

# Legislative Audit Division

State of Montana



Report to the Legislature

December 1998

## Performance Audit

### Permitting and Compliance Division

#### Department of Environmental Quality

This report provides an assessment of the reorganization of environmental permitting and compliance activities. Recommendations address:

- ▶ Management and Planning Controls.
- ▶ Staffing and Supervision.
- ▶ Permitting and Compliance Processes.

Overall, the impact of reorganization on permitting and compliance activities has been minimal. The next steps are evaluating, prioritizing, and revising processes and procedures.

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December 1998

The Legislative Audit Committee  
of the Montana State Legislature

We conducted a performance audit of the Department of Environmental Quality's Permitting and Compliance Division. The division is responsible for oversight of environmental regulations.

This report focuses on the effect of the legislatively-mandated reorganization which consolidated environmental permitting and compliance activities. The report contains recommendations for improving program operations. The written response from the Department of Environmental Quality is included at the end of the report.

We appreciate the cooperation and assistance of department staff during the audit.

Respectfully submitted,

**Signature on file**

Scott A. Seecat  
Legislative Auditor



# **Legislative Audit Division**

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## **Performance Audit**

# **Permitting and Compliance Division**

## **Department of Environmental Quality**

Members of the audit staff involved in this audit were Tom Cooper, Angie Grove, Kent Rice, and Mary Zednick.



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## Appointed and Administrative Officials

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Art Compton, Chief, Environmental Management Bureau  
Steve Welch, Chief, Industrial & Energy Minerals Bureau  
Bonnie Lovelace, Chief, Water Protection Bureau

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Cindy Younkin, Chairperson	Bozeman	1998
Daniel Dennehy	Butte	1998
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Russell Hudson	Libby	2000
Kim Lacey	Glasgow	1998
Roger Perkins	Laurel	2000
Garon Smith	Missoula	2000

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### Introduction

The Department of Environmental Quality (DEQ) was created in 1995 by the 54th Legislature through reorganization of environmental and natural resource agencies. Questions were raised during the 1997 legislative session relating to the impact of this agency reorganization. Specifically, these questions related to the effect on the Permitting & Compliance Division (PCD) at DEQ. In addition to these issues, the Environmental Quality Council questioned aspects of DEQ operations. Based on these two requests, the Legislative Audit Committee approved a performance audit of the PCD at DEQ.

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### Audit Objectives and Scope

Our review focused on the overall impacts on division operations after reorganization. Audit scope addressed the following questions:

1. Is management decision-making since reorganization consistent with regulatory policies and requirements?
2. Following reorganization, are management controls in place to improve continuity and coordination between programs?
3. Has reorganization impacted public access to records and dissemination of information?
4. How have staffing issues impacted division operations and program priorities since reorganization?
5. Has reorganization affected customer satisfaction?
6. How has reorganization affected program permitting and compliance?

Audit testing included:

- ❖ Survey of 450 members of the regulated community.
- ❖ Review of 112 permitting and compliance program files.
- ❖ Interviews with 86 PCD employees.
- ❖ Observation of compliance inspections and program meetings.

## **Report Summary**

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### **Bureau Management Memorandums**

Our review focused on overall impacts to division operations. However, we identified important issues relating to specific programs which warranted DEQ management attention. Management responded to each of these issues and outlined steps for addressing concerns noted. Issues were identified in each of the five bureaus within PCD and included:

- Need to formalize program procedures.
- Noncompliance with program statutes and requirements.
- Limited documentation of key program decisions.

### **General Background**

DEQ was formed by combining environmental programs and administrative functions from three different state agencies: the Department of State Lands, the Department of Natural Resources and Conservation, and the Department of Health and Environmental Sciences. This new agency administers most of the state programs that regulate and enforce environmental quality. Programs which had been structured and budgeted along categorical lines (air, water, etc.) have been replaced with programs structured along functional lines (enforcement, permitting, remediation, etc.).

There are approximately 150 FTE within the PCD. These FTE are responsible for reviewing and assessing all environmental applications, determining control measures needed to ensure program compliance, and preventing conditions detrimental to public health and the environment. The division prepares environmental review documents to comply with the Montana Environmental Policy Act. PCD goals address areas such as designing programs to issue complete, accurate, and environmentally sound permits within statutory timeframes. Compliance goals include conducting inspections and monitoring reviews to ensure all facilities regulated by the division operate in compliance with permit conditions and state laws.

### **Organizational Controls**

Due to concerns raised by legislators, past audits, and the public, audit testing was designed to evaluate management controls within PCD. Overall, we found the PCD established basic management controls including:

- Management decision-making.
- Organizational controls.
- Planning controls.

We identified areas where controls could be improved. The following list highlights these areas:

- ❖ Develop administrative policies and procedures.
- ❖ Develop policies and procedures on public notification.
- ❖ Identify practices which could be shared with other programs.

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### Staffing Impacts

Due to legislative questions and public concerns, we examined staffing impacts on the PCD resulting from reorganization. Controls reviewed included methods for addressing trends in staff turnover, efforts to ensure consistency between various technical staff throughout the division, and methods used to supervise reorganizational changes. We believe DEQ should address the following areas to resolve staffing impacts.

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### Staff Turnover Not Excessive

A common occurrence in any public workforce is turnover. Individuals change employment for various reasons including career advancement, relocation, dissatisfaction with work, transfer to the private sector, and personal reasons. We examined DEQ turnover statistics and found the turnover rate appears to be relatively constant. Turnover fluctuated about three percent over the last three years, and is comparable to the statewide average. Transfers within the department also remained fairly constant. Based on our review, there have been impacts on program operations including workload backlogs, delays in program activities, and increased program expenses due to use of contracted services. These are normal effects and impact all programs in public agencies. As a result, turnover at DEQ does not appear excessive.

---

### Review Position Descriptions

The reorganization of three state agencies into one department created a need for comparing consistency between position descriptions (PDs). We selected a sample of positions to examine responsibilities, supervisory duties, knowledge, skills, and abilities. Based on our review, there appears to be inconsistencies in some PDs, both within programs and across programs within PCD. Differences in PDs can create differences in classification, which usually results in different pay

## Report Summary

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amounts. Pay inequities may exist if PDs do not reflect actual job duties and responsibilities. Department management should conduct a division-wide review of positions to determine which positions are similar among programs.

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### Address Staff Supervision

During our review, we noted differences between designated duties and staff performance, but supervisors were unable to explain or justify the variances. Without feedback on activities, it is difficult for staff to determine if performance is appropriate and program activities meet agency goals. Program supervisors have not made staff supervision and evaluation a priority. As part of reorganization, management should establish a process for effective employee supervision and evaluation, focusing on emphasizing the need for ongoing supervision and feedback to staff.

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### Impacts on Permitting and Compliance

A primary purpose of this audit was to examine how reorganization impacted DEQ permitting and compliance programs. Our review included identifying efficiencies achieved by consolidating permitting and compliance activities into a single organization. Therefore, we focused our examination on program processes to evaluate the extent of and further need for streamlining procedures.

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### Program Permitting Processes

PCD administers numerous environmental programs through the issuance of permits, licenses, registrations, accreditations, plan approvals, etc. To assess permitting processes, we examined activities initiated from July 1, 1997 through June 30, 1998. In general, we found permitting process changes as a result of or following reorganization were minimal. Most permitting process timeframes and milestones are controlled by statutory and/or administrative rule criteria. These criteria did not change with reorganization. We identified areas where changes in procedures could streamline activities and address inconsistencies between programs.

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### **Review MEPA Policy and Documentation Variations**

As part of our review, we compared procedures used by each program to comply with the Montana Environmental Policy Act (MEPA). All programs operate under the MEPA statute, therefore, we examined how the process was incorporated into the new PCD structure to see if streamlining or sharing of resources occurred. We found each program is generally responsible for completing their own MEPA analysis. We noted many programs developed individual forms and processing procedures for addressing MEPA. By comparing program procedures, we identified inconsistencies and MEPA noncompliance.

We believe this is an area where a thorough review could help the division strengthen program permitting processes and address the purpose of reorganizing these programs into one division. DEQ should develop a work plan to address program inconsistencies and to ensure overall compliance with MEPA.

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### **Segregate Mine Bonding Duties**

PCD programs are required to establish a variety of financial assurance options including: performance bonds, insurance, letters of credit, trust funds, corporate guarantees, and demonstrations of financial viability. Each program is responsible for completing their own bond or financial assurance review. We found program technical staff perform all aspects of this review, including assessing reclamation and/or closure cost estimates, conducting periodic reviews of financial activity, recommending reductions or increases in dollar amounts held, and approving release of bonds or financial assurance.

Separation of the responsibility for the technical review of reclamation or corrective action proposals from financial assurance determinations could improve program management controls and assure independent review. With stronger controls in this area, the state's risks of inadequate financial assurance for environmental reclamation and/or closure requirements could be reduced. The department should segregate duties of bond management in the permitting programs within PCD.

## Report Summary

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### Standardize Permitting Process

During our review, we identified issues where consistency between programs could improve permitting process efficiency and affect potential process streamlining. Survey response comments identified the need to increase consistency and streamline permit processing documentation. While there may be legitimate reasons for distinct program approaches, standardized procedures, where appropriate, would assist staff in meeting the needs of the regulated community and the public.

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### Program Compliance Processes

We examined PCD program compliance processes to identify the impact of reorganization. We found most changes to compliance processes resulted from the separation of enforcement responsibilities and the establishment of the Enforcement Division. We noted areas where we believe additional changes or improvements could be made to the compliance processes.

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### Outline Compliance Policies and Procedures

For most programs, compliance processes include providing technical assistance, inspecting sites/facilities, reviewing required activity reports, and developing noncompliance findings to determine whether they represent violations of statute, rule, or permit requirements. Based on discussions with staff and review of files, we identified areas where general compliance inconsistencies exist between programs. Examples of variations include:

- Communicating compliance inspection findings.
- Use of warning memorandums and tracking of minor noncompliance.
- Notifying owners/operators of violations.
- Documentation of follow-up and resolution of noncompliance.
- Notification of the intent to pursue enforcement penalties.
- Excluding a program from the consolidation of enforcement activities.

We believe differences between individualized compliance procedures does not achieve effective reorganization. The division should outline general PCD compliance policy and procedures to ensure consistency between programs.

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### Share Noncompliance and Violation Information

For sites/facilities with permits from multiple programs, staff in one program are seldom aware of noncompliance documented by staff in another program. Several programs established internal tracking of noncompliance, however, other program staff do not have access to this information. Staff, particularly in programs with shared compliance responsibilities, should be aware of situations where another program or staff recently identified noncompliance, issued a violation notice, or imposed a penalty on a site/facility they are about to inspect. Program staff indicated with the current approach, site visits may be completed only to find out about a complaint which could have been investigated simultaneously. The division should develop procedures to ensure program staff are aware of current complaint investigation activity.

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### Review Program Compliance Priorities

Permitting activities are generally controlled by statutory timeframes. Therefore, those activities receive higher priority for most programs. Some programs have recognized the need to address program priorities, including compliance activities. Other programs have not identified their highest risk sites/facilities and in some cases address lower compliance priorities. We identified several concerns regarding priorities including:

- Outdated workload assignments and staff distribution.
- Inability to complete all compliance requirements.
- Inconsistent compliance and incident protocol.

When program priorities are unclear to staff, the division's ability to assure compliance is reduced. Based on the amount of compliance work possible, it is important for management to assure workload prioritization occurs. The division should establish procedures for ongoing review of program priorities to ensure workload assignments are based on a determination of the highest risk environmental compliance requirements.



# Chapter I - Introduction

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## Introduction

The Department of Environmental Quality (DEQ) was created in 1995 by the 54th Legislature through reorganization of environmental and natural resource agencies. Questions were raised during the 1997 Legislative Session relating to the impact of this agency reorganization. Specifically, these questions related to the effect on the Permitting and Compliance Division (PCD). In addition to these issues, the Environmental Quality Council questioned aspects of DEQ operations. Based on these two requests, the Legislative Audit Committee approved a performance audit of the PCD at DEQ.

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## Audit Objectives

Our review focused on the overall impacts on division operations after reorganization. Audit scope addressed the following questions:

1. Is management decision-making since reorganization consistent with regulatory policies and requirements?
2. Following reorganization, are management controls in place to improve continuity and coordination between programs?
3. Has reorganization impacted public access to records and dissemination of information?
4. How have staffing issues impacted division operations and program priorities since reorganization?
5. Has reorganization affected customer satisfaction?
6. How has reorganization affected program permitting and compliance?

Areas which impact more than one program are addressed in this report. Specific program issues were formally communicated to DEQ.

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## Audit Scope

To address our objectives, we documented changes in PCD activities resulting from department reorganization. We reviewed laws and rules relating to the programs administered by PCD. Proposed legislative changes and budget documents were examined to note any pending changes. Program organization charts and activity reports were obtained. Department information on staff turnover, procedures for

## Chapter I - Introduction

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standardizing job descriptions and classifying new positions was gathered. We also reviewed prior audit reports.

We conducted preliminary interviews with agency staff to determine the general processes and requirements of PCD programs, what information was available, and any ongoing concerns. Administrative support staff were interviewed to determine file controls and information processes.

Audit testing was designed to address our objectives on a division-wide basis. Rather than focus on specific programmatic issues, we examined overall division progress in addressing program efficiencies available through department reorganization. Any resulting permitting or compliance changes were highlighted. The following list summarizes our testing in these areas.

- > Input was received from the regulated community through 194 responses to a written survey. Comments were received from small miners, public water supplies, hard rock mines, asbestos contractors, etc. Input from various special interest groups was also documented.
- > A judgmental sample of 112 program files was reviewed to identify permitting and compliance procedures, as well as time frames for key processes. Files were selected from each of the PCD bureaus and programs. Audit work focused on identifying trends in program documentation. The period of our review was generally fiscal year 1997-98. If needed for comparison purposes, activities back to fiscal years 1995-96 and 1996-97 were also included.
- > Interviews were conducted with 101 DEQ employees, including 86 PCD employees. Staff interviews were held with administrative support, technical support, permitting and compliance, legal, and supervisory employees.
- > Compliance inspections and program meetings were observed to note procedures followed. Visits to regional offices in Kalispell, Missoula, and Billings were conducted to determine procedures followed in those locations.

We examined management controls over all bureaus in this division. Programs included in our review were all those administered by the division except for the Major Facility Siting Program and the Motor Vehicle Recycling Program. The Major Facility Siting Program had not been involved with a new facility since reorganization and the Motor Vehicle Recycling Program was previously reviewed by our office in two separate audits.

Management involvement in activities was documented from observations of activities, staff interviews, and file reviews. For the purposes of this review, management staff included the department director, the deputy director, chief legal counsel, division administrators, and bureau chiefs.

Staffing concerns were addressed by reviewing personnel records for the past three fiscal years, interviewing program staff, and comparing similar job descriptions. We also examined documentation completed by a private contractor to review the classification level of positions.

This audit was conducted in accordance with governmental auditing standards for performance audits.

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**Regulated Community Survey**

To obtain input from entities regulated by PCD, we sampled 450 members of over 3,000 individuals, businesses, and local governments receiving permits, licenses, plan approvals, registrations, accreditations, etc. Surveys were sent to a sample of the regulated community in the following programs:

<b>PCD Programs Surveyed</b>	
- Air	- Asbestos
- Coal Mining	- Water Discharges
- Exploration (mining)	- Ground Water
- Hard Rock Mining	- Hazardous Waste
- Opencut Mining	- Public Water Supplies
- Septic Pumpers	- Small Miners
- Solid Waste	- Stormwater
- Subdivisions	

## Chapter I - Introduction

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Surveys were sent to a minimum of 10 percent of the regulated community for each program, while some smaller programs had surveys sent to 100 percent of the regulated community. The survey addressed five areas:

- Permit application review and approval processes.
- Compliance and inspection processes.
- Access and availability of public records.
- Release of information.
- Overall impact of consolidation of permitting and compliance activities.

We received 194 responses to our survey for a return rate of 43 percent. We incorporate ratings and comments noted on completed surveys relating to PCD processes in applicable sections throughout this report.

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### Compliance

Compliance with statutory requirements was examined throughout this audit. Testing focused on various permitting and compliance requirements outlined for PCD programs. Specific areas of noncompliance with statutes have been formally communicated to the department in management memorandums which are discussed below. Division-wide issues which impact the ability of the department to assure compliance are discussed in Chapter V of this report.

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### Bureau Management Memorandums

Our review focused on overall impacts to division operations. However, we identified important issues relating to specific programs which warranted DEQ management attention. These areas relate to individual bureaus. Management responded to each of these issues and outlined steps for addressing concerns noted. The following summary reflects program areas affected by management memorandum issues:

#### Air and Waste Management Bureau

- Track receipt and review of compliance reports required by air quality permits.
- Coordinate compliance activities between Air Compliance and Opencut Program.
- Forward ambient air monitoring reports from Planning, Prevention, and Assistance Division staff.
- Reconcile asbestos abatement project permit fees.

### Industrial and Energy Minerals Bureau

- Document Opencut reclamation plan approval.
- Meet statutory time frames for Coal Program minor permit revisions.
- Analyze staff utilization and assignment.

### Water Protection Bureau

- Develop procedures for tracking permit deadlines.
- Track frequency of inspections.
- Prepare timely inspection reports.
- Assure compliance and MEPA documentation is complete and consistent.
- Assure correction of noncompliance findings.

### Environmental Management Bureau

- Define inspection protocol.
- Comply with five-year bond review requirements.
- Maintain bond calculations communication/correspondence.
- Issue timely inspection reports.
- Ensure compliance with Small Miner and Exploration permit requirements.
- Track Exploration Program projects to ensure completion of reclamation.

### Community Services Bureau.

- Provide training for contract management and oversight.
- Document MEPA policy.
- Define the role of Field Services versus Engineering Services.

As noted earlier, these issues are individual bureau issues and are not addressed further in this report. Division-wide issues are discussed in detail in later chapters.

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### **Issues for Further Study**

During the course of this audit, we identified several areas within DEQ as potential issues for further study. The following sections discuss these areas and potential concerns.

## **Chapter I - Introduction**

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### **MEPA EIS Process**

The current Environmental Impact Statement (EIS) process has evolved as a method for ensuring compliance with the Montana Environmental Policy Act (MEPA). EIS development is a time consuming, confusing, and expensive process that is frustrating both for the regulated community and the government agencies involved. Future audit work could examine the role of state agencies in this process and review alternatives for streamlining.

### **Enforcement Division**

One of the major changes occurring from reorganization at DEQ was the separation of enforcement and compliance activities. Most formal enforcement activities are currently addressed under a separate division at DEQ, the Enforcement Division. A review of Enforcement Division operations could be conducted to determine the effectiveness of separation from program operations. This could include a determination of whether all penalty calculations should be completed by the Enforcement Division.

### **Planning, Prevention, and Assistance Division**

During our current review, we identified several issues relating to program coordination between PCD and the Planning, Prevention, and Assistance Division. These issues could impact timeliness of permit processing and compliance activities. A review of this division could examine channels of communication and coordination.

### **Subdivision Approval**

PCD is responsible for administering the Sanitation in Subdivisions Act. This act addresses water, wastewater, stormwater, and solid waste regulation for subdivisions. Questions and concerns with this program were raised during our initial review and from various legislative committees. Due to potential program changes and the need to focus our review on division-wide issues, we did not specifically address concerns in this program. A future audit could evaluate the roles of other involved groups and determine the need for statutory clarification.

**Report Organization**

The remainder of this report is divided into four chapters. Chapter II provides a general overview of permitting and compliance activities administered by the PCD. Chapters III through V outline our findings, identify areas needing additional attention, and present audit recommendations.



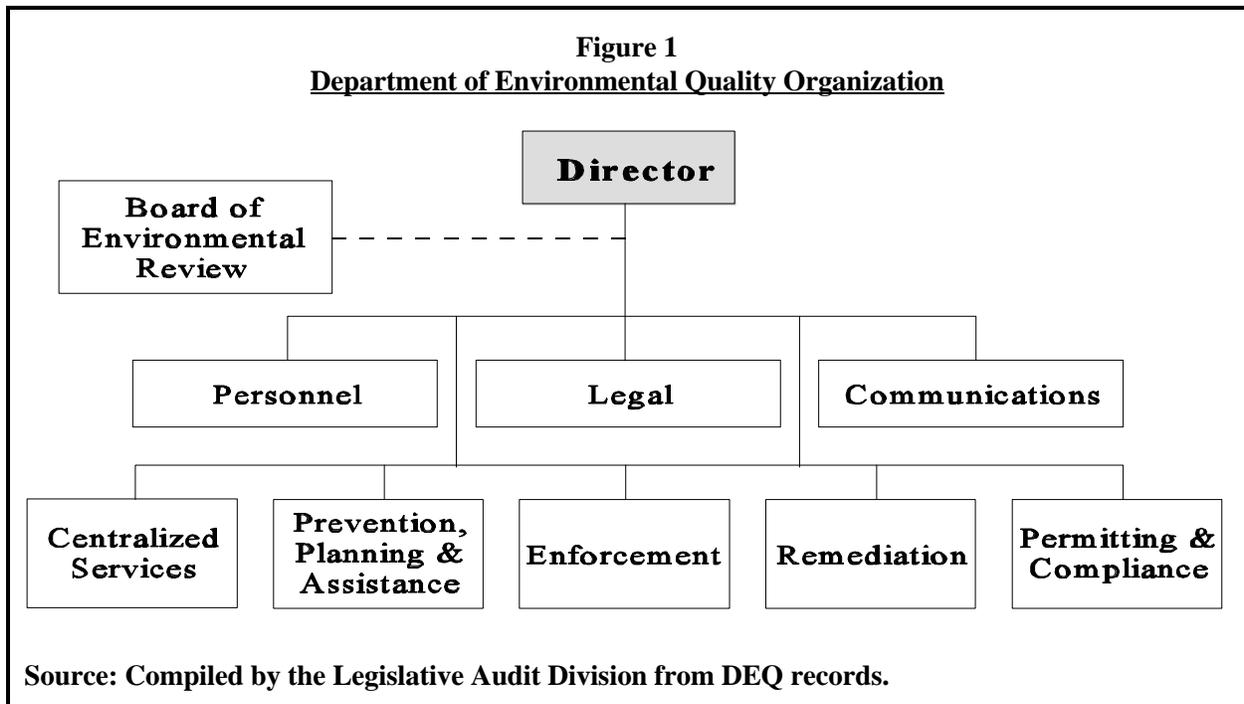
# Chapter II - General Background

## Introduction

This chapter provides a general overview of the organizational structure of the Department of Environmental Quality (DEQ). Additional information is provided on the Permitting and Compliance Division (PCD) and its program responsibilities. Division organization, program funding, and statutory responsibilities are briefly described.

## DEQ Organization

The DEQ was created by the 54th Legislature through a reorganization of environmental and natural resource agencies. DEQ was formed by combining environmental programs and administrative functions from three different state agencies: the Department of State Lands, the Department of Natural Resources and Conservation, and the Department of Health and Environmental Sciences. This new agency now administers most of the state programs that regulate and enforce environmental quality. Programs which had been structured and budgeted along categorical lines (air, water, etc.) have been replaced with programs structured along functional lines (enforcement, permitting, remediation, etc.). The following chart illustrates the department's organizational structure.



Source: Compiled by the Legislative Audit Division from DEQ records.

## Chapter II - General Background

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### PCD Organization

The PCD is responsible for reviewing and assessing all environmental applications, determining control measures needed to ensure program compliance, and preventing conditions detrimental to public health and the environment. The division prepares environmental review documents to comply with the Montana Environmental Policy Act (MEPA). PCD administers the DEQ's permitting and compliance activities for the following acts:

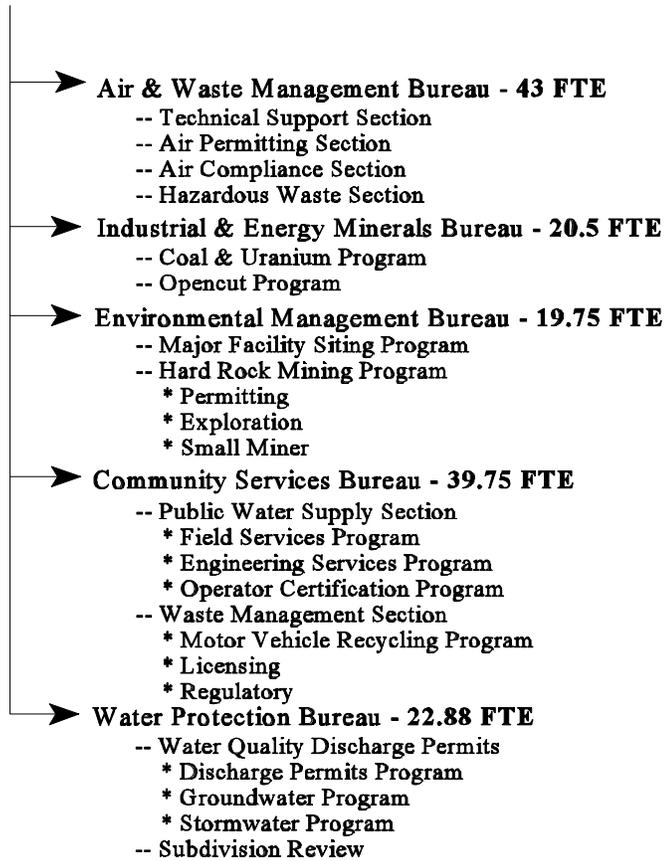
#### Montana Permitting and Compliance Acts

- \* Hazardous Waste Act
- \* Asbestos Control Act
- \* Air Quality Act
- \* Solid Waste Management Act
- \* Infectious Waste Management Act
- \* Halogenated Solvent Users Registration Act
- \* Water Quality Act
- \* Public Water Supply Act
- \* Water and Wastewater Operator Certification Act
- \* Motor Vehicle Recycling and Disposal Act
- \* Major Facility Siting Act
- \* Metal Mine Reclamation Act
- \* Opencut Mining Act
- \* Strip & Underground Reclamation Act
- \* Local Water Quality Districts Act
- \* Sanitation in Subdivisions Act

To administer these statutes, the division established five bureaus. The following chart outlines the division's structure and notes the program sections included within each bureau.

**Figure 2**  
**Permitting & Compliance Division Structure**

**Division Administration (includes MEPA unit) - 9.2 FTE**



**Source:** Compiled by the Legislative Audit Division from DEQ records.

The majority of PCD staff are located in Helena, with four FTE located in Kalispell, one in Missoula, one in Polson, and nine in Billings.

## Chapter II - General Background

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### Division Activities

PCD goals address areas such as designing programs to issue complete, accurate, and environmentally sound permits within statutory time frames. Compliance goals include conducting inspections and monitoring reviews to ensure all facilities regulated by the division operate in compliance with permit conditions and state laws. The approximate number of sites/facilities regulated by the division are listed below:

<b>Sites/Facilities Regulated by PCD in FY 1997-98</b>	
Drinking Water Permits	1,900
Junk Vehicles Sites	241
Hard Rock Mines	919
Coal Mines	20
Major Energy Facilities	20
Opencut Sites (gravel pits)	2,233
Hazardous Waste Sites/Facilities	462
Solid Waste Sites	123
Air Facilities (Emissions)	1,247
Subdivision Plans	1,346
Groundwater Permits	30
Stormwater Permits	350
Water Discharge Permits	<u>400</u>
<b>TOTAL</b>	<b>9,291</b>

### Division Funding

Many of the statutes for PCD programs implement federal requirements such as the Clean Water and Clean Air Acts. Other programs are governed by Montana statutes only. Thus, division funding is a mixture of General Fund, State Special Revenue (RIT & permit fees), and federal grants. The federal grants vary in match requirements. Total appropriated program budgeting for fiscal year 1997-98 was \$13.2 million. Funding sources included approximately \$9.5 million in State Special Revenue, General Fund of \$895,000, and approximately \$2.8 million federal.

# Chapter III - Basic Reorganization Controls

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## Introduction

Standard controls, such as a clearly defined organizational structure, program planning, personnel procedures, and useful program information are generally identified with effective program management. Due to concerns raised by legislators, past audits, and the public, audit testing was designed to evaluate management controls within the Permitting and Compliance Division (PCD) at the Department of Environmental Quality (DEQ). This chapter discusses our findings in these areas.

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## Management Decision-Making Following Reorganization

Throughout our review of files and during staff interviews, we assessed the involvement of department management in permitting and compliance decision-making processes. Management staff included the department director, the deputy director, chief legal counsel, division administrators, and bureau chiefs. Based on audit testing in this area, management decision-making following reorganization was appropriate and in compliance with regulatory policies and requirements.

*Conclusion: Management involvement in decision-making was appropriate and in compliance with regulatory policies and requirements.*

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## How Did PCD Address Organizational Controls?

When organizing the PCD, management analyzed the previous organizational structures to identify options and alternatives. Based on this review, five bureaus were established in the division: Environmental Management, Water Protection, Industrial and Energy Minerals, Air and Waste Management, and Community Services. We examined organizational management controls in each of these bureaus and found key controls are in place. A defined reporting structure was made with consideration given to specific program interaction, span of control for program supervisors, and the need for interdisciplinary teams. Interviews with staff and review of job descriptions reflected clear reporting lines and general familiarity with the new reporting structure. Program supervisors were provided appropriate authority to control their assigned responsibilities. Channels of communication were developed, and continue through periodic bureau staff meetings, weekly division administrator meetings, monthly support staff meetings, and posting of general department information via e-mail. In addition,

## Chapter III - Basic Reorganization Controls

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several methods were developed to establish the direction for division programs including:

- \* Identifying program goals, statutory mandates, and federal guidelines.
- \* Establishing a formalized process for developing and prioritizing applicable ARMs.
- \* Printing a department handbook to outline general program responsibilities, contact staff in each program, and applicable phone numbers.
- \* Developing new position descriptions for most management staff outlining prescribed duties. (Improvements in other planning controls related to staffing are discussed further in Chapter IV.)

***Conclusion: Following reorganization, appropriate organizational and basic planning controls were developed and implemented within PCD.***

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### Impacts of Reorganization on Public Access to Program Files

As part of our review, we were asked to evaluate the impacts of reorganization on public access to records to determine if access had been restricted. Information was obtained on the frequency of requests to review program information and current procedures used for allowing public access.

The results of our evaluation indicate differences between programs in the amount and type of information maintained to document access. Some programs experience daily requests for access to records by the general public while other programs rarely receive such requests. While controls over access to information vary between programs, we did not identify any impact on public access due to reorganization. Files and program information availability did not appear to be restricted. In addition, data gathered in the LAD survey of the regulated community did not identify concerns in this area.

***Conclusion: Public access to program records was not impacted by reorganization.***

## Chapter III - Basic Reorganization Controls

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### Management Controls can be Strengthened

The first step of reorganization was to focus on organizing and planning proposed changes. The next step of the process should be to direct and manage activities in order to ensure planned changes operate as intended. The following sections discuss strengthening this phase of PCD reorganization.

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### Administrative Policies and Procedures Are Not Available

Standardized operating procedures are key to incorporating changes resulting from reorganization. Areas such as administrative procedures and operational processes should be formally defined to ensure staff understanding and program consistency. To date, DEQ has not developed formal department-wide policies and procedures for general administrative functions. The following list highlights areas of inconsistency:

- > Bureau and program management staff indicated confusion about recruiting and hiring practices. This has resulted in hiring delays and ongoing work backlog.
- > Lack of guidelines for new employee orientation resulted in inaccuracies in completing basic tasks such as completion of travel forms, time sheets, travel reimbursements, etc. The current process for addressing problems in this areas is to have personnel or accounting staff correct errors. This corrective type of control is generally not the most cost-effective approach and creates additional workload.

### Administrative Policies and Procedures Should be Developed

The department has not developed general administrative policies and procedures. Formalized policies and procedures would assist in streamlining operations and ensuring consistency. As noted earlier, DEQ was formed with staff from three different state agencies: the Department of State Lands, the Department of Natural Resources and Conservation, and the Department of Health and Environmental Sciences. Staff from each of these departments brought their own department “culture” or philosophy based on their policies, operating procedures, and standard practices. DEQ management indicated the development of agency-wide policies and procedures is needed but has not been a priority to date. As a result, management relies on a corrective approach, rather than a preventive control. Establishing policies and procedures would create a more cost-effective process for standard administrative procedures.

## Chapter III - Basic Reorganization Controls

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### **Recommendation #1**

**We recommend the department develop formal policies and procedures to ensure consistency in general department administrative operations.**

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### **Public Notification**

Some programs are required to provide public notice of activities such as receipt of permit applications, boil orders, and release of bonds. Depending on the program, the requirement for disseminating information is the responsibility of PCD or the owner/operator.

The department has not established procedures to control public notification. Overall, programs lack guidance and respond to situations differently. Interviews with staff identified examples of concerns with applicant/operator requirements for public notification. Two advertisements placed in newspapers either contained information which was too general or was incorrect. This led to confusion and questions from the public. In another program, staff did not track public notice requirements of the applicant/operator. Therefore, proper public notification did not occur and the permitting process was delayed. Another program designated a position to monitor compliance and track activity, including public notification, due to recurring problems in that area.

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### **Department Policy Needed on Public Notification**

The department needs to develop policy and procedures for complying with public notification requirements. A review of current program practices may help identify effective procedures which could be used on a department-wide basis.

### **Recommendation #2**

**We recommend the department establish policy and procedures for complying with public notification requirements.**

## Chapter III - Basic Reorganization Controls

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### Best Program Practices

We identified some current program practices which could potentially improve operations in other programs. Typically, those practices noted are used by one or more, but not all of the programs involved in our review. These program practices were in place or developed following reorganization. The following list outlines program practices which could be shared to improve controls in other permitting and compliance programs:

- Water Protection Bureau's consolidated list of department permits provides applicants with additional information about other program permits which may be required.
- Stormwater Program's newsletter is distributed to inform permit holders of statute/rule interpretations, changes in fees, permit review procedures, and recent compliance findings.
- Public Water Supply Program's description of each staff position, duties and responsibilities is provided to new staff as part of orientation.
- Air Compliance Section's administrative procedures outline guidelines for program filing, leave, voice mail, sign out, cell phones, cars, and work scheduling.
- Asbestos, Coal, and Opencut Programs' permit application and/or renewal processing review checklists assure all requirements are included with the application to expedite processing.
- Solid Waste Program's file cover sheet is used for quick reference and file control identifies receipt, review, and approval dates for the wide variety of plans and licenses associated with solid waste facilities.
- Solid Waste Program's on-site inspection form provides immediate feedback to owner/operators. The reverse side of the form outlines state and federal solid waste rules and regulations.
- Hard Rock Program's file control procedures document public review of files and provides a history of file access.
- Air Compliance Section's inspection procedures and compliance monitoring strategy plan identifies annual inspection priorities, scheduling, and preparation processes.

## Chapter III - Basic Reorganization Controls

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- Air Compliance and Solid Waste Programs' administrative routing and process control forms assure process control, proper filing, and coordination between technical, administrative and data management.
- Hazardous Waste and Coal Mining Programs' documentation of violation, follow-up, and resolution provides a clear history of department activity.
- Hard Rock Program's permit tracking system for annual reports ensures timely submission of required information.

The department should assess these practices to determine if improved operational controls could result from consideration and implementation in additional programs.

### **Recommendation #3**

**We recommend the department continue to improve controls by expanding current program practices to other programs where appropriate.**

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### **Summary**

Overall, we found the PCD established basic management controls including:

- Management decision-making.
- Organizational controls.
- Planning controls.

In addition, we identified areas where controls could be improved. Developing department-wide policies and procedures for administrative responsibilities and notifying the public should improve general operations. The next chapter outlines staffing impacts resulting from reorganization and notes areas where improvements could be made.

# Chapter IV - Staffing Impacts Resulting From Reorganization

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## Introduction

Due to legislative questions and public concerns, we examined staffing impacts on the Permitting and Compliance Division (PCD) resulting from reorganization. Controls reviewed included methods for addressing trends in staff turnover, efforts to ensure consistency between various technical staff throughout the division, and methods used to supervise reorganizational changes. This chapter discusses staffing impacts resulting from reorganization.

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## Turnover Statistics for DEQ

A common occurrence in any public workforce is turnover. Individuals change employment for various reasons including career advancement, relocation, dissatisfaction with work, transfer to the private sector, and personal reasons. We examined Department of Environmental Quality (DEQ) turnover statistics maintained by the Department of Administration (D of A) to identify impacts on program operations. Table 1 shows DEQ turnover for the past three fiscal years.

**Table 1**  
**DEQ Turnover Rates**  
**(FY 1996 - 98)**

<u>Fiscal Year</u>	<u>Rate (%)</u>
1995-96	11.6
1996-97	8.0
1997-98	9.4

**Source: Compiled by the Legislative Audit Division from D of A records.**

Comparing turnover to the total number of positions in the department indicates about nine percent turnover rate for fiscal year 1997-98. According to D of A, the average turnover for state agencies is between 8 and 10 percent. Following reorganization, DEQ turnover is comparable to the average for all state agencies.

## Chapter IV - Staffing Impacts Resulting From Reorganization

### PCD Turnover

According to department records, 34 people left the department in fiscal year 1997-98; 5 were from PCD. Table 2 and Table 3 show DEQ and PCD turnover for the past fiscal year.

**Table 2**  
**DEQ Employee Turnover**  
**(FY 1997-98)**

<u>Division</u>	<u>FTE</u>	<u>No. of Turnovers</u>
Prevention, Planning & Assistance	89.05	8
Remediation	66.00	8
Permitting & Compliance	151.08	5 <sup>1</sup>
Petroleum Tank Release Board	10.00	4 <sup>2</sup>
Enforcement	15.00	3
Centralized Services	25.00	3
Director's Office/Legal/Personnel	<u>27.00</u>	<u>3</u>
<b>TOTAL</b>	<b>383.13</b>	<b>34</b>

<sup>1</sup> one position had turnover twice

<sup>2</sup> two positions had turnover twice

**Source: Compiled by the Legislative Audit Division from DEQ records.**

**Table 3**  
**Turnover in PCD Positions**  
**(FY 1997-98)**

<u>Bureau</u>	<u>Position</u>	<u>Grade</u>
Community Services	Lic/Cert/Permit Clerk	8*
Administration/MEPA	Environmental Impact Specialist	15
Air & Waste Management	Air Quality Specialist	15
Air & Waste Management	Fiscal Specialist	12

\* position had turnover twice

**Source: Compiled by the Legislative Audit Division from DEQ records.**

## Chapter IV - Staffing Impacts Resulting From Reorganization

### Transfers Within DEQ

Department turnover does not include statistics on the number of transfers within DEQ. It is common for staff to change jobs within their current agency. For example, an employee transferred out of the Subdivision Program into the Planning, Prevention and Assistance Division. This transfer would not be included in the DEQ turnover rate. Transfers within DEQ are comparable to statewide statistics. The following table shows the number of transfers within DEQ for the last three fiscal years.

**Table 4**  
**Transfers Within DEQ**  
**(FY 1996-98)**

<u>Type of Transfer</u>	<u>Fiscal Year</u> <u>1995-96</u>	<u>Fiscal Year</u> <u>1996-97</u>	<u>Fiscal Year</u> <u>1997-98</u>
Upgrade	27	19	24
Lateral	20	20	23
Downgrade	<u>2</u>	<u>6</u>	<u>3</u>
Total	49	45	50

**Source: Compiled by the Legislative Audit Division from D of A records.**

Several programs have been impacted by intra-agency transfers including Groundwater, Public Water Supply, Air, and Subdivisions. Some programs within PCD have only one or two positions, so any turnover will impact program operations more than turnover in programs with more positions.

### Turnover Trend Appears Constant

Based on turnover statistics, the turnover rate appears to be relatively constant. Turnover fluctuated about three percent over the last three years, and is comparable to the state-wide turnover average. Transfers within the department also remained fairly constant. Interviews and observations indicate individuals appear to be “testing the water” to determine which positions might provide different career paths. It is unknown whether this “shifting” of positions will continue.

The impact of staff turnover varies based on conditions such as experience of the departing employee, time frame for refilling the

## **Chapter IV - Staffing Impacts Resulting From Reorganization**

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position, and ability to cover responsibilities during the vacancy. From our review, we note impacts to programs such as workload backlogs, delays in program activities, and increased program expenses due to use of contracted services. These are normal effects and impact all programs in public agencies. The department has taken steps to manage the impacts from turnover by encouraging job sharing during transition and contracting out workload backlogs.

*Conclusion: Following reorganization, turnover at DEQ does not appear excessive.*

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### **Comparing Position Description Consistency Between Technical Staff**

The reorganization of three state agencies into one department created a need for comparing consistency between position descriptions (PDs). Reorganization made this area more critical because all program staff are now located within one agency. Staff are more aware of pay levels and classifications of other program positions. Now program staff work together more often and in some cases, sit side by side. If staff identify potential inequities which are not explained, there could be confusion and concern among staff. To evaluate this area, we selected a sample of positions to examine responsibilities, supervisory duties, knowledge, skills, and abilities. Classification pay grades and, if completed, benchmark factoring reviews were compared between positions.

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### **Position Description Inconsistencies in PCD**

Based on our review, there appears to be inconsistencies in some PDs, both within programs and across programs within PCD. For example, four of the environmental engineering positions within the Community Services Bureau generally have the same responsibilities. However, the PDs for these positions are different and include responsibilities which are not current job requirements. According to bureau officials, all PDs will be up-to-date by January 1999.

In other positions, classification reviews received different scores for similar positions. For example, we compared similar positions in two programs. While requirements for these positions are directed by separate statutes, the positions conduct similar activities. These staff visit the same site for similar work. The scores for these classification reviews were identical in six of seven components. The seventh component received different scores. However, based on our knowledge

## Chapter IV - Staffing Impacts Resulting From Reorganization

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of position requirements and observation of staff duties, this component appears similar and thus, should have received similar scores.

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### **Additional Position Reviews Should be Completed in PCD**

Differences in PDs can create differences in classification scoring. A higher or lower score can result in a higher or lower classification, which usually results in different pay amounts. Pay inequities may exist if PDs do not reflect actual job duties and responsibilities. To date, 292 of 380 DEQ positions have received a benchmark classification review. Within PCD, 120 of 154 positions have been reviewed. While considerable work has been accomplished, we believe additional reviews should be completed. For example, fifteen positions within PCD have PDs which were written prior to 1990 and 2 of these are from 1977. Delays in this area impact the effectiveness of reorganization by allowing employees to focus on staffing issues rather than regulatory duties.

One of the responsibilities of the Personnel Unit, Director's Office, is to assure equity across divisions and develop solutions for difficult classification issues. The department focused its efforts on reviewing and hiring vacant positions. Department management should now conduct a division-wide review of positions to determine which positions are similar among programs. This review should help identify potential classification concerns. Addressing classification differences among similar positions should help alleviate some of the recent classification appeals filed by department employees. Some of the recent appeals occurred due to increased staff awareness of upgrades of similar positions in other programs. The division-wide review should incorporate benchmark reviews as part of the review.

#### **Recommendation #4**

**We recommend the department complete a division-wide review of positions to identify similar job duties and possible position classification inequities.**

## **Chapter IV - Staffing Impacts Resulting From Reorganization**

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### **Supervision of Staff is Needed**

Organizational development involves three steps: 1) establishing organization and program plans; 2) evaluating staff performance; and 3) correcting variations from plans. As noted, DEQ took the initial step by establishing the basic plan and organization for its operations. The next step is to supervise and evaluate staff performance. Program supervisors responsible for over 150 FTE who contribute to permitting and compliance processes. Following reorganization, these staff need feedback to verify program accomplishments and assure consistency. We believe staff supervision and evaluation is needed to ensure controls are in place.

During our review, we found limited evaluation of staff performance. Bureau chiefs and program managers indicated they were waiting for a department evaluation policy and a formal performance appraisal form before completing evaluations. Without feedback on activities, it is difficult for staff to determine if performance is appropriate and program activities meet agency goals. During the audit, we identified the following differences between designated duties and staff performance:

- > In two programs, we noted wide variations in workload distribution. In addition, part of the inspection workloads were not completed.
- > In other programs, file documentation did not reflect follow-up on identified noncompliance areas. In some cases, program compliance criteria such as frequency of inspections was not followed.
- > Due to the number and size of permitted sources located near Billings, regional PCD staff are frequently involved with significant compliance issues. Although designated duties are the same as staff in Helena, regional staff may make decisions without involving or informing program supervisors.

PCD supervisors were unable to explain or justify these variances between staff assignment and performance. Supervision and monitoring of staff performance should be a priority.

## Chapter IV - Staffing Impacts Resulting From Reorganization

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### **PCD Managers Should Focus on Supervisory Duties**

Formal and informal assessments provide staff feedback and are important for morale building. Assessment of staff performance has been incorporated into job requirements for both program supervisors and bureau chiefs within the new division. However, these duties are not being performed effectively. Program supervisors have not made staff supervision and evaluation a priority. Rather than address staff supervision and evaluation, focus has been on day-to-day regulatory tasks. Effective supervision includes four responsibilities:

Responsibility to Management - A supervisor must be dedicated to organizational goals, plans, and policies. Their primary task is to make sure these are carried out by employees.

Responsibility to Employees - Employees expect their supervisors to provide direction and training. This includes ongoing assessment of staff performance.

Responsibility to Personnel Unit - Supervisors should provide the link between employees and a department's personnel unit to provide guidance and assist in complying with personnel requirements.

Responsibility to Other Supervisors - Teamwork is essential in the supervisory ranks. There is a great deal of department interdependence within DEQ. Supervisors need to be aware of this interdependence to assure division goals are not sacrificed by individual program priorities.

DEQ management should ensure all supervisors are aware of these responsibilities. As part of reorganization, management should establish a process for effective employee supervision and evaluation. Although this process should include developing a formalized performance appraisal process, the primary focus should be on emphasizing the need for ongoing supervision and feedback to staff.

#### **Recommendation #5**

**We recommend the PCD implement a process for effective supervision and evaluation of staff.**

## **Chapter IV - Staffing Impacts Resulting From Reorganization**

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### **Summary**

We believe DEQ should continue its review and classification of positions and increase its focus on staff supervision and evaluation. In addition to resolving these issues, the department can improve permitting and compliance processes and procedures. Chapter V discusses our findings and presents recommendations related to permitting and compliance activities.

# Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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## Introduction

A primary purpose of this audit was to examine how reorganization impacted Department of Environmental Quality (DEQ) permitting and compliance programs. Our review included identifying efficiencies achieved by consolidating permitting and compliance activities into a single organization. Therefore, we focused our examination on program processes to evaluate the extent of and further need for streamlining procedures. This chapter discusses the results of our review which included:

- Survey of 450 members of the regulated community.
- Review of 112 permitting and compliance program files.
- Interviews with 86 Permitting and Compliance Division (PCD) employees.

Earlier in the report, we indicated PCD has taken some basic steps to address the need for program continuity during the initial phase of reorganization. Reorganization created the opportunity for planning, prioritizing, and problem solving among programs and across bureau lines to transition from three different agency approaches to a more coordinated approach. Standardized procedures for permitting and compliance processes should assist in transitioning and help achieve additional consistencies. The following sections examine permitting and compliance processes.

## Program Permitting Processes

PCD administers numerous environmental programs through the issuance of permits, licenses, registrations, accreditations, plan approvals, etc. In this chapter, we use the term “permitting process” to incorporate all of these activities. To assess permitting processes, we examined activities initiated from July 1, 1997 through June 30, 1998. Activities prior to July 1997 were examined when necessary to determine procedural changes.

In general, we found permitting process changes as a result of or following reorganization were minimal. Most permitting process time frames and milestones are controlled by statutory and/or administrative rule criteria. These criteria did not change with reorganization. In our survey of the regulated community, 52 percent of the respondents indicated satisfaction with permitting processes and 14 percent

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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expressed no opinion. Survey comments generally described satisfaction with the quality of assistance provided by staff.

We identified areas where changes in procedures could streamline activities and address inconsistencies between programs. In the following sections, we discuss these areas.

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### MEPA Documentation

As part of our review, we compared procedures used by each program to comply with the Montana Environmental Policy Act (MEPA). All programs operate under the MEPA statute, therefore we examined how the process was incorporated into the new PCD structure to see if streamlining or sharing of resources occurred.

We noted MEPA decisions can be a major workload for some of the programs administered within the division. Department records indicate over 3,600 MEPA documents such as environmental assessments (EA) and environmental impact statements (EIS) were completed during calendar years 1996 and 1997. These documents include checklist EAs which may take 15 minutes to complete. EIS documentation can take years to finalize.

Audit work included a review of files from programs such as Air, Public Water Supply, Subdivision, Open-cut Mining, Hard Rock Mining, Solid Waste, and Hazardous Waste. We found each program is generally responsible for completing their own MEPA analysis. We noted many programs developed individual forms and processing procedures for addressing MEPA. By comparing program procedures, we identified inconsistencies and MEPA noncompliance. These are listed below:

- In the Public Water Supply Program, staff indicated an EA is only required if a proposed project deviates from standards. This criteria is not formalized in statute or rule and staff do not consistently document decisions in this area.
- Subdivision Program staff generally prepare EA checklists, in addition to a program significance determination checklist. Completed EA checklist components are frequently marked as data unknown, yet conclude the project will have minor impacts on the environment.

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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- In three of ten Exploration Program files reviewed, EA documentation was completed after the permits were issued. According to staff, the assessment was completed onsite at the time of verbal permit approval.
- In seven of the thirteen Water Protection Bureau permit files, MEPA documentation was not available in the program office files.

### Work Plan Needed to Standardize MEPA Documentation Procedures

We believe this is an area where a thorough review could help the division strengthen program permitting processes and address the purpose of reorganizing these programs into one division. DEQ should develop a work plan to address program inconsistencies and to ensure overall compliance with MEPA.

#### **Recommendation #6**

**We recommend the PCD develop a work plan to identify MEPA procedures and documentation needed to ensure compliance and consistency.**

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### Segregation of Mine Bonding Duties

PCD programs are required to establish a variety of financial assurance options including: performance bonds, insurance, letters of credit, trust funds, corporate guarantees, and demonstrations of financial viability. The total bond amounts obtained and monitored by PCD staff is over \$500 million. The following chart outlines the amount currently maintained in each mining program.

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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**Table 5**  
**Mine Sureties Held By DEQ**  
**(As of October 1998)**

<b><u>Program</u></b>	<b><u>Bond Amount</u></b>
Hard Rock	\$182,593,902
Small Miner	174,870
Exploration	4,501,618
Coal	322,702,542
Opencut	<u>18,379,821</u>
TOTAL	\$528,352,753

**Source: Compiled by the Legislative Audit Division from DEQ records.**

Each program is responsible for completing its own bond or financial assurance review. We found program technical staff perform all aspects of this review. Program staff are responsible for assessing reclamation and/or closure cost estimates, conducting periodic reviews of financial sureties, recommending reductions and increases in dollar amounts held, and approving release of bonds or financial assurance.

### **Segregation of Duties Would Increase Controls**

Previous audit work noted control weaknesses and documentation concerns with bonds and financial assurance. Separation of the responsibility for the technical review of reclamation or corrective action proposals from financial assurance determinations could improve program management controls and assure independent review. With stronger controls in this area, the state's risks of inadequate financial assurance for environmental reclamation and/or closure requirements could be reduced. Increasing process controls could provide opportunities for streamlining current processes. The department should segregate duties of mine bond management in PCD programs to improve operational and financial controls.

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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### **Recommendation #7**

**We recommend the division segregate surety duties for mine programs to improve operational and financial controls.**

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### **Permitting Process Inconsistencies**

During our review, we identified issues where consistency between programs could improve process efficiency and affect potential process streamlining. These issues are outlined below:

- Permit final approval/signature requirements are not consistent. For some permits, the director's signature is required; for others, a section or bureau supervisor signature is adequate.
- Staff indicated there was an informal procedure requiring the use of e-mail to notify all programs about permit issuance. Staff indicated the intent of this procedure was to make other program staff aware of permitting activity involving sites/facilities with multiple permits. For some programs, division-wide notification occurs when a permit application is received. For other programs, the electronic notification occurs when the permit is final.
- Program permit file documentation requirements also varied. In some cases, we did not find copies of permits in the program files. Some programs require written justification of permit decisions and three different forms are used.

### **Standardized Permitting Procedures Could Improve Consistency**

Survey response comments identified the need to increase consistency and streamline permit processing documentation. While there may be legitimate reasons for distinct program approaches, standardized procedures where appropriate, would assist staff in meeting the needs of the regulated community and the public. It appears these are areas where the division should develop standardized procedures to ensure consistency.

### **Recommendation #8**

**We recommend the division establish standardized permitting procedures where appropriate for all PCD programs.**

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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### Program Compliance Processes

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We examined PCD program compliance processes to identify the impact of reorganization. In the survey of the regulated community, 51 percent of the respondents indicated satisfaction with compliance processes and 20 percent expressed no opinion. Survey comments included:

- Provide more technical assistance and increase inspections.
- Staff interpretation of regulations is not consistent.
- Many violations are technicalities rather than problematic environmental concerns.

During our review, we found most changes to compliance processes resulted from the separation of enforcement responsibilities and the establishment of the Enforcement Division. Prior to reorganization, compliance staff were directly responsible for working with legal staff to develop enforcement cases, determine penalties, and achieve final resolution. Following reorganization, compliance staff request formal enforcement action through program management to the Enforcement Division. Enforcement Division staff are responsible for determining penalty amounts and proceeding with formal enforcement action. The following sections discuss areas where we believe additional changes or improvements could be made to compliance processes.

### Compliance Inconsistencies

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For most programs, compliance processes include providing technical assistance, inspecting sites/facilities, reviewing required activity reports, and developing noncompliance findings to determine whether they represent violations of statute, rule or permit requirements.

We found a significant part of compliance work involves determining whether findings warrant technical assistance to help resolve a problem, or if formal violation notification and/or enforcement action is justified. For example, an inspection finding may be minor or significant and can be addressed in several ways. Improper labeling of containers may be addressed with a warning letter requiring immediate corrective action. In another example, emissions or discharges which exceed statutory criteria may be subject to a formal violation notification and ultimately an enforcement penalty. Based on discussions with staff and review of files, we identified several areas where general compliance

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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inconsistencies exist between programs. These inconsistencies are outlined below:

- Compliance Inspection Reports. Formally communicating compliance findings with owner/operators varies by program. Many programs conduct an “exit” interview with officials prior to departure from the site/facility. Some programs issue an abbreviated field report on-site following the inspection. Others prepare formal reports written and forwarded from Helena.
- Other Compliance Memorandums. Some programs use a warning memorandum for minor noncompliance issues. In other programs, we noted staff do not use any warning memorandums regardless of the severity of the noncompliance. Some programs identify minor deficiencies in an inspection report. In some programs, these deficiencies are tracked to resolution in succeeding inspection reports, while in others they are not.
- Violation Notification. PCD staff use a variety of formats for notifying owner/operators about violations. In some programs, reference to a violation occurs in the inspection report provided to the owner/operator of the site/facility. In other programs, letters of violation, notices of violation and noncompliance notices are all used by staff to identify violations.
- Follow-up and Resolution of Noncompliance. File documentation for some programs reflects a detailed review and approval process for resolution of noncompliance. Documentation in other PCD files did not identify corrective action and/or closure. We also reviewed file documentation reflecting PCD and/or industry dissatisfaction with the lack of resolution, yet the division was neither pursuing enforcement action nor requesting corrective action. In some cases, program files included inspection reports identifying deficiencies and neither follow-up nor corrective action could be determined based on available documentation.
- Intent To Penalize. Staff in some programs advise owner/operators of the division’s intent to proceed with enforcement penalties following the issuance of a violation. In other programs, owner/operators receive a notification of violation, but are not formally advised of the intent to pursue enforcement penalties.
- Coal Mining Program Enforcement. According to staff, the Coal Mining Program was excluded from consolidation of enforcement activities because program procedures are based on existing state

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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laws which include federal coal enforcement criteria. Exclusion of the Coal Mining Program represents a department inconsistency. Other programs also operate under laws which include federal enforcement criteria.

### Reorganization Not Complete

We believe differences between compliance procedures do not promote effective reorganization. Consistency of state regulation and coordination between programs has not been completely addressed for PCD compliance processes. This is reflected by the perception of the regulated community noted in the survey that staff interpretation of regulations is not consistent. For some sites/facilities, there are multiple program permits. Different compliance procedures and documentation formats for different programs adds to confusion and can result in notification and corrective action delays. Further, inconsistent use of warning letters and violation notices can result in continued noncompliance without corrective action or delays in corrective action. Potentially, noncompliance warranting a penalty is overlooked, because the initial violation documentation was not clear. In addition, depending on the historical compilation of warning letters versus violation notices, the need for enforcement penalties could be inconsistently determined.

### Standardized Compliance Procedures Could Improve Consistency

We believe general PCD compliance policy and procedures are needed to ensure consistency between programs. Basic procedures should include areas such as the provision of technical assistance, inspection reports, warning memorandums, letters of violation, resolution memorandums, and notification of intent to penalize.

#### **Recommendation #9**

**We recommend the division develop standardized compliance procedures where appropriate for all programs.**

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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### Noncompliance and Violation Information

For sites/facilities with permits from multiple programs, staff in one program are seldom aware of noncompliance documented by staff in another program. The Enforcement Division developed a tracking system for formal violations forwarded with a request for enforcement. However, this system does not include all other program noncompliance identified by staff. Several programs established internal tracking of noncompliance, however, other program staff do not have access to this information.

Staff, particularly in programs with shared compliance responsibilities, should be aware of situations where another program or staff recently identified noncompliance, issued a violation notice, or imposed a penalty on a site/facility they are about to inspect. According to staff, this information would assist in preparing for discussions with site owner/operators and potentially provide feedback to staff in the program issuing the violation.

### Program Staff Should Review Information

Staff in several programs identified the need to be aware of complaints received on their assigned sites/facilities. As part of reorganization, receipt and tracking of public complaints was assigned to the Enforcement Division. Based on current policy (anonymous callers), only Enforcement Division staff can access this information. The Enforcement Division provides complaint status sheets to affected programs every 30 days. Program staff indicated with the current approach, site visits may be completed only to find out about a complaint which could have been investigated simultaneously. To resolve this concern, the division should develop procedures to assure program staff are aware of current complaint investigation activity.

#### **Recommendation #10**

**We recommend the division develop procedures for reviewing related compliance and complaint information prior to site visits.**

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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### Program Compliance Priorities

Permitting activities are generally controlled by statutory time frames. Therefore, those activities receive higher priority for most programs. Some programs have recognized the need to address overall program priorities, including compliance activities. As a result, some programs established formal procedures for prioritizing compliance activities or portions of their requirements to help assure compliance at highest risk sites/facilities. Other programs have not identified their highest risk sites/facilities and in some cases address lower compliance priorities. During our review of files and through staff interviews and observations, we identified the following compliance priority concerns:

- Air, Public Water Supplies, Opencut Programs. We identified programs which have or will experience significant workload increase as a result of increasing requirements. Management staff has not reviewed inspection and compliance priorities and staff workload assignment to assure both compliance with statutory intent and equitable assignment/distribution.
- Asbestos Program. Staff are responsible for inspecting a sample of asbestos abatement projects. Based on staff availability and historical EPA criteria, approximately 30-35 inspections are completed annually, although there are several hundred projects permitted each year. Management has not reviewed priorities, established goals, or reviewed alternatives for accomplishing the work.
- Hard Rock Mining Program. Currently, there is no process in place to distinguish between routine work priorities and unusual circumstances warranting distinct priorities. We reviewed procedures used by staff when responding to two incidents and found differences. One incident involved a cyanide leak and the other involved a diesel spill. However, in the case of the diesel spill, staff decided to prioritize this incident and investigate. Although both incidents were potential noncompliance issues, each situation was handled differently.

## Chapter V - Permitting and Compliance Impacts Resulting from Reorganization

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### **PCD Program Compliance Priorities are Not Clear**

When program priorities are unclear to staff, the division's ability to assure compliance is reduced. Staff dedication to work requirements not identified as priorities results in the inefficient use of compliance resources. Based on the amount of compliance work possible, it is important for management to assure workload prioritization occurs. As part of the reorganization process, the division should establish procedures for ongoing review of program priorities to ensure work assignments are based on a determination of the highest risk environmental compliance requirements.

#### **Recommendation #11**

**We recommend the division prioritize program compliance activities.**



# **Department Response**

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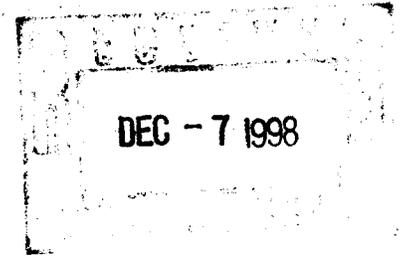
# DEPARTMENT OF ENVIRONMENTAL QUALITY



MARC RACICOT, GOVERNOR

STATE OF MONTANA

December 7, 1998



Ms. Angie Grove  
State Capitol Building, Room 135  
Legislative Audit Division  
P.O. Box 201705  
Helena, MT 59620-1705

Dear Ms. Grove:

The department appreciates the effort taken by your office to identify areas where procedures can be improved. Where the latitude exists to improve procedures the department will consider all recommendations. It must be remembered however, it was not the intent of reorganization to change procedures defined in rule or statute. Reorganization was intended to improve communication and coordination where overlapping responsibilities exist.

It is also important to recognize the effort and dedication of DEQ employees throughout this undertaking. DEQ has completed reorganization without supplemental funding, with a 4 FTE cut. Thus, many DEQ employees have been filling in - at least double duty - completing their daily activities, plus extra reorganizational activities, plus implementing government-wide changes such as MT PRRIME and MBARS.

With limited resources, DEQ has achieved a tremendous amount of progress in establishing a new structure, putting in place key management controls, updating position descriptions, developing policies, and developing internal communications necessary to improve coordination between programs. Needless to say, we expect improvement to be an ongoing goal, as it should be in any effective organization, and we will continuously try to refine our policies and procedures. The audit provides a springboard for continuing these activities, but it must not fail to recognize the success we have achieved to date.

The audit report also identifies areas for potential future studies. The department particularly endorses the idea of investigating the MEPA process government wide, with an eye towards increasing the effectiveness of the process itself - rather than investigating whether or not adequate management controls or paper documentation exist. No amount of planning and guidance can fundamentally change a process which many believe is too cumbersome. The statute has been in place for nearly 30 years. The fee system has never been workable and may be impacted by CI-75,

and a tremendous amount of case law has developed in the last 30 years which must be effectively implemented in order to withstand legal challenges.

The audit report presents eleven recommendations for the department's consideration. Each of these recommendations is addressed below. Attached is a table which summarizes our management goals for the coming year.

**Recommendation #1** (p. 16)

We recommend the department develop formal policies and procedures to ensure consistency in general department administrative operations.

*Response: We concur with this recommendation and will be developing written procedures over the next 12 months to address recruitment and hiring, employee orientation, performance appraisal and related areas. These procedures will supplement previously completed payroll, travel and other procedures.*

**Recommendation #2** (p. 16)

We recommend the department establish policy and implement procedures for complying with public notification requirements.

*Response: We concur with this recommendation and have been working with the department's public information office to develop such procedures by April 1, 1999.*

**Recommendation #3** (p. 18)

We recommend the department continue to improve controls by expanding effective current program practices to other programs where appropriate.

*Response: We concur. The division has disseminated your list of best management practices and held an orientation meeting to acquaint the many program supervisors with the systems available in other sections. Section supervisors are now in the process of evaluating and implementing procedural changes to improve their program management. Most changes will be in place by approximately December 31, 1999.*

**Recommendation #4** (p. 23)

We recommend the department complete a division-wide review of positions to identify similar job duties, and possible position classification inequities.

*Response: We concur. The division has initiated establishment of an internal tracking system to evaluate position classifications and position description status. This will supplement systems maintained by the personnel unit and will be refined as new division needs arise.*

**Recommendation #5** (p. 25)

We recommend the PCD implement a process for effective supervision and evaluation of staff.

*Response: We concur. Attached is the department's interim performance appraisal form which is being put in place once the interim performance appraisal policy is complete -*

*approximately December 15. A final policy will be developed by the end of the year.*

**Recommendation #6** (p. 29)

We recommend the PCD develop a work plan to identify MEPA procedures and documentation needed to ensure compliance and consistency.

*Response: We concur. A department MEPA work plan, with milestones and time frames, was presented to the EQC December 4, 1998, and is being implemented.*

**Recommendation #7** (p. 31)

We recommend the division segregate surety duties for all permitting programs to improve operational controls.

*Response: We concur. The division has already segregated bonding duties and will continue to evaluate ways to improve upon management controls.*

**Recommendation #8** (p.31)

We recommend the division establish standardized permitting procedures where appropriate for all PCD programs.

*Response: We concur, recognizing that beyond a certain level there will continue to be program-by-program variations driven by differences in statutes and delegated program requirements. Many procedures are in place and will be reviewed to determine the need for updating. Programs without permitting procedures will have such procedures in place by June 30, 1999.*

**Recommendation #9** (p. 34)

We recommend the division develop standardized compliance procedures where appropriate for all programs.

*Response: We concur. Core policies and procedures applicable to all programs will be developed shortly. Once the core procedures are complete, they will be supplemented by new and existing program-specific procedures. This effort is expected to supplement policy and procedure development occurring in Enforcement Division and will be completed by December 31, 1999.*

**Recommendation #10** (p. 35)

We recommend the division develop procedures for reviewing related compliance and complaint information prior to site visits.

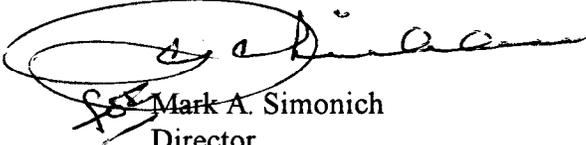
*Response: We concur. Inspection preparation procedures will be modified immediately to include a requirement that inspectors contact Enforcement Division for the latest information on complaint and compliance status on sites to be inspected.*

**Recommendation #11** (p.36)

We recommend the division prioritize program compliance activities.

*Response: We concur. Each program will be modifying its inspection procedures to identify the response criteria for a variety of possible unexpected and non-routine events by May 31, 1999.*

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Simonich", is written over a large, hand-drawn oval. The signature is positioned above the typed name.

~~SS~~ Mark A. Simonich  
Director  
Department of Environmental Quality

Audit Commitments - PCD

Due Date	Responsible Unit	Product	Comments
Dec 4, 1998	DEQ	MEPA work plan	Add work plan dates to this table
Dec 31, 1998	WPB/P	Log Book for tracking applications	
Dec 31, 1998	WPB/P	File Retrieval	
Dec 31, 1998	WPB/P	Gen Proc for completing Inspection Reports/Forms	
Dec 31, 1998	PCD/PWS	Interim Contract Management guidance for PWS	
Dec 31, 1998	PCD	Public Notice writing standards	
Dec 31, 1998	AWMB/HW	Adopt modified office procedures	
Dec 1998	Personnel	Interim Performance Appraisal Policy	
Dec 1998	Personnel	Recruitment & Selection Policy	
Dec 1998	WPB/P	Training at staff meeting	
January 1999	PCD/All	Work & workload evaluation plans	
Monthly	WPB/P	Permit Status tracking	BC & SS
Monthly	WPB/P	Renewal Status tracking	SS
Monthly	WPB/All	Timely Completion of Inspection reports	
Jan 1, 1999	ED	Voluntary Audit Policy	
Jan 1999	PCD	Interim Contract Training for PWS	
Jan 1999	HR/OC/CU	Tracking and documentation forms	
Jan 1999	AWMB	Asbestos work plan and fee collection analysis	
March 1, 1999	EMB	Modified exploration Inspection Report	

March 1, 1999	EMB	Revised exploration tracking system	
March 1, 1999	PCD/PPA	MOU on sharing of permit reports	
March 31	WPB	Workplans to resolve 54% outstanding violations	
Quarterly	EMB	Review bond review status report	BC & SS
Quarterly	WPB/P	Validate MEPA compliance	BC
Quarterly	WPB/P	Review Permit Status tracking reports	BC & SS
Quarterly	WPB	Permit Writers Meeting & guidance development	
April 1, 1999	WPB	Evaluation of tracking systems complete	
April 1, 1999	PCD/DEQ	Final Public Notice guidance	
April 1999	PCD	Final compliance tracking procedures	
May 31, 1999	EMB	Backlog of bond reviews completed	
May 31, 1998	EMB/All	Protocol for "Regulatory Situations" completed	
May 31, 1999	EMB	Revised Inspection Report procedures completed	
June 30, 1999	Personnel	Core Ops & Pers. Policies Final	
June 30, 1999	MEPA	PWS Procedures, PWS MEPA procedures	
June 30, 1999	MEPA	Standardized Checklist	
June 30, 1999	PCD	PD status review & work plan prioritization complete	
June 30, 1999	WPB/P	Renewals for facultative lagoon GPs complete	
June 30, 1999	WPB/P	Permit Procedures Manual (PPM) update complete	
June 30, 1999	WPB/P	Inspection Procedures added to PPM	

June 30, 1999	WPB/P	Violation Procedures in PPM	
June 30, 1999	PCD	Signature List complete	
July 1, 1999	AWMB	AWMB workload analysis in section procedures	
July 31, 1999	CSB/PWS	Written permit procedures	
July 31, 1999	EMB/PCD	Bond Release procedures	
July 31, 1999	CSB/PWS	BMPs	
Summer 1999	CSD	Contracting procedures	
Summer 1999	CSD/PWS	Contract Mngt training	
Sept 1999	All	Identify areas of needed policy development	
Sept 1999	WPB/P	Tracking system changes resulting from April review implemented	
Oct 1, 1999	PCD	Draft compliance procedures & enforcement response guide	
Oct 1, 1999	WPB/S	Subdivision's analysis of scope of inspection and compliance completed	
Dec 1, 1999	WPB/P	Final Permit Manual	
Dec 31, 1999	WPB/P	Compliance procedures in PPM	
Dec 31, 1999	PWS	Backlog of Sanitary Surveys completed	
Dec 31, 1999	All	Workplans for policy development completed	
December 1999	PCD	Final compliance procedures	
Jan 2000	All	Place compliance procedures on Web	
When Received + 2 months	WPB	CAFO update on inspection procedures in PPM	in development at EPA

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MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

"CONFIDENTIAL"

PERFORMANCE APPRAISAL FORM

Covering Period of Service From \_\_\_\_\_ To \_\_\_\_\_

Action Item: 1st 3 months ( ) End of Probation ( )

1st 6 months ( ) Anniversary ( )

NAME OF EMPLOYEE \_\_\_\_\_

CLASSIFICATION \_\_\_\_\_

UNIT, BUREAU OR DIVISION \_\_\_\_\_

PURPOSE: The purpose of the Performance Appraisal System is to provide a communication tool between the employee and supervisor through the following:

- 1. To ensure that employees and supervisor clearly understand the job duties and responsibilities of the position and the levels of expected performance.
2. To gather information to improve performance through identification of employee strengths, weaknesses and training needs.
3. To recognize and encourage good job performance.
4. To provide a means of communication and feedback on all aspects of the employee's job.

SPECIAL NOTE TO SUPERVISORS:

- The characteristics listed are in no particular order; no numerical or other form of cumulative score will be attached to them. Select the characteristic which best describes that quality in the employee being evaluated.
-- "Comments" section is for use by either or both the supervisor and the employee.
-- "Over Summary of Employee's Performance" (page three) must be completed by each supervisor.

JOB RELATED PERFORMANCE

1. INITIATIVE (Does employee display the ability and willingness to proceed alone and unguided in the fulfillment of responsibilities?) Check one.

- ( ) Usually takes action in order to discharge responsibilities of the job.
( ) Fails to proceed alone and requires detailed, step-by-step instructions.
( ) Consistently takes action to get thing done, even when confronted with unusual situations.
( ) Normally takes action in order to discharge responsibilities of the job, but seeks assistance with some difficult aspects.
( ) Shows no interest in assignments outside of normal routine.

Comments:

2. QUANTITY OF WORK (Consider the amount of work produced by the individual in relation to others and the requirements of the position.)

- ( ) Production meets job requirements.
( ) Methodical, producing only minimum work.
( ) Production is good with attention to details.
( ) Production meets job requirements when specifically assigned and supervised.
( ) Accomplishes high volume of work.

Comments:

3. RESPONSIBILITY (Does employee assume responsibility for the job assignments and produce timely results?)

- Accepts assignments, but frequently fails to produce finished or acceptable product.
- Handles variety of duties, works well under pressure, delivers finished, acceptable product within established time frames.
- Requires constant supervision, checking and advice. Finished product rarely acceptable without thorough review.
- Accepts assignments; requires frequent supervision, but quality of work is acceptable.
- Completes assignment in allotted time with minimum of supervision.

Comments:

4. RELATIONS WITH FELLOW WORKERS (Consider how well employee gets along with other employees and adheres to peer concept by management.)

- Uncooperative in dealing with other staff.
- Works harmoniously with others, consults with peers as appropriate.
- Frequently has difficulty in dealing with other staff or seeking advice from peers.
- Cooperative; usually maintains favorable relationship with fellow-workers, supervisors and other staff.
- generally cooperative in dealing with other staff or seeking advice from peers.

Comments:

5. TIME SPENT PRODUCTIVELY (Consider whether employee makes best use of time.)

- Works efficiently for short periods, but is easily distracted.
- Efficient, dedicated with good production.
- Wastes time; unproductive.
- Works steadily and consistently.
- Hard worker, minimum of distraction.

Comments:

6. EFFECTIVENESS UNDER STRESS (Consider how employee reacts under emergency time constraints, heavy workloads and other circumstances which can induce stress.)

- Usually dependable under pressure.
- Easily flustered. Reacts negatively when given more than one job at a time.
- Highly dependable and accurate when faced with deadlines. Very Cooperative.
- Unsatisfactory performance and attitude when faced with deadlines and heavy workloads.
- Generally dependable, but may have problems during peak period and with stressful demands.

Comments:

7. ATTENDANCE AND PUNCTUALITY (Is employee dependable in reporting to work daily within scheduled work hours, with the exception of approved leave?)

- Frequently tardy. utilizes all available leave without regard to workload.
- Dependable and prompt.
- Excessive absence without good excuse and/or frequently late.
- Usually dependable and prompt. Adequate notice for absence given.

Comments:



**SUPERVISORY**

(If Applicable)

1. Leadership (Consider to what extent supervisor is able to motivate employees in an effort to accomplish goals and objectives.)

- ( ) Generally receives employee cooperation in achieving objectives.
- ( ) Provides effective guidance and direction in motivating employees. Inspires confidence, respect and loyalty.
- ( ) Fails to motivate employees in an effective manner. Makes arbitrary decisions and abuses power and authority.
- ( ) Sets good example. Delegates authority and responsibility in acceptable manner.
- ( ) Limits delegation of authority and responsibilities. Tends to suppress employee creativity.

Comments:

2. PERSONNEL MANAGEMENT (Consider ability to recognize problems and handle them appropriately.)

- ( ) Handles personnel problems objectively and fairly.
- ( ) Fails to recognize problems. Presents inaccurate and unfair assessment of situations.
- ( ) Deals directly and with a sense of fairness in handling work-related problems. Is sensitive to other problems within limits.
- ( ) Will face a problem only when forced to by supervisor.
- ( ) Personnel management is acceptable. Seeks help in unusual situations.

Comments:

3. MANAGEMENT AND TRAINING (Consider ability to manage program responsibilities under budget constraints, personnel capabilities and available resources.)

- ( ) Exhibits good management and training skills. Recognizes budget and personnel limitations.
- ( ) Is able to effectively meet program goals and objectives within budget constraints and other resource limitations and deals appropriately with staff development needs.
- ( ) Fails to recognize constraints and other factors which influence programs.
- ( ) Familiar with policies. Willing to adhere to constraints within limitations of staff and funds.
- ( ) Unfamiliar with policies and limitations. Seldom recognizes training needs.

Comments:

CRITERIA LISTED BELOW WILL BE USED IN COMPLETING THE PERFORMANCE APPRAISAL SYSTEM FORM

PERFORMANCE STANDARDS AND/OR RESULTS TO BE ACHIEVED: (Specific statements of the goals and/or objectives the employee can reasonably be expected to achieve in the coming period.)	DATE OF NEXT REVIEW	OBJECTIVES MET	
		YES	NO