users Summit, Energy Summit for Montana Schools, and the Regional Children's Environmental Health Summit.

The DEQ also actively participates in a multi-agency effort to target Montana businesses with safety and environmental regulatory requirements – WorkSafeMT. In addition, the program dedicates additional time and resources on other multi-agency efforts such as the Statewide Asthma Plan, Indoor Air Quality training and assistance, and K-12 environmental stewardship plans.

Other Compliance Activities

The program has continued conducting facility inspections and Full Compliance Evaluations (FCE) in accordance with the DEQ-EPA Performance Partnership Agreement (PPA) and the Compliance Monitoring Strategy (CMS) with EPA. Inspections entail site visits by DEQ staff for the purpose of witnessing the operations of a facility on a particular day. FCEs are the in-depth assessments of a facility's compliance success for a given time period. FCEs include a detailed assessment of

various industry-submitted reports, DEQ site visit notes, public complaints, etc. for a particular facility over a specified time period. Program staff use FCEs as an opportunity to fully evaluate the compliance aspects of the subject facility and to report the findings back to industry and other interested parties.

Complaints and Noncompliances

The DEQ received 118 complaints concerning air quality emissions during the reporting period. Of these complaints, many were self-reported emissions of NO_2, H_2S, or SO_2 due to malfunctions or equipment failures at the Billings refineries. Most of the remaining complaints involved emissions from other industrial sources, crushers or concrete batch plants, paint spraying operations and asphalt batch plants.

The department received 173 dust complaints during this reporting period. The largest single category of dust complaints involved dust from county roads. Another significant source of dust complaints was from gravel pits, subdivision construction and large building construction projects.

The department received 88 open burning complaints during the reporting period. Of these complaints, most were for disposing of prohibited materials and items by open burning.

The department documented 15 odor complaints during the reporting period. Most of the odor complaints were from unknown sources. The department documented one indoor air quality complaint during the reporting period. The DEQ does not typically regulate indoor air quality standards or regulations and most calls are referred to the Department of Labor and Industry.

Program Response to Complaints and Noncompliances

Complaints and noncompliances concerning air quality can typically be separated into three areas: fugitive dust emissions, open burning emissions/issues; and industrial sources emissions/issues.

Dust complaints are generally received in the late summer and early fall. Most dust complaints are resolved by requesting that the responsible party take reasonable precautions (water or other dust suppressant) to control the dust. As necessary, program staff sends notices of reasonable precautions requirements to the responsible party to assist them in understanding the applicable rule. Such outreach generally prevents future complaints against the responsible party.

Open burning frequently generates complaints. The majority of the complaints are received during the early spring and late fall. When the DEQ receives open burning complaints that indicate some type of noncompliance, the department investigates the complaint. If the department finds that the burning is not being conducted in compliance with the rules, it notifies the responsible party of the applicable regulations. Generally, this outreach prevents future noncompliance from by the responsible party.

Industrial sources also generate complaints and issues of noncompliance. The DEQ investigates complaints against industrial sources to determine whether or not the

source is complying with the air quality rules and permit requirements. Areas of noncompliance are also discovered through inspections, report review, and emission source testing. If the DEQ finds that areas of noncompliance exist, the department issues either warning letters or violation letters.

Warning letters are typically issued for those instances of noncompliance where the DEQ has determined that the violations are not significant (for example, first time violations of a relatively minor permit condition or rule). Typically, the department uses enforcement discretion to close such issues without formal enforcement being requested. Warning letters can be used to document a history or pattern of violations and may be considered at a future time to determine how to respond to subsequent violations.

Violation letters are typically issued for those areas of noncompliance that the department determines are significant (for example, emissions violations, substantial recordkeeping/reporting violations, etc.). When the DEQ issues a violation letter, the intent is to pursue a formal enforcement action unless the responsible party submits additional information that the violation did not occur as described in the violation letter. Typically, violation letters are issued to industrial facilities, but significant noncompliance issues caused by dust and open burning can also lead to violation letters. Violation letters can also be used to document a history or pattern of violations and may be considered at a future time to determine how to respond to subsequent violations.

Formal Enforcement

During the reporting period, the Enforcement Division managed a total of 60 enforcement cases: 26 were ongoing from the prior reporting period and 34 were new cases. In 46 of the 60 cases, administrative enforcement actions were taken; in nine of the remaining cases, judicial enforcement actions were filed; and five cases were referred to EPA. Forty of the 60 cases have been closed, nine are still active under an administrative order or a judicial judgment, two cases are in litigation before the Board of Environmental Review or District Court, three cases have been issued a demand letter, five cases have been referred to EPA and one was in case development.

The Enforcement Division settled 25 enforcement cases during the reporting period for penalties totaling $1,250,060. During the reporting period, the DEQ collected monetary administrative and civil penalties in the amount of $1,363,441. This amount includes some penalties that were assessed during the previous reporting period but which did not become due until this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until some future date or are being paid in installments.

Trends/Benefits to Environment

The size of the regulated permitted community has remained about the same since the last reporting period (about 705 active permits for this reporting period). The number of regulated registered facilities has increased from about 550 facilities the last reporting period to about 810 facilities this reporting period. The large increase in the number of

regulated registered facilities is a direct result of the program's compliance assistance (education and outreach) efforts to the oil and gas production industry.

The program observed witnessed a continuation of the trend for an increase in the submittal of recordkeeping/reporting requirements from the Title V program. Not only are sources now beginning to fully understand the recordkeeping and reporting requirements of Title V, but the increase in applicable requirements has also led to the increase in the submittal of reports.

Compliance issues with newly-permitted power plants were noticed during the reporting period. The DEQ has dealt with the compliance issues and will consider those areas of noncompliance with future power plants. Other than for newly-permitted power plants, no trends were identified regarding violations since the last reporting period. The number of violation letters continued to vary from year to year and from industry to industry.

Because the oil and gas production industry was relatively new to air quality requirements, the program's efforts during the reporting period focused on educating and training the industry. This outreach enhanced the department's ability to share information with sources that had registered with the DEQ, but that did not fully understand their obligations under the state rules. For example, program's education and training efforts included presenting information at Montana Petroleum Association meetings; spending lots of time on the telephone with companies and consultants explaining various aspects of the registration program (and environmental regulation in general), and conducting detailed field inspections. Furthermore, the department has made a concerted effort to use its gas emissions detecting equipment in the field, to show the various industry field staff how the equipment works, and to share the findings of the gas emissions surveys with industry for their own process improvements.

Unfortunately, many oil and gas sources in Montana did not realize that they were required to either obtain a permit or to register. The program undertook a large effort to identify and inform oil and gas production facilities of their responsibility to evaluate their facilities to determine the need to either apply for a permit or register. The effort to inform this sector of the oil and gas industry has been very time-consuming, but has resulted in a more informed regulated universe. Many oil and gas facilities learned through this outreach that they were required by state rules to either obtain a permit or to register.

C. Environmental Management Bureau

Major Facility Siting Act, 75-20-101, MCA

Description of Statute and Program
The Major Facility Siting (MFSA) Program (Program) includes certification that energy facilities such as large transmission lines and pipelines are needed, that their location, construction, and operation minimize impacts, and that public lands are considered and used whenever their use is as economically practicable as the use of private lands. The Program also has responsibility as the lead state agency for hydroelectric dams greater than 50 megawatts (MW) being licensed or relicensed by the Federal Energy Regulatory Commission (FERC).

Description of Regulated Community
The regulated community consists of operators of large energy facilities covered by MFSA. Thirty facilities are covered under MFSA.

Compliance Assistance and Education
As necessary, program staff review and update PPL Montana's (PPLM) required submittals to FERC regarding its operation of hydroelectric facilities on the Missouri and Madison Rivers and coordinate state agency approval of emergency operating variances as necessary. Program staff participates in the implementation of a settlement agreement for Avista's hydroelectric projects on the lower Clark Fork River.

The program reviews results of monitoring reports and PPLM's proposed recovery measures for leaks and spills from the "closed loop" ash disposal system for Colstrip Units 3 and 4, suggests follow-up investigations, proposes alternative cleanup and prevention measures as necessary, and works cooperatively to identify underlying causes and alternative solutions to seepage and leaks. More recently, staff worked with PPLM to identify sources of leakage from three process ponds, and reviewed plans for ground water interception systems to recover leakage. Additional investigations are underway to identify the maximum extent of seepage from process and ash disposal ponds so that the major portion of leakage can be recovered and water quality standards attained. The DEQ has also participated in negotiations with the company concerning longer-term cleanups, possible bonding for reclamation, and plans for eventual plant closure. Program staff monitors the construction of certified facilities to determine compliance with conditions of certification. Two projects were monitored in the last year.

Complaints and Noncompliance
Occurrences of noncompliance are found through on-site monitoring, review of required monitoring reports, response to reported spills, or through citizen complaints. Four MFSA complaints were received in the Enforcement Division. Two of the complaints were self reports of leaks, and two were complaints of ground water contamination from PPL in Colstrip.

Colstrip Units 3 and 4: The certificate requires that the facilities be operated as a closed-loop system so that there is no leakage from the wet process ash disposal system. The certificate also requires a network of monitoring wells. Ground water monitoring or spills reported to the program indicate where and when the facilities are not being operated as a closed-loop system. Ground water is being adversely affected by the release of process water with, among other things, elevated total dissolved solids and specific electrical conductivity, boron, and sulfate. There is one ongoing private civil action concerning leakage from the ash disposal and process water ponds.

Prohibited releases from the system, which may violate water quality standards, are usually discovered through PPLM self-reporting or complaints from nearby residents. Program staff, legal staff, and representatives of PPLM are nearing completion of an Administrative Order on Consent (AOC) for Colstrip Steam Electric Generating Units 1-4.

Program Response to Noncompliance
Complaints are referred to the program. Violations may be resolved with phone calls or visits targeted at improving ash disposal and process pond system integrity and ground water interception systems. Staff is also working with the Western Area Power Administration, Bonneville Power Administration, Bureau of Land Management, US Department of State, US Forest Service, and two applicants to coordinate MFSA and Montana Environmental Policy Act (MEPA) compliance with other state and federal agencies.

Formal Enforcement
No formal enforcement actions were initiated under this statute during the reporting period other than the AOC for Colstrip listed above.

Trend/Benefits to Environment
When facilities are not operating in compliance with the certificate or mitigating measures specified in a certificate are not adequately addressing the problem, the program must wait for the applicant to propose a change in operation or design before the underlying cause can be addressed. Likewise, unforeseen circumstances arising over the life of a project (for example, a dam failure at Colstrip) must be addressed by applicant initiative rather than the program making a simple change to certificate conditions. In certain cases, it would be more expeditious for the program, in conjunction with the applicant and affected public, to propose a modification to a certificate condition to achieve a timely solution.

There has been a significant increase in interest in new and/or modified transmission systems and wind power over the last four years, and this trend is expected to continue into the near future with an application for another 500kV line expected in January, 2010. Likewise, an application for a large oil pipeline is being processed and a Draft EIS for a large natural gas pipeline was prepared and reviewed by program staff.

Metal Mine Reclamation Act, 82-4-301, MCA

Description of Statute and Program
The Hard Rock Program (Program) of the Environmental Management Bureau administers the Montana Metal Mine Reclamation Act, MEPA, and administrative rules on hard rock mining. The functions of the Program are: (1) regulation of hard rock mining and reclamation activities; (2) reclamation of bankrupt or recently abandoned mining sites with forfeited or relinquished reclamation bonds; (3) implementation of environmental analysis provisions of MEPA and the hard rock mining and reclamation statutes; and (4) administration of the Small Miner Exclusion and Exploration programs.

Description of Regulated Community
Currently, the program administers 72 permits covering 70 mines. These include six metal mines; four are actively producing, one is in a major stripping phase prior to resuming production in 2011, and one is shut down awaiting financing for a pit expansion. There are also four major limestone quarries (three with associated cement plants), and three talc mines, along with several other operations that produce building stone, riprap, and aggregate. The remaining properties are inactive or in reclamation, with two being reclaimed at the direction of the program. There are 112 current exploration licenses and 517 Small Miner Exclusions.

As of mid-2009, the program administered 701 permits, exploration licenses, and Small Miner Exclusions. Since staff do not visit every site each year, particularly the Small Miner and exploration sites, it is not possible to estimate a specific compliance percentage. Based on past experience, though, it is reasonable to say that at any given time, the great majority of the regulated community universe, in excess of 95%, is believed to be in compliance.

Compliance Assistance and Education
Compliance assistance is provided through a combination of pre-application plans of study, application review, MEPA coordination, and post-permit issuance inspection and review.

Identification and analysis of baseline data for the potentially affected environment is the first step in preparing an application for an operating permit. 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." During the permit application review period, staff works with applicants to produce a mine plan that should comply with mining, air and water laws. This effort includes coordination with other state and federal agencies to assist in identifying the diverse resource areas that may be affected.

Compliance assistance continues after a permit is issued. Program staff performs from one to three regularly scheduled inspections of every permit area each year to ensure adherence to the provisions in the permit. Lead staff, hydrologists, soil specialists and

the bureau's mining engineers become familiar with projects and assist permittees in recognizing potential violations before a noncompliance occurs.

The program also hosts a Mine Design, Operations & Closure Conference every year in a joint effort with the US Forest Service, US Bureau of Land Management, Montana Tech, consultants, and industry sponsors.

Complaints and Noncompliance
During the reporting period, the DEQ received 11 complaints alleging potential violations at hard-rock mining and mineral exploration areas. The complaints were regarding accidental releases of equipment fluids, water quality, operating hours, and aesthetics.

Program Response to Complaints and Noncompliances
The Enforcement Division refers all metal mining complaints to the program for resolution. Minor violations are often resolved with phone calls or visits that bring the operator back into compliance. Letters, such as warning or violation letters, may also be used to obtain compliance. Some complaints, especially those involving large releases of mine processing fluids, may generate a formal enforcement action.

Violation letters are copied to the Enforcement Division to assist in coordination between the two divisions. These open up communication with mining companies in order to assist in their compliance.

Formal enforcement
During the reporting period, the Enforcement Division managed a total of seven enforcement cases: four were ongoing from the prior reporting period and three were new cases. Five of the cases were administrative and two were judicial. Three of the seven cases have been closed, one case is in litigation before the Board of Environmental Review, and three are under administrative order.

The Enforcement Division settled four of the seven enforcement cases during the reporting period for penalties totaling $2,888. During this reporting period, the department collected penalties for metal mining reclamation violations totaling $3,351. The amount collected included some penalties that were assessed during the previous reporting period but which did not become due until this reporting period.

Trend/Benefits to Environment
The regulated community has expanded and contracted cyclically over the last fifteen years due to a combination of economic and sociopolitical factors. High prices for gold and other metals in the 80's and early 90's sparked an exploration boom in Montana and most other western states, leading to the development of several new mines in Montana. After holding relatively steady for several years, gold prices declined from 1996 to 1999, and exploration for gold and other metals dropped off sharply. Implementation of a successful Citizen's Initiative (I-137) against the use of cyanide for leaching of low-grade ores, and a climate of litigation further discouraged exploration.

More exploration licenses were placed inactive in Montana than new ones issued each year from 1994 to 2006. Consolidation of major mining companies and emphasis on foreign exploration also led to the termination of many exploration activities across the country during this same period.

Starting in 2004, gold prices began a recovery, joined by other metals in 2006. Although prices have been affected by the world-wide recession, most have begun to rebound, and in late 2009, gold is at all-time record levels. From 2007 to 2009, eight exploration licenses have been placed inactive, but 20 new ones have been issued. Since the technology applicable to large low-grade gold ore bodies has been banned, there has been a basic shift in the nature of mineral exploration in the state. Most large mining companies see little incentive to renew exploration in the state. There is one pending application for a permit for a new underground copper-silver mine, but no significant increase in the size of the regulated community should be expected anytime soon. Smaller companies, however, have seen a niche created by high gold prices, and are actively pursuing the development of additional underground high-grade reserves at historic mines. These kinds of projects often involve private land, and are likely to result in reopened mines with smaller footprints and minor impacts to the environment.

Another area of increased activity over the last several years does not involve metals: a prolonged boom in home construction led to an increased demand for landscape rock and building stone from small-scale excavations, and new legislation in 2005 gave the department authority to issue operating permits for multiple small, relatively low-impact quarry sites. Although housing construction has also been affected by the recession, many stone producers remain active.

D. Hazardous Waste Site Cleanup Bureau

Comprehensive Environmental Cleanup and Responsibility Act (CECRA), 75-10-701, MCA

Description of Statute and Program
The Site Response Section (SRS) of the DEQ's Remediation Division utilizes the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and the Environmental Quality Protection Fund (EQPF) to investigate and clean up hazardous substances at sites not addressed by the federal Superfund program. Historical waste disposal activities at these sites caused contamination of air, surface water, ground water, sediments, and/or soils with hazardous or deleterious substances.

Description of Regulated Community
Under CECRA, sites are ranked based on potential risks to human health and the environment. Because staff and financial resources are not sufficient to address all 209 listed sites in Montana, CECRA activities focus primarily on maximum and high priority sites. The section has consent decrees or administrative orders at 18 CECRA sites, but current resources only allow the SRS to address 28 sites and ensure compliance. There are currently 58 maximum and high priority sites on the CECRA Priority List; however, 25 of those sites are not being actively addressed by the SRS or another agency. Low and medium priority sites and sites not on the CECRA Priority List are often addressed through the Voluntary Cleanup and Redevelopment Act (VCRA).

Currently there are 209 listed CECRA sites; however, this list may not be comprehensive since new sites may be discovered at anytime. The portion of the population in compliance cannot be calculated for this law.

Compliance Assistance and Outreach
Montana law provides several opportunities for potentially liable parties (PLPs) to clean up contaminated sites under CECRA without enforcement activities. VCRA allows for voluntary clean up of sites or portions of sites so the property can be redeveloped without the use of notices and orders. VCRA is appropriate where cleanups can be accomplished in less than five years. The Controlled Allocation and Liability Act provides for liability allocation where PLPs can complete cleanups and seek reimbursement of cleanup costs from the Orphan Share Fund for costs allocated to bankrupt or defunct entities. Other provisions of CECRA allow noticed PLPs to conduct proper and expeditious voluntary cleanup at their sites before the section issues orders.

The section also conducts outreach to inform individuals and communities about VCRA opportunities, orphan share funding, and possible federal grants to clean up contaminated sites. The DEQ receives grant funding from EPA to conduct this outreach. The program also assists communities to secure state and federal grant monies to investigate and clean up contaminated sites.

Other Compliance Activities
None.

Complaints and Noncompliances
Contaminated sites are discovered through a variety of means, including: citizen complaints, construction/utility worker discoveries, environmental assessments, investigations at other contaminated sites, voluntary submittals, and other avenues.

When the DEQ receives complaints regarding remedial or other activities at current or potential CECRA sites, the Enforcement Division refers these complaints to the department's Remediation Division for appropriate follow-up action and/or investigation. During this reporting period, no CECRA complaints were received by the Enforcement Division.

Program Response to Complaints and Noncompliances
Typically, the SRS first works with the PLPs to obtain their cooperation in investigating and cleaning up the site. PLPs, working cooperatively with the SRS, conduct most site cleanups. If the PLPs are uncooperative, the SRS may initiate enforcement actions to obtain cleanup.

Formal enforcement
During the reporting period, one appeal was filed.

Trends/Benefits to Environment
Contamination at CECRA sites has caused or may cause public health impacts, such as contaminated drinking water and ecological impacts (such as loss of fisheries). Requiring the regulated community to remediate contaminated sites protects public health and the environment.

Underground Storage Tank Act, Leaking Underground Storage Tanks, 75-11-501, MCA

Description of Statute and Programs
The Hazardous Waste Site Cleanup Bureau in the DEQ Remediation Division contains two programs that address Leaking Underground Storage Tanks (LUSTs): the LUST Trust Fund Program (LUSTTF Program) and the Petroleum Tank Release Cleanup Fund Program (PTRCF Program). Technical staffs in both programs implement or require tank owners and operators to conduct corrective action required by the Montana Underground Storage Tank Act (UST Act). The staff oversees, requires, and sometimes performs the investigation and cleanup of sites contaminated by releases of regulated substances from underground storage tanks.

Size and Description of Regulated Community
The regulated community includes any person who owns or operates an underground or petroleum 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

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 4,467 releases have been confirmed since the inception of the program through June 30, 2009. A total of 70 releases were confirmed in FY2008 and FY2009.

Compliance Assistance and Outreach

By the time a release has been identified, some level of pollution/contamination to soil and/or ground water has already occurred. The program focuses its efforts at ensuring compliance by identifying the environmental harm and compelling corrective action to mitigate the risks to public health, safety, and the environment.

If the tank owner or operator has a valid operating permit when the release was discovered and remains in compliance with the UST Act, the Petroleum Tank Release Compensation Board is authorized to reimburse a portion of the eligible leak investigation, remediation, and third-party damage costs. The first $35,000 in costs is split with the tank owner. In general, the PTRCF Program has not needed to take strong enforcement measures to achieve compliance with the corrective action requirements, due to the availability of the PTRCF and the rules for access to the fund. State law requires UST sites to remain in compliance with cleanup requirements in order to remain eligible for funding from the PTRCF.

Compliance assistance efforts include site visits and meetings with responsible parties and their consultants, which may include visits and meetings with individuals from the PTRCF program staff, local health officials and fire officials. The PTRCF Program's project managers keep the responsible parties informed as to their continuing obligations as they work through the investigation and cleanup processes. The PTRCF Program also provides cleanup technology articles to the DEQ's "MUST News", a publication distributed to UST owners and operators, and other parties interested in UST Act compliance. The PTRCF Program also participates in the Petroleum Tank Release Compensation Board's regular meetings with environmental consultants to discuss cleanup and reimbursement procedures and policy.

Other Compliance Activities

The LUSTTF Program utilizes the LUST Trust Fund in lieu of, or in addition to the PTRCF to fund investigations and cleanup activities using DEQ staff or its contractors. In the event that an UST owner/operator cannot afford cleanup or refuses to conduct the cleanup, or unknown sources of petroleum exist, the LUSTTF Program may initiate 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. Costs incurred by the DEQ for these actions are recoverable from financially viable responsible parties. The department utilizes these provisions to encourage responsible parties to conduct their own investigations and cleanups. Legal enforcement against insolvent or bankrupted responsible parties is typically not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs.

Complaints and Noncompliances
The Enforcement Division received 30 complaints during the reporting period related to leaking underground storage tanks. Complaint sites that involved a release were referred to the PTRCF Program for cleanup oversight.

Program Response to Noncompliances
Noncompliance includes owners and operators ignoring or refusing to implement regulatory and statutory requirements to investigate and clean up petroleum releases in a timely manner.

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

In most instances, the PTRCF Program first utilizes an escalating enforcement strategy designed to use the least resource-intensive enforcement activities. Initial efforts focus on informal enforcement actions, such as warning letters, violation letters, requests for additional information or corrective action plan submittal, staff field visits or follow-up telephone calls in order to achieve voluntary compliance. Cases are referred to the Enforcement Division for more resource-intensive actions, such as formal Notices of Violation and Administrative Compliance and Penalty Orders, judicial actions, etc., only when a lower level of enforcement action fails to achieve the desired response.

The PTRCF Program may issue up to two letters notifying responsible parties of incomplete work or noncompliance prior to initiating formal enforcement actions. When a deadline from a DEQ request letter is missed, the program will send a warning letter with a new deadline. Continued noncompliance typically results in issuance of a violation letter. Throughout these written exchanges, PTRCF Program project managers conduct informal conversations and assistance visits to try to ascertain why an owner or operator is not complying, and to facilitate compliance.

The vast majority of owners and operators of leaking underground storage tanks comply with requirements to investigate and clean up releases that they are responsible for. Approximately only 12% of the known releases have received warning letters or violation letters from the DEQ. This overall compliance is credited to the availability of PTRCF funding, ability for the state to take unilateral corrective actions through the LUST Trust funding, and the collaborative approach taken by program case managers. During the reporting period, the program has issued eight warning letters and two violation letters.

The type of enforcement response selected depends on the severity 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 tank facility), the owner's cooperation and financial ability to conduct the required release investigation and corrective action.

Formal Enforcement
No formal enforcement actions were initiated during the reporting period to compel compliance with the investigation or cleanup requirements of the UST Act.

Trends/Benefits to Environment
This type of contamination has caused or may cause public health impacts, such as contaminated drinking water, vapor intrusion into homes and businesses, explosion hazards, and ecological impacts (such as loss of fisheries). Requiring the regulated community to remediate contaminated sites protects public health and the environment.

E. Industrial and Energy Minerals Bureau

Opencut Mining Act, 82-4-401, MCA

Description of Statute and Program
The Opencut Mining Act requires the regulation and reclamation of land mined for sand, gravel, bentonite, clay, peat, soil and scoria, by any party on any land (except tribal) in Montana. The Opencut Mining Program (Program), which is part of the DEQ's Industrial and Energy Minerals Bureau, oversees the administration of the statute.

Description of Regulated Community
The regulated community varies greatly. The permit holders vary from small one or two person entities that mine a few hundred or thousand cubic yards of material annually and have one permit, to multinational companies that have several hundred employees, mine millions of cubic yards of material annually, and have several permits. Some permit holders only supply a small local market, while other companies ship mined product out of state. Several cities have permits with the program, as do all 56 counties and some state agencies (mainly the Montana Department of Transportation). A few federal agencies also have permits with the program.

At the end of fiscal year 2009, the program had a total of roughly 1,800 permitted operations, 266 pending permit applications, amendments, and assignments, and a large number of pending bond release applications. These numbers fluctuate continually in response to new applications for permits and bond releases being submitted and decisions being made on pending permits and bond releases.

Complaints and Noncompliances
The DEQ received 33 complaints associated with sand, gravel, and topsoil mining operations. The complaints represented potential violations of state environmental regulations and the majority of complaints were in relation to hours of operation, dust, and water quality.

Program Response to Complaints and Noncompliances
Minor violations are generally resolved by a phone call or visit that brings the operator back into permit compliance. Warning or violation letters may also be used to obtain compliance. The Air Resources Management Bureau or Enforcement Division addresses those potential violations where dust is the major concern. Some complaints, most often those involving mining without a permit or outside a permit area, are generally addressed through a formal enforcement action.

Formal Enforcement
During the reporting period, the Enforcement Division managed a total of 89 opencut enforcement cases, 58 of which were ongoing from the prior reporting period and 31 were new cases. Administrative orders were issued for 82 of the cases while the remaining seven cases were prosecuted as judicial actions. Nine of the 89 cases remain in case development, 44 cases have been closed, three cases are being

litigated, 26 of the cases are either under an administrative order or subject to a judicial judgment, four cases were vacated and three cases were withdrawn.

During the reporting period, the Enforcement Division settled 57 enforcement actions for a total of $58,544. The average settlement penalty was $1,027.09. The DEQ collected opencut penalties in the amount of $42,442.50. Some of the collected penalties were owed from the prior reporting period and came due during this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until some future date or are being paid in installments.

Trends/Benefits to Environment

At the end of FY2009, the program had a considerable backlog of pending permit applications (266, of which 249 were received prior to 2009). However, from late 2008 through early summer of 2009, the program was provided the capability to hire four additional staff: one temporary administrative assistant (soon to be a permanent position), and one temporary and two permanent environmental specialists. These additional staff members have assisted in working on the permit backlog.

In certain areas of the state, some applications have been considerably more complex to process to completion. This has been especially true in the high growth/high population portions of some counties, such as Flathead, Gallatin, Missoula, and Lewis and Clark. In these counties, mineral operations have encroached onto rural residential areas and new subdivisions are encroaching upon existing gravel operations. These situations have resulted in questions, concerns, and conflicts regarding impacts to ground water and domestic water supplies, air quality, truck traffic, public safety, and property values, among others. Over the reporting period, the program has also witnessed a continuation of applications that require additional information and studies, especially concerning issues on water quantity and quality, truck traffic, and public safety.

These applications require considerably more staff time to review and analyze than operations that are proposed in sparsely populated areas or those that do not actually encroach on or have little potential for impacting ground water. Addressing the concerns of local citizens, holding public hearings, preparing complex and extensive environmental assessments, investigating complaints, analyzing the applications for compliance, and contacting the applicant about needed revisions have stretched staff resources of the Opencut Mining Program.

A legislative audit in the first half of 2008 and the passage of HB 678 in the 2009 Legislative Session resulted in some new directions for the program, including the development of new permit processing procedures and timelines, the opportunity for public meetings on permit applications, and the hiring of new staff. This has required considerable staff time to pursue and implement these new initiatives, while in the long run will serve the program well by improving the permitting process.

As a result of all of the above, the number of pending permits has remained at a high level over the reporting period and the majority of permitted sites have gone without needed compliance inspections. It has also resulted in sites that operate without permits because of the lack of resources to locate them or to follow-up once they have been identified. Some of these unpermitted sites are not reclaimed and end up as weed-infested sites. Pending permits and a lack of timely follow-up is counterproductive to the mission of the program, because some operators may see this as a legitimate opportunity to mine without a permit, creating a competitive disadvantage for permitted companies and damage to the environment.

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

Description of Statute and Program
The Coal and Uranium Program (Program) is responsible for permitting, inspecting and otherwise managing regulatory compliance of coal and uranium prospecting, mining, and reclamation operations in the state.

Description of Regulated Community
There are six major coal development companies actively mining in Montana. Five active mines are located in southeastern Montana and one is located in northeastern Montana. One inactive large mine is in the process of final reclamation operations. One comparatively small operation located elsewhere is totally reclaimed. Of the eastern Montana operations, one company holds five permits (Western Energy), while other companies hold one or two permits. Most of the active coal mines are strip mines. There is one underground mine.

Currently, prospecting/exploration activities in Montana are limited to coal exploration by one company in potential new mining areas, and companies exploring coal resources at existing operating mines. The activities of existing companies generally involve defining the coal quality and quantity as mining advances in currently permitted areas or in potential expansion areas of existing mines.

Compliance Assistance and Education
Prospecting inspections are conducted to evaluate site situations prior to initiation of activity, and as necessary during and after prospecting activities to ensure compliance with regulations and permit conditions.

Each active mine site must be inspected monthly, including one complete inspection every quarter. For each inactive mine site, one complete inspection per quarter is required. Additional inspections are conducted as necessary to ensure compliance with regulations and permit conditions.

Program staff interacts with representatives of the regulated industry, government agencies, interested members of the public, and special interest groups on a frequent basis. Using telephone, fax, regular mail, e-mail, interpersonal meetings and other forums, compliance issues and problems relating to prospecting and mining are

evaluated and resolved. Activities and efforts to promote compliance assistance and education also include participation in and sponsorship of conferences, meetings, and training. These interactions and efforts appear to facilitate the conduct of coal prospecting and mining business with limited formal enforcement action or litigation required.

The greatest incentive for compliance with coal and uranium rules is the cost effectiveness of doing so. Costs associated with discovery, evaluation, mitigation, and final resolution of noncompliance issues are high, for both the regulated industry and the regulatory agencies. Multiple violations of the same or similar regulatory requirement can establish a pattern of violations that may lead to cessation of part or all of a prospecting or mining operation. In addition, there is a readily accessible nationwide system allowing all state and federal regulatory agencies to track and evaluate compliance problems related directly or indirectly to a given coal mine permittee or applicant. If a given permittee does not meet regulatory obligations under one permit, other permits may be obstructed.

Complaints and Noncompliances

The DEQ received three complaint reports associated with activities at coal mines or "strip mines". All complaints and spills were referred to the Coal and Uranium Program.

Program Response to Complaints and Noncompliances

The program refers to the issuance of a notice of a violation of a statutory or permit requirement as a Notice of Noncompliance (NON). While NONs generally relate to the failure to conduct operations in the field as approved, some are issued for administrative failures. In general, if a compliance problem can be corrected in the field during an inspection or within a reasonable time period, an operator may be issued a maintenance item rather than a NON. The maintenance item requires work to be performed within a specified time frame or prior to the occurrence of a specific event. Issuance of NONs may result in a requirement to make minor or major adjustments to permits and/or operations, may involve significant monetary penalties, or if the violations are minor, a waiver of penalties. The program must also issue a "Cessation Order" whenever a regulated activity creates a real or imminent threat to public health or safety, or causes significant and imminent environmental harm. NONs are discovered as a result of program field inspections, review of reports and data, citizen complaints or by notification by the permittee.

Violations may require the permittee to perform on-the-ground work, such as filling in rills and gullies, upgrading sediment control, or repairing unauthorized disturbance of native ground. Others may require a permitting action, typically a minor revision, to implement a revised or new way of doing something. Violations which involve monitoring practices may need to be resolved by minor revisions to a monitoring plan, or may be such that data were not collected and are forever lost. Some violations specifically involve reclamation practices, such as re-grading of the surface, soil replacement, or seeding. Resolution typically entails adjustment of reclamation practices that provide compliance with the rules and permit. Violations involving a water

effluent problem may require water treatment and sediment control structures to be in place and functioning or revising treatment practices or structures. Although uncommon, exorbitant failures to carry out permit commitments can result in permit revocation and bond forfeiture.

Formal Enforcement

During the reporting period, the Enforcement Division managed a total of 15 enforcement cases: six were ongoing from the previous reporting period and nine were new cases. All of the cases were administrative. Nine of the 15 cases have been closed, one request for enforcement was withdrawn, one case is in case development and four others are under order.

During the reporting period, the Enforcement Division settled seven cases for penalties totaling $42,788. Penalties in the amount of $42,229 were collected. Some of the collected penalties were owed from the prior reporting period and came due during this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until a date in the next reporting period.

Trends/Benefits to Environment

DEQ regulations must be as stringent as federal regulations that essentially require that a penalty must be assessed for all violations. Over time, as more mined lands are reclaimed, the benefits of post-mining land use will increase.

The Coal and Uranium Program has had a relatively stable regulated mine community of seven large operators (six currently active) and several small operators (most of whom are no longer in operation) for the past 20 years. Partial inspections may occur based on special needs, bond release, or as part of a discipline-specific inspection. The number and frequency of such inspections vary year to year, but the average over the report period is likely to continue for the foreseeable future. The number of new bond release applications and associated inspections has remained at a relatively high level during the report period. This is expected to continue in the next report period.

F. Public Water Supply and Subdivisions Bureau

Public Water Supply Laws, 75-6-101, MCA

Description of Statute and Program
The DEQ Public Water Supply Program implements and enforces the Montana Public Water Supplies' Distribution and Treatment Law and has primary enforcement authority for implementation and enforcement of the federal Safe Drinking Water Act. Public water suppliers must comply with stringent construction, operation, monitoring and treatment requirements.

Description of Regulated Community
The PWS program regulates approximately 2,086 public water supply systems, which includes 686 community systems. A community water system is a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A transient water system means a public water supply system that is not a community water system and regularly serves at least 25 different people for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are 1,156 transient systems. A non-transient non-community water system is a public water supply system that is not a community water system but regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are 253 non-transient non-community systems.

Compliance Assistance and Education
The PWS program monitors public water supply compliance with the requirements; 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.

PWS program staff participates in a very active statewide operator training program that also involves other approved training providers. The program emphasizes operator training, technical assistance, and best available treatment techniques and monitoring tools. The monitoring and reporting section routinely provides monitoring schedule calendars for water systems and time critical reminders, which has proven very beneficial for the systems and for the program in terms of compliance. These activities promote public health protection through preventive measures. The field services section performs routine sanitary survey inspections of public water systems to identify possible system deficiencies that may affect compliance. This section also provides technical assistance to water suppliers to address specific compliance issues. Technical assistance is provided via the telephone, on site or at DEQ offices, direct mailings, and at water schools and conferences.

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. The Plan Review Section reviews approximately 430 plan submittals per year for new construction.

Complaints and Noncompliance
The DEQ received 65 complaints concerning public water supplies during the reporting period. The majority of the complaints were in relation to drinking water quality and there were several complaints concerning water pressure. All complaints were referred to the Public Water Supply Program.

Program Response to Complaints and Noncompliance
The PWS program receives complaints directly, as referrals by the Enforcement Division, or through the Governor's office. Once received, the complaint is logged in by the compliance officer, assigned to the appropriate staff, and followed up by contacting and providing assistance to the complainant. After the initial follow up, an activity report is written by the problem staff which includes any action(s) taken by the program. The complaint will be closed on resolution. Some complaints may result in a violation to the system or possibly an enforcement action requiring the system to achieve compliance through various means.

Formal Enforcement
During the reporting period, the Enforcement Division managed a total of 413 public water supply enforcement cases: 159 of the cases were ongoing from the prior reporting period and 254 were new cases. Administrative enforcement actions were initiated for 298 of the cases, 27 judicial actions were filed, and 88 cases were referred to the EPA for enforcement. At the end of the report period, four of the 413 cases were in case development, 130 cases had been closed, 137 are still active under an administrative order or a judicial judgment, 15 cases are in litigation before a district court or the Board of Environmental Review, 54 Enforcement Requests for enforcement actions were withdrawn, 12 enforcement cases were vacated, and 60 cases were referred to EPA for enforcement. In addition, a demand letter has been sent to one violator to facilitate the initiation of a judicial action.

During this reporting period, the Enforcement Division resolved the violations cited in 142 cases for settlement penalties in the amount of $181,969.50. During this reporting period, the department collected penalties totaling $187,678.50. Some of the penalties that were assessed are either due at a future date, are being paid in installments, are subject to appeal or judicial review, or are not collectable because the violator is judgment-proof.

Trends/Benefits to Environment
During the reporting period, the PWS program experienced some staff shortages due to turnover. The staff turnover continues to strain resources to recruit, fill, and train. Even with staff shortages, the program has decreased violations and significant non-

compliers (SNC) due to staff addressing violations more promptly, better accountability and tracking of the programs database, and increased public outreach and education.

As a result of a shortage of staff necessary to fully implement all federal regulations, EPA Region 8 is working on early implementation of the Stage 2 Disinfection Byproduct Rule (DBPR) and Long Term 2 (LT2) Surface Water Treatment Rule and will possibly start implementation of the new Ground Water Rule (GWR) for the State of Montana, in lieu of the department.

During FY2008, the program completed 2,011 monitoring schedule calendars for the regulated systems. In FY2009, the program completed 4,107 monitoring schedule calendars electronically through the programs database that were sent out bi-annually. There were 2,331 reminder letters and postcards sent out in FY2008 to systems, and a total of 4,792 sent in FY2009. In 2006, access to monitoring schedules and historical sample data became available to the public via the DEQ website. This allowed public water supplies to track their monitoring data, violation history, and water sampling requirements. The website also allows the general public to check on a system's water quality and compliance with the requirements.

The large number of enforcement actions taken under the Public Water Supply Laws reflects the size of the regulated community, as well as the complicated nature of the regulations adopted by EPA for public water. Most of the enforcement actions initiated were for the failure to monitor for coliform bacteria and/or nitrates, Surface Water Treatment Rule violations requiring tighter filter effluent turbidity requirements, Stage 1 DBP monitoring and reporting, Maximum Contaminant Level (MCL) violations for DBPs, and failure to provide public notification of the violations. The failure to provide public notice places consumer's public health at increased risk. Without public notification, the consumer cannot make informed decisions concerning their health. The largest amount of enforcement actions were taken against small water systems that serve cafés, drinking establishments and trailer courts rather than large municipal water suppliers. The small systems are the most vulnerable populations at risk when addressing water quality issues due to the transient use of the establishments and trailer courts.

The DEQ is attempting to encourage compliance by using Administrative Orders on Consent to resolve enforcement cases involving monitoring violations. Negotiated consent orders contain stipulated penalties for future violations that provide an incentive for compliance.

Sanitation in Subdivisions Act, 76-4-101, MCA

Brief Description of Statute and Program

The Subdivision Review Section (Section) is responsible for the technical review and processing of 900 to 1,600 subdivision applications (approximately 3,500 to 10,000 new lots, less than 20 acres in size) each year for adequacy of water supply, wastewater treatment and disposal, solid waste disposal, and storm water control systems.

Description of Regulated Community
The regulated community includes all subdivisions approved by the DEQ that hold a certificate of subdivision approval. Current electronic records indicate that, since FY1990, 26,550 subdivisions containing 112,946 lots have been reviewed and approved in Montana. This number does not include the Municipal Facilities Exemption lots connected to municipal systems. The number of individual lots included within a subdivision application can range from one to several hundred. The section is currently seeing trends towards larger numbers of smaller lots in subdivisions that include both public water and public sewer.

The annual number of subdivisions reviewed and approved over the past three years has steadily decreased from 1,443 applications for 9,917 lots in FY2007, to 1,230 applications for 6,690 lots in FY2008 to 931 applications for 3,374 lots in FY2009. The section also made water quality nondegradation determinations for approximately 20,000 individual and community wastewater treatment systems in FY2008 through FY2009 to ensure compliance with the Water Quality Act. The section began conducting detailed water availability reviews in January of 2007, and has approved 300 evaluations since.

Compliance Assistance and Education
The section provides technical assistance and training on the requirements of the laws and regulations to county health departments, county commissioners, and to developers and their consultants. Most technical assistance is provided by phone or in the office, and staff interacts with applicants on a daily basis.

Over the past two years, the section has continued to increase efforts to provide more formal education and training about rule interpretations and technical analyses to county sanitarians and consultants. Section staff has provided a minimum of five off-site training sessions per year starting in 2001 and continuing today. Staff will occasionally conduct field investigations of proposed subdivisions; however, personal contact by phone and in-office meetings is the most effective means to provide compliance assistance.

Several administrative rules were modified through the efforts of a focus group consisting of DEQ employees, local health officials, developers, and consulting engineers. An ongoing goal of the focus group is to streamline the application process and provide greater consistency, thereby promoting greater compliance. The section has developed an online subdivision application preparation tool in order to make the application process more streamlined and to provide consistent and complete applications. The section also contracted with MSU Extension in Bozeman to develop a soils training class for consultants and county sanitarians that was offered in five locations throughout Montana to approximately 150 county sanitarians and consultants.

Complaints and Noncompliance
The most common noncompliance issue involving the Sanitation in Subdivisions Act arises when lots within a subdivision do not meet the conditions that were placed on

them at the time of approval. This type of noncompliance occurs when facilities are constructed that are either inadequate or different from what was originally approved. The most serious type of noncompliance occurs when a non-approved wastewater treatment/disposal system is constructed. In this situation the original nondegradation analysis used to approve the system may no longer be valid, water quality protection standards may be exceeded and public health may be threatened.

Discovery of noncompliance with the Sanitation in Subdivisions Act generally occurs long after the original certificate of subdivision approval is issued. Potential noncompliance situations have been discovered, and at times prevented, by the DEQ or by local government officials while conducting inspections during construction activities. More commonly, noncompliance situations are identified through complaints by neighbors and concerned citizens, and by county health officials who observe noncompliant facilities during septic system installations.

There were 101 formal complaints of potential violations of the Sanitation in Subdivisions Act and associated rules during the reporting period. Most of the complaints were filed by citizens concerned about well water quality and quantity as well as the adequacy and location of their neighbor's wastewater treatment system. Some complaints are filed by the Department in response to notifications by county health departments. Not all complaints were determined to be actual violations of the Sanitation in Subdivisions Act.

Program Response to Complaints and Noncompliance

In January of 2009, the section added a half-time position to deal with problem files, complaints, and violations. Since adding this position there have been 22 complaints, 10 are ongoing and 12 have been resolved. During the same time period there were 17 warning letters issued, 10 violations letters issued, and 2 formal cases referred to enforcement.

The majority of complaints, once validated and after a violation letter is sent by the Enforcement Division, are referred to the Subdivision Review Section. The responsible party generally resolves them by submitting a revised subdivision proposal to the section or conducting the necessary corrective actions to bring the subdivision back into compliance with the original approval. If a case is deemed too far out of compliance to be corrected and the original developer still owns the subdivision, the section may revoke the original approval for the subdivision. In FY2008 and FY2009 there were 3 formal revocations issued by the section. These revocations were due to lack of soils present in the approved drain field location, and easements that were represented in the application that could not be granted because the water line serving the development had been cut off by the municipality.

Formal Enforcement

During the reporting period, the Enforcement Division managed a total of 15 enforcement cases. Seven of the cases are ongoing from the previous reporting period; the remaining eight cases were requested during the current reporting period. Fourteen of the 15 cases were taken as administrative enforcement actions and the remaining

one was filed in district court. At the end of the reporting period, one case had been closed, three cases were under an administrative order, one was being litigated in district court, four cases were in case development, and four cases had been withdrawn or vacated. In addition, demand letters had been sent in the two remaining cases to facilitate development of the judicial enforcement actions.

During this reporting period, the DEQ settled the violations cited in four cases for $5,614.25 and collected $4,040.25 in penalties to resolve violations of the Sanitation in Subdivisions Law and regulations for which enforcement actions had been completed.

Trends/Benefits to Environment
There does not appear to be any clear trend regarding the number of enforcement actions that occur each year. This is due to the very high work load of the section just keeping up with the day-to-day work of reviewing new applications. The section has hired a compliance engineer to interface with the Enforcement Division and the subdivisions that are not in compliance with their original approval. The compliance position that was recently filled is resolving problems without taking formal enforcement actions so there is the benefit of a gentler approach in some situations and more one-on-one contact leading to problem resolution. Due to the large number of subdivisions approved and constructed since the Act came into existence in 1961, and given the steady growth that various regions of Montana are experiencing, the section anticipates that there will be an increase in the number of complaints that will lead to enforcement actions each year.

Water Treatment Plant Operators Laws, 37-42-101, MCA

Description of Statute and Program
The Water and Wastewater Operator Certification Program (Program) implements and enforces the Water Treatment Plant Operators Laws. The program also implements training, testing, and continuing education services for water and wastewater operators and provides general assistance to the public and other state and federal agencies.

Description of Regulated Community
Although exact numbers vary continually, there are approximately 679 community public water supply systems and 219 non-transient non-community public water supply systems that must retain the services of a certified operator. There are presently 303 public sewage systems that must retain the services of certified operators. There are approximately 1,582 certified operators in Montana.

Compliance Assistance and Education
During FY2008 - FY2009, the program held one Water and Wastewater Operator Advisory Council meeting, and one Continuing Education Credit Review Committee meeting. Training new operators on certification requirements has been ongoing and the program continually explores new technologies like CDs and Internet based courses to make training more accessible to operators. The program provides new

operator training in conjunction with examination sessions, which are held at various locations throughout the state.

Complaints and Noncompliance
Complaints received regarding operators of public water supplies are grouped with the public water supply complaints and are referred to the Public Water Supply and Subdivisions Bureau.

Formal Enforcement
During this reporting period, the DEQ did not take any enforcement actions under this statute. Instead, the department cited violations of the water and wastewater operator certification requirement in six formal enforcement actions initiated for various violations of the Public Water Supply laws.

Trends/Benefits to Environment
This program ensures that the operators of water and wastewater treatments systems are qualified and trained in order to protect human health and to assist in a technical capacity.

G. Waste and Underground Tank Management Bureau

Asbestos Control Act, 75-2-501, MCA

Description of Statute and Program
The Waste and Underground Tank Management Bureau's Asbestos Control Program (Program) regulates the abatement of asbestos through the issuance of asbestos project permits, facility (annual) permits, accreditation of five distinct asbestos-related disciplines, compliance inspections, as well as approval and audit of asbestos training course providers. The program regulates asbestos projects in buildings involving the abatement of three or more linear or square feet of regulated asbestos-containing material (RACM). Asbestos project means the encapsulation, enclosure, removal, repair, renovation, demolition, placement, transportation, and/or disposal of friable ACM or ACM that may become friable. Asbestos projects require permits, the use of accredited personnel, and proper work practices.

In addition, EPA has delegated authority to the DEQ to administer the National Emission Standards for Hazardous Air Pollutants for Asbestos (NESHAP), 40 CFR Part 61, subpart M. NESHAP governs building demolition and renovation activities, asbestos inspections, notification of building demolition/renovation activities, controlling asbestos emissions, disposing of asbestos waste, and other asbestos-related activities.

The program's mission is to protect human health from asbestos exposure by providing asbestos education and compliance assistance. The program ensures objective, consistent, efficient, and thorough application of laws, rules, and guidance for the asbestos abatement and building demolition/renovation industries in Montana through education, communication, enforcement, and timely response.

Description of Regulated Community
The regulated community under the Asbestos Control Act consists of building owners, contractors, consultants, and individuals who conduct asbestos projects, provide asbestos training, and conduct other asbestos-related activities including inspecting for asbestos, designing asbestos projects, and generating asbestos management plans.

The regulated community under the asbestos NESHAP includes building owners and contractors who demolish or renovate buildings, dispose of asbestos, and create other sources of asbestos emissions. The asbestos NESHAP is adopted by reference in the asbestos rules.

The program issued an annual average of 392 asbestos project permits, 12 asbestos facility permits, 482 asbestos accreditations, 66.5 NESHAP notifications. It also approved 8.5 asbestos training courses, audited 4.5 training courses, and conducted an average of 51 compliance inspections during the reporting period.

Compliance Assistance and Education

The program continues to be engaged in numerous compliance assistance activities ranging from responding to numerous telephone and written requests for information to providing on-site asbestos regulatory compliance assistance. The program continues to make a significant effort to educate local authorities, such as local building code officials and sanitarians, on asbestos regulations. This allows the local authorities that are in a position to raise awareness to offer this information to the regulated community and the public in their locales. The program conducted town meetings/asbestos training seminars in Bozeman, Billings, Missoula, and Great Falls, along with presenting asbestos waste recognition trainings to five solid waste facilities throughout the state. Staff also spoke at a number of Solid Waste Advisory Committee (SWAC) meetings about asbestos transport and disposal. The program continued to distribute informational publications entitled "Think Asbestos"; EPA's "Current Best Practices for Vermiculite Attic Insulation"; and updated the asbestos information on the department's website to offer more frequently asked questions and compliance assistance information at www.asbestos.mt.gov.

The program worked with the Remediation Division's Site Response Section on a public awareness effort about karstolite asbestos. The effort consisted of educating residents, contractors, and building owners in Bozeman, Helena, Townsend, and Livingston about karstolite asbestos and its potential presence in the attics of buildings in those locales. The effort included town meetings, development of a karstolite-specific webpage, and the distribution of an informational pamphlet called, "Karstolite Insulation and Other Asbestos." Funding was through an EPA Brownfields grant.

During the reporting period, the program welcomed the formation of an association of asbestos contractors and consultants called the Asbestos Contractors and Consultants Association of Montana (ACCAM). The program hopes to maintain communication with ACCAM in an effort to enhance members' regulatory knowledge.

The program, the Department's Office of Information Technology and Montana Interactive (MI) developed an online accreditation application system whereby persons can apply for asbestos licenses on line and pay the required fee with a credit card. The program anticipates developing similar systems with its other permit applications. The program wrote and distributed its first ever newsletter to an interested parties list of stakeholders.

The program has furthered its relationship with fellow agencies such as the Departments of Administration, Labor and Industry, Fish, Wildlife and Parks, Transportation, and Military Affairs. Those agencies have invited the program to provide them with regulatory compliance assistance. The program has recently been communicating with Labor and Industry and federal OSHA concerning the enforcement of asbestos work practices.

Complaints and Noncompliances
The department received 88 complaints concerning asbestos during the reporting period. Most of the complaints involved the failure to conduct an asbestos inspection prior to building renovation or demolition. The other complaints mainly relate to improper asbestos abatement techniques and general asbestos handling such as questions about home insulation, removal of non-friable asbestos such as cement asbestos siding or roofing, and methods for proper asbestos transport and disposal.

Program Response to Complaints and Noncompliances
Asbestos complaints are validated, documented, and resolved through the use of compliance assistance, warning letters, violation letters, or formal enforcement. By using warning letters for minor first offenses, the department can assist responsible parties in complying with the rules. The warning letter is then considered in any future enforcement action relative to a history or pattern of violations. Major violations or repeat offenses usually result in formal enforcement with a civil or administrative penalty.

Formal Enforcement
During the reporting period, the Enforcement Division managed 11 enforcement cases to address violations of the Asbestos Control Act. Nine of the cases were ongoing from the prior reporting period and two were new cases. Four of the 11 enforcement actions taken were in an administrative venue and the remaining two cases were filed in District Court. Five of the cases were closed at the end of the reporting period, two cases were being litigated in District Court, and administrative compliance and penalty orders had been issued in two other cases. In the remaining two cases, demand letters had been sent to the violators to ascertain if they would be willing to enter into a Consent Order rather than litigating the cases.

The Enforcement Division has not settled any of the enforcement cases that were ongoing during this reporting period. The department, however, collected $40,000 in penalties that came due from cases settled during the previous reporting period.

Trends/Benefits to Environment
The number of project permits and asbestos accreditations issued for the reporting period decreased slightly, as have the number of compliance inspections conducted by the program. The lower number of inspections was due to: the loss of one of two program regulatory employees; increased administrative obligations associated with the development of the online accreditation application system; and litigation against the program. The department anticipates returning to previous inspection numbers because two of the three challenges noted above have been resolved and the online services project will help gain efficiency, resulting in greater field presence in the future. The abatement industry's compliance rate, as determined by inspections of permitted projects, continues to be greater than 80%. The abatement industry should be highly compliant because members attend annual asbestos refresher training courses in order to maintain accreditation. In addition, complying with asbestos requirements is in their best interest since only trained and accredited asbestos personnel are allowed to

conduct asbestos abatement work, inspections, and write project designs and management plans.

The department is still concerned about a high rate of noncompliance with the asbestos NESHAP regulations, which govern building demolition and renovation activities. The number of building renovation/demolitions occurring in Montana is high compared to the low number of demolition/renovation notifications received by the program. The program studied building demolition records it gathered in 2000 and 2001 and compared them to similar records maintained by local building code offices of several major Montana cities. The program studied the same demolition notification issue in 2002, 2003, and 2004 and found that compliance with demolition notification requirements increased slightly overall. The cities that recognized the issue acted proactively by training building code inspectors in asbestos regulations. Some cities, like Livingston and Great Falls, and most recently Missoula and Cut Bank, enacted asbestos inspection and demolition requirements in which the issuance of building permits is tied to inspecting for asbestos. Survey data illustrates that cities that acted proactively reduced the rate of building demolition noncompliance. The department will continue moving forward with broadening the awareness of the asbestos regulations throughout Montana as part of the effort to attain a higher level of compliance with the asbestos requirements by emphasizing the asbestos inspection and building demolition/renovation notification requirements.

The program has seen a significant increase in the number of inquiries about asbestos regulations. The increase is largely attributed to asbestos compliance assistance and enforcement the Department conducts. The inquiries include both verbal and written requests for information regarding the regulations but also information on asbestos exposure and the techniques that should be utilized to safely remove asbestos. Asking local authorities to make asbestos literature available to contractors applying for building permits has been very helpful. Educating landfills, transfer stations, and waste transporters about asbestos waste issues has improved regulatory compliance. Another reason could be the tragic health impacts resulting from the exposure to asbestos in Libby, Montana.

Interestingly, the program still finds that many general contractors in Libby fail to comply with asbestos regulations. Many contractors are very aware of vermiculite, but few seem to recognize the fact that many other building materials contain asbestos and need to be inspected for and identified prior to demolition and/or renovation activities. The program recently conducted asbestos recognition training for twenty Lincoln County solid waste employees. During that training the program learned that Lincoln County is requiring asbestos inspections (for waste characterization) from contractors wishing to dump construction waste at the landfill. Similarly, the City of Libby's building codes office is tying the issuance of building permits to asbestos regulatory requirements.

The program operates with only two technical staff engaged in field work and compliance assistance activities. Because of the limited resources, the staff rely on the education they provide to local authorities, the abatement industry, interested parties,

and others to heighten the regulated community's awareness of the asbestos regulations.

Hazardous Waste Act, 75-10-401

Description of Statute and Program
The Hazardous Waste Program (Program) within the Hazardous Waste Section of the Waste and Underground Tank Management Bureau (WUTMB) operates the state's hazardous waste regulatory program. The DEQ controls a universe of waste that is identical to the federal EPA program. EPA delegated authority to the Program under the Resource Conservation and Recovery Act-Subtitle C (RCRA-C).

Description of Regulated Community
As of July 1, 2009, there were nine permitted facilities in Montana and numerous hazardous waste handlers, including 26 transporters and 117 generators who were required to register with the program.

Compliance Assistance and Education
The state's Hazardous Waste Act is primarily designed for the prevention of waste management problems in the first instance. As such, the program offers many types of compliance assistance activities. Ongoing efforts include response to written and telephone requests for information, waste minimization review during compliance evaluation inspections, contractor contact sheets, and waste stream-specific handouts to answer frequently asked questions. Program personnel provide compliance assistance during reviews of annual waste generation reports to ensure data quality and the correct assessment of fees. Program personnel also continue to provide general and sector-specific presentations on hazardous waste management when requested. Staff gave presentations to concerned citizens on activities at facilities of interest. Pre-permit modification application assistance is given to facilities seeking changes to permits. Working in concert with DEQ's Small Business and Community Assistance Program, the program distributed guidance publications and provided training on a variety of hazardous waste and used oil topics.

The program also distributed a comprehensive compliance assistance CD to provide a single source of all hazardous waste and used oil compliance assistance information and education to the regulated community. The program revised the content of the CD and provided an Internet-based version in 2009.

The program continued to implement a compliance monitoring strategy that defines the number of inspections that staff members conduct at each category of handler, consistent with the Performance Partnership Agreement during the reporting period.

Complaints are first evaluated by the DEQ's Enforcement Division. Those complaints that clearly involve hazardous waste are referred to the program. Complaints that may involve hazardous waste or used oil and are for sites already in the program's database, are also referred to the program. Other complaints are investigated by the Enforcement

Division for validation. The majority of the complaints involve the mismanagement of used oil.

Complaints and Noncompliances
The DEQ received 44 complaints concerning hazardous waste during the reporting period. The majority of the hazardous waste complaints were filed against businesses for poor waste management and disposal practices.

The department received 37 complaints concerning used oil during the reporting period. The most common complaint was against businesses and private individuals for not removing and properly disposing of used oil that had been spilled, released, or purposely dumped onto the ground. The next most common complaint was concern for private individuals applying do-it-yourselfer (DIY) generated used oil on either their own personal property, or on public property for dust abatement. Used oil cannot be placed on public property for any purpose, but the department's administrative rules have not disallowed the practice of applying DIY used oil on private property as long as the used oil is applied in such a manner as to not threaten state waters.

Program Response to Complaints and Noncompliances
Noncompliance may be observed during complaint-related inspections or during "normal" compliance evaluation inspections. The response to noncompliance may be: verbal informal, a written informal, or a violation letter. All recorded violations are entered into the federal database (RCRAInfo); this information is automatically extracted to the state enterprise database (CEDARS). A verbal informal would be issued in the field for an easily corrected violation, e.g. an unmarked drum of used oil. The violation is corrected in the presence of the inspector. A written informal, i.e. warning letter, is issued for relatively minor violations that cannot be corrected immediately, e.g. a minor used oil spill, or not having a required manifest on site. A written informal requires the submission of proof of compliance. A violation letter, which is the first step in a formal enforcement proceeding, is issued in the case of a more serious violation, such as a spill of hazardous waste, or repeat violations, such as a demonstrated pattern of repeated minor violations. A violation letter allows the responsible party to submit mitigating evidence prior to a referral for formal enforcement.

Formal Enforcement
During the reporting period, the Enforcement Division managed a total of 17 enforcement cases: 11 of the cases were ongoing from the prior reporting period and six were new cases. Ten of the 17 cases were taken as administrative actions and the seven were judicial actions. At the end of the reporting period, a demand letter had been sent in one of the cases, four cases had been closed, nine cases are still active under an administrative order or a judicial judgment, one case was vacated, one case is being litigated in District Court and the Enforcement Request for one of the cases was denied because of evidentiary issues.

During the reporting period, four enforcement cases were settled for penalties in the amount of $170,469. The department collected the full amount of the assessed penalties.

Trends/Benefits to Environment

For the reporting period, the hazardous waste regulated community was similar to the previous years. The program's track record, as measured by EPA's enforcement oversight process, of producing timely and accurate inspection reports of high quality continued. The general trend of a gradual reduction in the number of generators has leveled off.

Since the inception of the program, the costs associated with waste disposal have resulted in pollution prevention efforts on the part of regulated entities and a decrease in the number of generators. This is complimented by compliance assistance efforts by program staff. The number of transporters and permitted facilities have decreased slightly or remained relatively constant. The number of permitted facilities is relatively steady because there is no market for new commercial facilities in Montana and because the requirement for facility-wide corrective action at permitted facilities acts as a disincentive.

In response to declining federal grant revenue, the program proposed fee increases in administrative rule to maintain a viable program to protect Montana citizens from improper management of hazardous wastes.

Within the universe of hazardous waste generators, there are several trends of note. At the national level, the program has received information that there is a decrease in hazardous waste generation due to the downturn in the national economy. At the state level, the program expects that the trend in waste reduction will be reflected in the next state annual waste reporting cycle, along with a proportional reduction in program income. For example, as of November 1, 2009, Columbia Falls Aluminum Company, one of the state's largest generators, has ceased production and all hazardous waste generation for an indeterminate period of time, which will have a pronounced impact on the program's income.

As this report is finalized, EPA is preparing to issue draft regulations governing the management of coal combustion waste. When finalized, the regulations may require some coal combustion waste to be managed as a hazardous waste and potentially require that coal combustion waste handlers seek a hazardous waste management permit. A fourth trend in waste management is an increased interest in recycling universal waste and electronic waste by businesses and individuals.

Again, similar to the previous reporting period, the most frequently observed violations during the reporting period continue the long-established trend: deviations from pre-transport hazardous waste management and used oil labeling requirements. Despite the program's attempts at compliance assistance through inspection and educational outreach, these types of violations still occur. As such, violations are the result of an

individual's decision to deviate from regulatory requirements and not due to the novelty or complexity of the requirements. However, there was no increase in serious noncompliance that threatened human health or the environment.

The DEQ believes that hazardous waste compliance and enforcement activities result in cleaner soil and water for Montanans, and less direct exposure for individuals consistent with the direction of the Montana Hazardous Waste Act. Informal and formal enforcement actions deter violators, eliminate competitive disadvantages, and send a message to the remainder of the regulated community that the department will exercise its authority to ensure compliance.

Infectious Waste Management Act, 75-10-1001, MCA

Description of Statute and Program
The Waste and Underground Tank Management Bureau (WUTMB), Solid Waste Section, Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana including infectious wastes. The purpose of the Infectious Waste Management Act is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infections waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable. Private citizens, medical facilities and veterinary clinics, as well as ranching or farming operations have the potential to generate infectious wastes.

Description of Regulated Community
There is currently one infectious waste treatment facility licensed by the Solid Waste Program in Montana.

Compliance Assistance and Education
Two site inspections were conducted in each year of the reporting period at the lone infectious waste management facility in Montana.

Complaints and Noncompliances
No complaints were reported in the reporting period.

Formal Enforcement
No formal enforcement actions were taken under this statute during this reporting period.

Trends/Benefits to Environment
The benefit to the environment is the continued perfect compliance record at the licensed solid waste management facility for the treatment of infectious wastes.

Megalandfill Siting Act, 75-10-901, MCA

There has been no activity under this program during the reporting period. Due to changes in the regulatory requirements for the siting and construction of solid waste landfills, the Megalandfill Siting Act was deemed unnecessary and was repealed by the 2009 Legislature.

Formal Enforcement
No formal enforcement actions were taken under this statute during this reporting period.

Methamphetamine Cleanup Act, 75-10-1301, MCA

Description of Statute and Program
The Waste and Underground Tank Management Bureau (WUTMB) administers the Methamphetamine Cleanup Program (Program) that was created by the 2005 Legislature. The law mandates communication between governmental agencies as well as landlords, tenants, and prospective purchasers of former methamphetamine (meth) labs. State and local law enforcement agents are now required to report actions against meth labs to the DEQ. The law also created a cleanup standard for meth and requires those who assess and cleanup meth labs to be certified. The program is required to post meth lab properties on the Internet at www.deq.mt.gov/Meth/ and work with the property owner to voluntarily decontaminate the property to meet the cleanup standard. Once that is accomplished, the property will be removed from the website and the property owner does not have to disclose the past contamination. If a property has not been remediated by a certified contractor to the cleanup standard, then the property owner must notify the program in writing that the property has been used as a clandestine meth lab before the property can be leased or sold.

Description of Regulated Community
Although cleanup of meth labs is voluntary under the Act, property owners must use DEQ certified contractors and meet cleanup standards in order to remove their property from the Internet list and receive the immunity provision in the statute. The regulated community under the Act consists of anyone seeking to become a Certified Meth Lab Cleanup Contractor. The program also oversees the certified contractor's performance by determining whether the contractor's work has effectively met the cleanup standard. In addition, the program regulates the training providers that are responsible for the courses to certify cleanup contractors. A new training provider was certified during the reporting period. Approximately 55% of the initially certified contractors have attended a meth lab cleanup refresher course and have been recertified for another two-year period. Eight new meth lab cleanup contractors were certified in the reporting period.

Compliance Assistance and Education
A great deal of outreach continues to be performed to help stakeholders and the general public understand this law. To improve that understanding, the program has published a Homeowner's Guidance Document, funded by an EPA Brownfields grant.

Program staff also traveled to Washington D.C. to participate in the drafting of EPA's national Voluntary Guidelines for Methamphetamine Laboratory Cleanup. The document provides technical guidance for state and local personnel.

Complaints and Noncompliances
The program received 14 clandestine drug lab complaints during the reporting period from the Department of Justice. Upon establishment of the program's database, the Enforcement Division closed and referred all of these complaints to the Methamphetamine Cleanup Program. The program then took steps to determine if the labs were located within inhabitable properties and if so, notified each property owner and placed the property address on the Internet. The program independently tracks the location and status of all historical and recent lab locations.

Program Response to Complaints and Noncompliances
There were no complaints during the reporting period.

Formal Enforcement
No formal enforcement actions were taken under this statute during the reporting period.

Trends/Benefits to Environment
There are 205 properties listed on the DEQ meth website. A Certificate of Fitness has been issued to seven property owners and their addresses removed from the website during the reporting period. The number of labs peaked in 2002 and has been steadily dropping since. Although the number of lab busts is declining, a backlog of contaminated sites remains due to the inability to obtain the information necessary to pursue proper cleanup. The program is also discovering that there are many clandestine drug labs throughout the state that were never reported to or investigated by law enforcement. Also, residual methamphetamine in a structure is as prevalent from consumption as it is from manufacturing. Meth houses may pose as much of a threat to human health as meth labs. Restoration of inhabitable properties impacted by meth is critical to protect present and future occupants of these structures.

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

Description of Statute and Program
The Motor Vehicle Wrecking and Recycling Program (Program) within the Solid Waste Section of the Waste and Underground Tank Management Bureau (WUTMB) administers this statute. The Act requires the DEQ to license and regulate motor vehicle recycling facilities (MVRFs) and to administer a program for the control, collection, recycling, and disposal of junk vehicles and component parts. The program provides annual financial grants to counties to administer the program on a local level. The program also oversees the operation of the county programs and approves their annual budgets and expenditures.

Description of Regulated Community
The total size of the regulated community is any Montana citizen possessing a junk vehicle, plus any governmental or commercial entity active in or possessing junk vehicles. During the reporting period there were 416 new and renewal licenses issued by the program. Of that total, 312 were private recycling facilities. The number of commercial licenses declined slightly throughout the reporting period.

Each county has to acquire, develop, and maintain property for motor vehicle graveyards. Ten of 56 counties have merged with other counties or districts. There are 52 licensed county motor vehicle graveyards. In each year of the reporting period, 50 inspections were completed and less than six violations were found each year.

Compliance Assistance and Education
Motor vehicle recycling facilities and graveyards are 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 and a review of the facility's records. During the reporting period, program staff conducted 560 inspections at regulated facilities, approximately 280 inspections per year.

Each county program is provided with a comprehensive Motor Vehicle Recycling and Disposal Program Reference and Guidance Manual. Annual training is also provided to all county programs. The training is usually offered in Billings and in Helena.

The program participates in producing a bi-annual Solid Waste Section newsletter with copies going to all the licensed MVRF and county junk vehicle graveyard owners and operators. The program also provides interactive forms on the Waste and Underground Tank Management Bureau webpage.

Complaints and Noncompliances
The department received 97 complaints concerning junk vehicles during the reporting period. Complaints regarding four or fewer junk vehicles are referred to the county junk vehicle programs. Complaints regarding permitted motor vehicle wrecking facilities are addressed by the program. All other junk vehicle complaints are addressed by the Enforcement Division. Frequently, junk vehicle complaints include used oil and solid waste components.

Program Response to Complaints and Noncompliances
It is important to note that all violations are aesthetic, licensing, or record keeping issues. When contamination issues (water or ground) present themselves e.g., fluid removal, staff alert other appropriate programs within the DEQ or other agencies as appropriate. Some investigations lead to formal enforcement activities, with actions ongoing.

When noncompliances are noted during facility inspections, they are recorded in the inspection report and brought to the operator's attention and scheduled for correction. If

the violation continues unabated into the next scheduled inspection or beyond the scheduled date for compliance, enforcement action may be required.

Formal Enforcement
During the reporting period, the Enforcement Division managed 17 enforcement cases: 14 were ongoing from the prior reporting period and three were new cases. Five cases were administrative, 11 were judicial, and one case was referred to a county attorney for prosecution.

At the end of the reporting period, three cases were closed, 12 cases were still active under either an administrative order or a judicial judgment, and two cases were in case development.

During the reporting period, the department settled four of the junk vehicle cases for a total of $61,705.50 and collected $14,325.50 in penalties that came due during the reporting period. The remainder of the penalties that were assessed is either due during the next reporting period or will require further litigation or collection activity to recover.

Trends/Benefits to Environment
One trend that has been observed is that the number of complaints about junk vehicles has increased in the western part of the state. This can be attributed to increasing populations and expansion of housing into more rural areas.

As noted in the FY 2004-2005 report, the program has continued to observe that many of the owners of longtime, established motor vehicle recycling facilities are retiring or leaving the business. The newer operators tend to be more professional, focused on recycling, and aware of environmental issues. The training provided to new licensees has contributed to this improvement.

In general, improved performance at county graveyards and MVRFs has resulted in the continued reduction in the potential for ground and surface water contamination from leaking fluids at these facilities and improvement in the aesthetic impacts to the surrounding environment resulting from the proper shielding of junk vehicles from public view.

It should be noted that the Motor Vehicle Recycling and Disposal laws authorize a $250 civil penalty for each day of violation and, as of April 28, 2005, added administrative penalty authority in the amount of $50 per day. In some instances, the DEQ initiates a judicial action when it believes an administrative compliance and penalty order will not achieve compliance. Such actions are time-consuming and resource intensive for both the department and courts. Administrative penalty authority should allow the department to assess penalties more efficiently. However, in past cases, the authority of the District Court was necessary to compel the violator to comply.

Septage Disposal and Licensure Laws, 75-10-1201, MCA

Brief Description of Statute and Program
The Waste and Underground Tank Management Bureau (WUTMB), Solid Waste Section, Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana including septic tank pumpings, pumpers and disposal sites.

Description of Regulated Community
There are 158 licensed septage pumpers and 169 septage land application and disposal sites.

Compliance Assistance and Education
The program has published a pumper guide and brochures that are mailed to new pumpers, currently licensed pumpers, county health departments, and county sanitarians. Articles are published in a newsletter that is mailed to all licensed pumpers and local sanitarians. Annual training is provided to licensed pumper and county sanitarians. Program staff received 1,581 compliance telephone calls or e-mails during the reporting period. One program staff member is on the Septic Pumper Advisory Committee (SPAC), which consists of septic pumper business people representing seven regions from across the state. The program conducted inspections at 35 land application sites.

Complaints and Noncompliances
The DEQ received 25 complaints concerning septic pumpers during the reporting period. The complaints were related mostly to septage application sites and unlicensed septic pumpers. All complaints relating to licensed septic pumpers are addressed by the Septic Pumper Program.

Program Response to Complaints and Noncompliances
The program closes complaints by providing the needed compliance assistance to the septic pumpers. This is done by conducting a site inspection and providing education on regulatory requirements and pumper responsibilities. Complaints can also result in new licenses being issued by the program.

Formal Enforcement Activities
During the reporting period, the Enforcement Division managed five enforcement actions under this statute: four cases were administrative and the other was judicial. Three of the enforcement actions were carried over from the previous reporting period and enforcement requests were received for the other two cases. Two of the five cases have been closed and the other three were subject to judicial judgments.

The department settled one of the five cases during the reporting period for $14,440. The department, however, collected $25,439.50 in penalties that became due during the reporting period.

Trends/Benefits to Environment
The size of the regulated community has increased since the last reporting period from 145 active licenses to 158 active licenses. Thirty of the active licensees were new to the program for this reporting period. Sixteen of the active licenses either closed or were sold during the reporting period. There appears to be a trend regarding the increasing number of businesses failing to submit the STP license renewal package while still operating after their license has expired. The DEQ's efforts to correct this problem included notice reminders, calls, and an enforcement action request.

Solid Waste Management Act, 75-10-201, MCA

Description of Statute and Program
The Solid Waste Management Act is to ensure the proper management of solid waste management systems and to prevent the improper and unregulated disposal of solid wastes. This is to ensure the protection of public health and safety and to conserve natural resources. 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.

Description of Regulated Community
There are currently 142 licenses issued by the Solid Waste Program (Program) in Montana, as compared to 128 in the last reporting period. Solid waste management systems in Montana include 31 municipal solid waste (MSW) landfills, three construction and demolition waste landfills, 51 inert material landfills and clean wood waste burn sites, three resource recovery facilities, five large commercial composters, six small yard waste composters, 10 dead animal composting operations, 10 waste transfer stations, seven full-time and five one-time landfarms for petroleum contaminated soils and sump solids, and 11 recycling facilities. The program also issued nine household hazardous waste and e-waste (electronic waste) collection event licenses in the reporting period.

Compliance Assistance and Education
The major outreach efforts conducted by the program are the site visits to proposed facilities and inspections of license holders. The Licensing Program staff visit every proposed solid waste facility and actively encourages prospective applicants to attend pre-submittal scoping meetings to facilitate the licensing process.

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 program with the Montana Association of Counties. Program staff participates in or provides instruction at all of the training sessions. The program also published two newsletters for a total of 1,180 copies. Staff spends considerable time answering questions over the telephone or by e-mail. The program averages about 25 calls per day for various kinds of technical assistance. Six staff people handle these calls. This equates to approximately 9,125 calls in the FY2008–FY2009 period.

Complaints and Noncompliances
The DEQ received 142 complaints concerning solid waste during the reporting period. The complaints mainly involved: private landowners or businesses with illegal dumpsites; asphalt and/or construction and demolition wastes; tires; and dead animal disposal. Frequently, solid waste complaints involve junk vehicles. Complaints regarding unlicensed facilities are addressed by the Enforcement Division.

Program Response to Complaints and Noncompliances
Most landfills resolve problems as soon as they are noted in an inspection report. The program emphasizes education and assistance over enforcement. In the history of the program, only two landfills have had their licenses revoked for numerous solid waste violations.

Formal Enforcement Actions
During the reporting period, the Enforcement Division managed 13 enforcement cases that addressed violations of the Solid Waste Management Act. Ten of the 13 cases were ongoing from the previous reporting period and three cases were referred during the reporting period. Seven of the cases were administrative enforcement actions and the other six cases were taken as judicial actions. At the end of the reporting period, two of the 13 cases were in case development, two cases were closed, six cases were either under an administrative order or a judicial judgment, two were being litigated in District Court, and a demand letter had been sent to the violator in the remaining case.

The Enforcement Division resolved three cases during the reporting period for penalties in the amount of $9,225. At the end of the reporting period, the DEQ had collected $39,250 in penalties that were due for cases that were completed during the current and prior reporting periods.

Trends/Benefits to Environment
The benefit to the environment that has resulted from program activities at licensed solid waste management systems is the continued low number of major violations. The program is also working to license all solid waste management facilities including recycling facilities. Recycling facilities under the current regulations are solid waste management facilities and as such have to be licensed by the DEQ. The licenses issued to recycling facilities are free of charge; however, the facilities have to provide tonnage information as well as information on the types of the commodities collected and recycled.

The department has also seen a gradual increase in the number of household hazardous waste and e-waste collection events in several communities around the state. This trend is helping to keep potentially harmful constituents found in household hazardous wastes and e-wastes out of landfills. The number of small compost facilities has also increased in the last reporting period.

Underground Storage Tank Act, Leak Prevention, 75-11-501, MCA

Description of Statue and Program
The Underground Storage Tank Section of the Waste and Underground Tank Management Bureau (WUTMB) operates the state's Leak Prevention Program (Program) for underground storage tanks. The program's goal is the prevention and early detection of leaks from underground storage tanks (USTs) to prevent or minimize soil and ground water contamination.

The program has four components: ensuring proper operation and maintenance of tanks through its operating permit program; ensuring proper installation and modification of tanks through its installation permitting program; compliance assistance to owners and operators; and ensuring installers, removers, and inspectors are properly trained and licensed.

Description of Regulated Community
As of June 30, 2009, the DEQ regulated 888 owners of 1,421 UST facilities housing 3,983 tank systems.

Changes and Accomplishments
On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV. Subtitle B of this act (titled the Underground Storage Tank Compliance Act of 2005) contains amendments to Subtitle I of the Solid Waste Disposal Act, the original legislation that created the Underground Storage Tank Program. This law significantly affects Montana's program. The UST provisions of the Energy Policy Act focus on preventing releases and mandate provisions regarding:

- compliance inspections,
- delivery prohibition,
- secondary containment,
- financial responsibility, and
- operator training.

The program has implemented each of these goals with the requisite administrative rules and business procedures. Operator training rules and owner/operator training media were implemented in November, 2009. Additionally, Montana is requiring, by administrative rule, that owners/operators be fully trained to operate their UST systems by 2010.

Compliance Assistance and Education
In FY2008 and FY2009, the program engaged in 10,898 compliance assistance communication events. Sixty-two percent of these were phone calls; 12 percent were letters; 25 percent were e-mails. The remaining were site visits and walk-ins.

The staff sends inspection reminders to all active UST facilities six months before their operating permit expires. They send warning letters 75 days before their permit expires.

Program staff begins to call owner/operators 45 days before their permit expires. The day before their permit expires, they contact the owner to tell them it will be unlawful to operate after their Operating Permit expires and then the program calls the facility's distributor to advise them that it is unlawful to deposit fuel in the UST system(s).

Program staff conducts continuing education classes for licensed installers, removers, and compliance inspectors annually. A three-day training course is optionally offered to train new compliance inspectors.

Tank Helper, a free, Internet-based software program that translates underground petroleum storage tank rules into easy-to-understand instructions has won two awards. In 2006, the application won a Digital Government Achievement Award from the Center for Digital Government. It later won a Montana Information Technology 2007 Award of Excellence. It can be found at www.Tankhelper@mt.gov.

During the current biennium, TankHelper was significantly enhanced (TankHelper II) to provide an online training option that generates a customized, video-based training session for owners and operators that translates complex underground petroleum storage tank rules into simple, easy-to-understand lessons. The TankHelper II service presents tank owners and operators with a series of training videos specific to their facility and/or operator category. The training videos are followed by lesson quizzes that test the owner's knowledge of their tank systems. After the owner completes their training, TankHelper II generates a training certificate as well as a customized, printable management plan. This plan guides facility operators through the actions they will need to take to stay environmentally safe and in regulatory compliance, based on their individual storage tank system.

Underground storage tank registration fees are invoiced and collected through the Department of Revenue's One-Stop Business Licensing Program.

Complaints and Noncompliance

Violations are discovered primarily through the compliance inspection process, but may also be identified during upgrade activities, through complaints and as a result of petroleum release investigations.

Compliance inspections conducted during FY2008–FY2009 resulted in the following:

- 931 inspections identified 1,949 violations.
- 12.2% of the violations (237 violations) were of major significance (significant noncompliance).
- 170 facilities had major violations at the time of their inspection (18.3% of inspected facilities).
- 16.3% of the violations (317 violations) were of moderate significance.
- 116 facilities had moderate violations but no major ones (12.4% of inspected facilities).
- 71.5% of the violations were of minor significance or had no significance applied.

The program expects that compliance inspections will continue to identify a number of violations. Many owners and operators will continue to be able to correct violations before their current operating permit expires.

Program Response to Complaints and Regulatory Noncompliance
Compliance inspectors are expected to debrief the owner or manager at the end of a compliance inspection; identifying violations and corrective action. Violations are categorized in policy by significance i.e. major, moderate, or minor. The DEQ reviewed all inspection reports and sent letters to the UST owners detailing the violations and their significance. Compliance letters sent to owners also set a timeframe for the correction of each identified violation.

Major violations that are not corrected by the time an operating permit expires are referred for formal enforcement. Moderate violations are given a six-month corrective action window. If uncorrected after that window, they are referred for formal enforcement. Minor violations must be corrected by the next inspection cycle, three years hence. If they are not, they will be elevated to moderate significance.

Formal Enforcement
During the reporting period, the Enforcement Division managed a total of 55 enforcement cases: 21 of the cases were ongoing from the prior reporting period and 34 were new cases. In 41 of the 55 cases, enforcement was administrative, 13 were judicial and one case was referred to EPA. Twenty-eight of the 55 cases have been closed, 17 cases are under an administrative order or a judicial judgment, six cases are in litigation before the Board of Environmental review or a district court, two cases were in case development, and one case was withdrawn because of evidentiary shortcomings.

The Enforcement Division settled 27 enforcement cases during the reporting period with penalties in the amount of $53,411. The average settlement penalty was $1,978.19. During the reporting period, the department collected administrative and civil penalties totaling $42,891. That amount includes some penalties that were assessed during the previous reporting period but which did not become due until this reporting period. Likewise, some of the $53,411 in settlement penalties that was assessed during this reporting period were not due by the end of the reporting period and will be paid during the next reporting period.

Trends/Benefits to Environment
If the operator training initiative is effective, operators will understand the value of leak prevention and early leak detection. They will understand how to operate and maintain their equipment and will understand not only how to comply with the regulations but also how those regulations protect water, their soil, and their investment.

Alternative fuel compatibility and fuel quality issues have become subject to much national discussion. The program intends to provide outreach on alternative fuel changeover practices, but does not contemplate regulatory amendments at this time.

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

Description of Statute and Program
The Underground Storage Tank Section (USTS) of the Waste and Underground Tank Management Bureau (WUTMB) operates the state's Leak Prevention Program (Program) for underground storage tanks. The program's goal is the prevention and early detection of leaks from underground storage tanks (UST) to prevent or minimize soil and ground water contamination.

It achieves the above-stated goal by ensuring proper installation and modification of underground storage tanks (USTs) through its installation permitting program, continuing education training opportunities and licensing inspectors, installers, and removers of UST systems.

Description of Regulated Community
The regulated community includes UST owners and operators, installers, removers and inspectors. As of June 30, 2009, the program licensed 64 installers, 16 removers and 26 inspectors. The program issued 395 permits to install, modify, or close UST systems during FY2008–FY2009.

Compliance Assistance and Education
The program trained, tested and licensed five UST compliance inspectors during FY2008 and FY2009. The program conducted two UST installer/remover refresher courses and two inspector refresher courses in this time period.

The program conducted 78 oversight inspections (audits) on licensed compliance inspectors. These inspections provide accountability and oversight and identify training needs.

Complaints and Noncompliance
The department may initiate an enforcement action in the event of unprofessional conduct by licensed installers or inspectors. No complaints were reported in the reporting period.

Formal Enforcement
During the reporting period, the Enforcement Division managed four enforcement cases involving underground storage tank installer licensing and permitting violations. Two of the cases were carried over from the previous reporting period while the remaining two enforcement cases were requested during this reporting period. All of the cases were handled as administrative actions. At the close of the reporting period, three cases had been closed and an administrative action issued in the remaining case.

During the reporting period, the Enforcement Division resolved two of the cases through negotiated settlement for penalties totaling $500. The department collected penalties in the amount of $480 during the period.

Trends/Benefits to Environment

The program continues to streamline its paperwork requirements and permitting process.

In the first quarter of FY2010, the program will adopt rules that are specifically aimed at preventing petroleum releases. The major changes to UST administrative rules are:

1. Pump shutdown in the event of liquid alarms or other system alarms that indicate that a regulated substance release may have occurred. Implementation of this requirement is designed to ensure that UST system alarms are investigated by the operators in a timely fashion and to minimize their impact to the environment if the substances escape containment.
2. Integrity testing of containment sumps associated with all in-operation UST systems. This requirement, when implemented, will require each UST system that has containment sumps associated with their double-wall piping systems to test each sump every three years to ensure that they are fluid tight and thus detect and contain fluid without impacting the environment.

Under-dispenser containment and double-walled systems for new UST installations were also implemented during the biennium to comply with Energy Policy Act of 2005 requirements. This also necessitated program outreach and interpretation for our licensed installers and UST owners/operators. Methods used for this outreach were the UST website, mailers to the regulated community, and through our annual licensee refresher classes.

H. Water Protection Bureau

Water Quality Act, 75-5-101, MCA

Description of Statute and Program
The Montana Water Quality Act (WQA) prohibits the construction, operation, and use of any disposal system or outlet structure that discharges to state waters without a current permit from the DEQ. The WQA establishes the Montana Pollutant Discharge Elimination System (MPDES) for discharges of wastewater and storm water to state surface waters and the Montana Ground Water Pollution Control System (MGWPCS), governing the discharge of wastes to state ground waters. The DEQ has been delegated the authority under the federal Clean Water Act to issue permits pursuant to the National Pollutant Discharge Elimination System (NPDES). Because of the distinct differences in the regulated community and subject regulations, wastewater permits are typically separated into five different categories:

1) MPDES – Municipal wastewater treatment systems,
2) MPDES – Industrial wastewater treatment systems,
3) MPDES – Storm Water,
4) MPDES – Concentrated Animal Feeding Operations (CAFOs), and,
5) GWPCS - Ground Water Pollution Control System permits for administrative and accounting purposes.

The WQA also states that is unlawful to cause pollution or violate any provision of the Act unless explicitly authorized by the department pursuant to Section 308 (Short-term water authorization – water quality standards) or Section 318 (Short-term water quality standards for turbidity). The Permits Program also provides 401 Certifications pursuant to Section 401 of the federal Clean Water Act for federal activities or permits that result in a discharge to state waters.

Description of Regulated Community
Because of the differences in the regulated communities, this section is broken down into program areas.

MPDES Facilities – This category includes both individual permits issued to both major and minor public and industrial facilities and facilities authorized to discharge under a General Permit. It is estimated that a high percentage of the regulated community obtains permit coverage for wastewater discharges and the regulated community is well informed about the consequences of discharging wastewater without a permit. Problem areas include the following:

- Wastewater facilities, including both public and private wastewater lagoons, which were designed as non-discharging systems but are now discharging due to lack of proper maintenance or other factors such as growth in population.
- Oil and gas production wells were inventoried by EPA in 1998 and a number of facilities were identified that were discharging to state waters, primarily ephemeral drainages, without a permit. Follow-up continues to be needed.

- Short-term discharge such as hydrostatic pressure tests of pipelines, tanks and related facilities, construction dewatering and cooling water discharges do not obtain permit coverage. Because dischargers are required to pay fees, many smaller operators do not apply for the necessary permits.
- Unidentified CAFOs that have not applied for permit coverage but are discharging to state waters. These operations have been inventoried and work continues with agriculture interest groups to provide livestock producers with assistance to come into compliance.
- Non-filers in general, all types of permits. The DEQ is working through the annual Performance Partnership Agreement with EPA. The programs identify focus areas each year to find those that do not file for permit coverage.

Storm Water – Due to the high number of facilities and lack of numeric effluent limitations, the DEQ regulates storm water discharges through the issuance of four General Permits. Phase I of the federal Clean Water Act storm water regulations address large municipal storm sewer systems and industrial facilities, including construction activities greater than five acres. With the exception of several industrial sectors, such as auto salvage yards, compliance with these regulations is relatively high. Phase II of the federal storm water program went into effect in Montana in 2003. After an appeal of the new General Permit, it became effective in 2005 in Montana for municipalities over 10,000 in population. The regulations require small municipalities and small construction projects to obtain permit coverage under the MPDES program.

CAFO – Significant federal regulatory changes have occurred in recent years. A significant change at the federal level, and follow-up at the state level, has changed the approach to CAFOs in Montana. Revised CAFO regulations expanded the number of operations covered by the rule and include requirements to address the land application of manure from CAFOs. The rule became effective on April 14, 2003. Authorized NPDES states were required to modify their programs by February 2005 and develop state technical standards. As a result of litigation, portions of the CAFO rule were required to be revised.

The DEQ adopted the federal regulations by reference in 2006, to ensure consistency between the programs, but some portions of the rule remain unclear. The State Specific Technical Standards were developed and adopted as DEQ-9 in February 2006. The department has utilized DEQ-9 during the response to the litigation and development of the finalized federal rule.

The 2008 final CAFO regulations revise portions of the 2003 CAFO regulations to address the Second Circuit Court's vacature and remand orders in its decision in *Waterkeeper Alliance et al. v. EPA,* 399 F.3d 486. Revised regulations that address the Waterkeeper decision were signed on October 31, 2008, and were published in the Federal Register on November 20, 2008. These regulations were effective on December 22, 2008. The 2008 federal final rule revised the 2003 regulations.

The state incorporated portions of the revised federal rule in the CAFO General Permit which became effective in November 2008. The state rule revisions are required and will be completed during the next reporting period to ensure consistency with federal regulations.

GWPCS – The Montana GWPCS was established in 1982 and includes both ground water quality standards and a permit program. The GWPCS Permit Program regulates facilities that discharge wastewater or have the potential to contaminate state ground water through the concentration and surface storage of pollutants. The percentage of the regulated community subject to the GWPCS Program is difficult to assess but is estimated to be less than 10%. There are currently 18 categories of activities which are exempt from the permit requirement. Eleven of these exemptions were established by the Legislature and the remaining seven were adopted by the Board of Environmental Review in rule. The purpose of these exemptions is to minimize duplicative permitting among other state programs that regulate certain categories of activities; however, it does create confusion in the regulated community about the need to obtain discharge permits.

During this reporting period the Water Protection Bureau is managing twice the number of permits as the last reporting period. Currently, there are more than 100 sub-surface dischargers. The regulated community consists predominately of domestic waste dischargers due to subdivision growth and land development. Facilities discharging more than 5,000 gallons per day (gpd) are required to obtain a permit.

318/401 – The program regulates short-term changes in water quality caused by construction, and related activities. The program also coordinates with conservation districts that issue permits under numerous Montana statutes. Because of the high degree of interagency coordination, the DEQ estimates that a high percentage of the community is in compliance with the regulations. Approximately 250 authorizations are issued each year.

308 – A 308 Authorization is required for activities such as emergency remedial activities in state waters and for the application of pesticide used to control nuisance aquatic organisms or to eliminate nonnative or undesirable species. The number of authorizations has increased over the years as the awareness of this program increases. The regulated community includes owners of both public and private mosquito control districts and fish management agencies. With the exception of fisheries management projects, which have a high rate of compliance with Section 308, it is difficult to assess the compliance of the regulated community.

Compliance Assistance and Education

The Water Protection Bureau provides compliance assistance and outreach in a variety of ways to both the regulated community and the public. It assists the regulated community during facility inspections, the annual report review and response process, the permitting process, through responses to verbal and written requests for

information, and in other forums. The bureau uses training opportunities to explain regulatory requirements and discuss issues of potential concern.

The bureau provides information to the public through verbal information requests/comments, through responses to written information requests/comments, and via other forums. Many times bureau staff can alleviate public concerns by describing the applicable rules, explaining the reviews that are conducted, and explaining the permitting processes that apply. During the reporting period, the Water Protection Bureau provided technical assistance and responded to more than 15,000 requests for information, clarification requests regarding regulations, and program authority inquiries. In an effort to improve service, all permit applications, technical guidance, environmental assessments and draft permits, and regulations are posted on the department's website.

In addition to the outreach efforts mentioned previously, staff gives presentations to various groups on a variety of water quality topics. Inquiries are common from already permitted dischargers concerning the details of their permit conditions and seeking advice on how to meet those conditions. Whether making presentations to concerned local residents, special interest groups, or affected industry representatives, the DEQ continues to use its staff as a resource for public and industry outreach.

Complaints and Noncompliances

The primary issues identified in noncompliance events are as follows:

- Discharging without a permit.
- Failure to pay annual permit fees within 90 days of receiving an invoice.
- Exceedance of effluent limits as specified in the permit, or a whole effluent toxicity test.
- Failure to conduct monitoring.
- Failure to operate and maintain treatment systems or best management systems in proper condition, especially for storm water discharges.
- Failure to comply with record keeping and reporting requirements in the permit.
- Failure to comply with sewage sludge and pretreatment requirements.

The DEQ received 523 complaints related to potential water quality concerns. The department received 11 complaints about discharges to surface water from potential CAFOs or feedlots. Complaints regarding facilities that have MPDES discharge permits were referred to the Water Protection Bureau for resolution. Feedlots not large enough to be CAFOs are considered Animal Feeding Operations (AFO). The 16 AFO complaints managed were commonly due to animals confined in a small corral with open access to a creek.

Other types of MPDES Permits most often complained about include storm water discharges from construction sites and subdivisions, and construction dewatering activities. Fifty-five MPDES complaints were received. Construction within the high water mark of a perennial stream requires DEQ authorization to temporarily exceed DEQ-7 turbidity standards, known as a 318 Authorization. There were five associated complaints

during the report period. The department received three complaints related to discharges permitted under the Ground Water Discharge Pollution Control System during the reporting period. GWPCS complaints are typically about facilities that have sewage lagoons or similar structures and have a potential to discharge to ground water.

Unauthorized discharges can be associated with transportation-related fuel spills and releases from stationary fuel storage tanks and pipelines. Releases from tanks are regulated under the Underground Storage Tank Act Sections and will not be discussed here. There were 74 pipeline releases called in during the reporting period. The Enforcement Division received 421 spill reports during the reporting period. Fifty-four of these impacted ground or surface water.

When surface water impacts are documented, the Enforcement Division ensures that 1) state waters were promptly cleaned up to reduce long-term impacts and that 2) cleanup efforts are verified through laboratory analysis. The Department works closely with both state and federal agencies that have jurisdiction over the oil and gas industry and tribal lands to ensure spill and release remedial actions are conducted according to the protocols established by the regulating authority. The DEQ receives spill and release reports via the: 1) 24-hour DEQ Duty Officer (431-0014); 2) the Enforcement Division (444-0379); and 3) the Remediation Division's Release Reporting Hotline (1-800-457-0568 or 841-5000).

The department received 184 water-related complaints generated by citizens alleging that someone or something placed material in a location that may threaten water quality. All documented violations receive written notification with appropriate recommendations and reasonable timelines to complete the corrective action.

Program Response to Complaints and Noncompliances

The Water Protection Bureau initiates a response whenever it discovers a violation of the permit has occurred. This response is typically in the form of a violation letter, identifying the activity that resulted in a violation and describing what action is required by the permittee to come into compliance. If a Water Quality Act violation is documented, the bureau sends a violation letter and provides assistance to return the site to compliance.

Compliance with permit conditions is assessed primarily through self-monitoring reports and compliance inspections performed by program staff. Discharge monitoring reports are submitted to the program on a monthly, quarterly, or semiannual basis depending on the type of permit, nature of the discharge, and the reporting requirements specific to the permit. Public complaints of permitted facilities are not a significant factor in determining compliance.

Formal Enforcement

During the reporting period, the Enforcement Division managed 50 enforcement cases. Thirty-four of the cases were carried over from the previous reporting period and 16 were new cases. Forty-two of the 50 enforcement cases were administrative enforcement actions, eight cases were judicial actions, and one case was referred to EPA for enforcement. At the conclusion of this reporting period, one of the 50 water quality enforcement cases was currently in case development, 20 cases have been closed, 21 cases were still active under an administrative order or a judicial judgment, four cases were in litigation before the Board of Environmental Review or a District Court, one violator has been sent a demand letter to determine if two of the cases can be settled with a consent order, and one Enforcement Request for an enforcement action was denied because of evidentiary issues.

Thirteen enforcement actions were settled during the reporting period for penalties totaling $90,459. During the reporting period, the department collected $60,393 in administrative and civil penalties that became due for enforcement actions that were initiated during the previous and the current reporting period.