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April 19, 2010

TO: Environmental Quality Council (EQC) Members
FR: EQC staff
RE: DNRC Compliance and Enforcement Report

Attached are the 2010 compliance and enforcement reports submitted by DNRC in accordance with 75-1-314, MCA.

Cl2255 0110hsxb.

DNRC Forestry Assistance Program
2010 HB132 Compliance Report

I. Regulated Programs

a. The Hazard Reduction Agreement (HRA) Program is the operational/enforcement component of Montana's Control of Timber Slash and Debris Law (76-13-401 through 415 MCA). The law requires the slash generated from any commercial timber harvest operation to be treated. Landowners, loggers, and/or other forest operators are subject to this law and must register their project by securing an HRA from their local DNRC office. The HRA requires a refundable bond be withheld until the slash hazard is reduced by at least 90%.

b. The Forestry Water Quality Best Management Practices (BMPs) (76-13-101 (2) MCA) are a voluntary program in Montana that addresses timber harvest and associated forest management operations. BMPs give operators and landowners scientific and time-tested guidelines that protect natural resources (primarily soil and water) while they conduct their forest management operations.

c. Montana's Streamside Management Zone Law (SMZ), (77-5-301 through 307 MCA) establishes minimum standards for protection of streams and adjacent lands during timber harvest activities. The SMZ law establishes buffers along streams where activity is highly regulated and limited. Alternative Practices may be requested by landowners or loggers to operate in these areas in a way that would normally be prohibited, provided impacts to SMZ functions can be acceptably mitigated.

II. Promoting Compliance, Information, Education, Technical Assistance:

a. BMP Audits (Field Reviews): The DNRC Forestry Division conducts audits every other year on Timber Harvest Best Management Practices in Montana. The audits evaluate how well BMPs are applied and how effective they were in protecting soil and water resources. The results represent a report card for how well the voluntary compliance approach to BMPs is working. The 2008 Audits yielded an overall 97% compliance level with BMPs across all ownerships.

b. Other workshops/training: Every year, DNRC partners with the Montana Logging Association (MLA) to train logging professionals, forest landowners, and others about BMPs and SMZs. In spite of a decline in the number of loggers statewide, attendance and interest in these workshops continues to be strong.

BMP/SMZ	2007	2008	2009
# Workshops	6	7	5
# Participants	199	229	142

c. SMZ Alternative Practices: The SMZ law allows for activities that may technically violate the SMZ law, but would still maintain the function of the SMZ. Requests for alternative practices ("alternative" to management standards stated in 77-5-303(1) MCA) are reviewed in the field by DNRC foresters, and an analysis is conducted consistent with the requirements of the Montana Environmental Policy Act. If a request is granted, the Alternative Practice requires mitigation to maintain the function of the SMZ.

	2007	2008	2009
Alternative Practices Approved	25	10	13

III. The Regulated Community – Compliance

a. **Control of Timber Slash and Debris Law (HRA Law)**

i. Description: The regulated community under the Hazard Reduction Act includes anyone (1) clearing rights of way (except temporary logging roads), (2) cutting forest products, building haul roads,

and/or carrying out timber stand improvement activities on private lands. Purchasers of such forest products are also part of the regulated community in that they must insure the entities they are purchasing forest products from have complied with hazard reduction regulations.

ii. HRA Agreement Summary

HRA holders

	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Balance of open HRAs	3408	3511	3631	3429	3134	2696	2324

Purchasers

	FY 06	FY 07	FY 08	FY 09
Number of Mills Reporting	49	78	62	60

IV. The Regulated Community – Non-compliance

a. **HRA** The measure of hazard reduction non-compliance is the number of HRA agreements the Department must take over because the HRA holder has not met the terms of their HRA.

i. Number and description of non-compliances:

1. HRA holders

	FY 06	FY 07	FY 08	FY 09
HRAs taken over by State of MT	51	19	31	30

ii. Mills. No formal mill audits were conducted during FY 2007, 2008, or 2009.

b. **SMZ** Non-compliance is enforced with either a Warning or an Order. SMZ Violations:

SMZ Type	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY 06	FY 07	FY 08	FY 09
Warnings	16	15	8	2	10	15	9	8	6	2	4
Orders	0	2	6	1	0	2	3	3	5	2	1

SMZ violations and warnings over 10 years of enforcement show violations at less than 1% of open HRA agreements.

c. **BMP** -Compliance is monitored every 2 years by conducting BMP Field Review Audits on 45 sites across Federal, State, Industry and Non-industrial private lands are rated for the Application and Effectiveness of BMPs. Results over 10 audit cycles show progressive improvement to consistently high scores. Audits will again be conducted in 2010.

Comparison of BMP Audit Results – 2008 with All Previous Audits

Category	**2008**	**2006**	**2004**	**2002**	**2000**	**1998**	**1996**	**1994**	**1992**	**1990**
Application	97%	96%	97%	96%	96%	94%	92%	91%	87%	78%
Effectiveness	97%	97%	99%	97%	98%	96%	94%	93%	90%	80%

Board of Oil and Gas Conservation

Oil and Gas Conservation Division
Program Description

The Oil and Gas Conservation Division of the Department of Natural Resources and Conservation (DNRC) is the staff to the Board of Oil and Gas Conservation (Board) and is attached to DNRC for administrative purposes. The Board enforces the oil and gas conservation statutes and has rulemaking authority (Chapter 11, Title 82, MCA and Chapter 22, Title 36 ARM respectively).

Regulated Community

There are over 400 active oil and gas operators in the State of Montana.

Compliance Assistance and Education

The Board of Oil and Gas Conservation is composed of seven members appointed to four-year terms by the Governor. Included on the Board are industry members and land/mineral owners as well as two public members. Industry members participate in professional societies such as the Society of Exploration Geophysicists, American Institute of Petroleum Geologists, Montana Petroleum Association and the Northern Montana Oil and Gas Association; and landowner members typically participate in the two active land and mineral owners associations.

The Board's field inspectors perform routine visits to drilling sites, producing wells, abandoned wells, and other facilities and provide information and advice about regulations and compliance needs. Board professional staff also participates in organizations and societies, which provide opportunity for outreach activity to the regulated community.

Inspection and Enforcement Resources

The Board has 7.0 FTE (Chief Field Inspector and six Field Inspectors) assigned to inspection and enforcement activities The Underground Injection Control (UIC) program is delegated from the EPA and carries specific requirements for inspection activities. Other priority inspections include response to complaints, witnessing well plugging, drilling inspections and inspections for compliance prior to approval of operator changes. Field inspectors also supervise plugging and abandonment of orphan wells by companies under contract to the Board to provide plugging services.

Enforcement Policy and Actions

Generally, staff initiates enforcement actions. If not resolved at staff level, incidents of non-compliance are brought to the Board. The Board is the final authority for enforcement actions. Decisions made by the Board may be appealed to District Court.

Noncompliance

The following tables list non-compliance incidents brought before the Board in the reporting period.

Calendar Year 2008

Order Number	Operator	Violation	Penalty	Status
273-2008	B.C. Jam, Inc.	Failure to P&A well	Bond Forfeited	Closed
249-2008	Humes Oil Co.	Failure to P&A wells	Bond Forfeited	Closed
307-2008	Delphi International Inc.	Failure to Pay Penalty and File Reports	Shut-in Production until penalty paid and reports filed and Fined $1000	Closed
308-2008	Weststar Energy, Inc.	Failure to Pay Penalty and File Reports	Increased Penalty	Closed
309-2008	Faith Drilling, Inc.	Failure to P&A well	Well Plugged	Closed

Calendar Year 2007

Order Number	Operator	Violation	Penalty	Status
180-2007	TOI Operating	Failure to Clean Up Wellsite	Well Double-Bonded Wellsite Cleaned Up	Closed
226-2007	Zimco and Hi-Dezert Petroleum	Failure to Maintain Wellsite and File Reports	Bond of Hi-Dezert Petroleum Forfeited	Closed
227-2007	Brandon Oil Company	Failure to File Reports	Increased Penalty	Closed
228-2007	Delphi International Inc.	Failure to File Reports	Increased Penalty	Closed
229-2007	Yellowstone Petroleums, Inc.	Failure to File Reports	$1000 Penalty for Failure to Appear and Additional $400 Fine for Failure to File Reports	Closed
230-2007	Rocky Mountain Gas, Inc.	Failure to File Reports	$1000 Penalty for Failure to Appear and Additional $480 Fine for Failure to File Reports	Closed
335-2007	Rocky Mountain Gas, Inc.	Failure to Pay Fines/Penalties and File Reports	Plugging Plan Due Dec 5 or Bond Forfeiture Scheduled	Closed

Compliance Results and Tracking

Field inspection activities and follow-up resolve most non-compliance incidents at the administrative level. Production reporting non-compliance incidents are also typically resolved at the administrative level. Significant non-compliance in the regulatory and UIC programs has been relatively rare during the reporting period. .

The Oil and Gas Conservation Division has formal inspection and compliance tracking system for non-UIC activities, which is done through the Division's Risk Based Data Management System.
Tracking of compliance activities is formalized in the UIC program through submission of an annual report to EPA summarizing inspection, enforcement, and resolution of significant non-compliance issue.

The **Dam Safety Regulatory** program is designed to ensure that dams in Montana are operated and maintained in a safe manner. Regulatory responsibilities of the DNRC include: Issuing and managing operation permits; Issuing and managing construction permits; Hazard evaluations; And emergency action plan updates. Permitted dam owners include irrigation districts, private irrigation companies, cities, counties, State of Montana, and private individuals.

The Dam Safety Program uses education and outreach to promote compliance. The Dam Safety Program worked with the Montana Association of Dam and Canal Systems to host workshops in October 2008 and October 2009 as well as an upcoming workshop in 2010. A program of conducting simulated emergency response exercises with dam owners and emergency responders is ongoing. Approximately ten table top exercises are conducted each year. During the past two years, ninety percent of the emergency action plans were updated annually.

Noncompliance usually involves not repairing an unsafe dam, not obtaining, renewing or following specific conditions of an Operation Permit or failure to obtain or follow the requirements of a construction permit. There are 3 high hazard dams in the state that do not have an Operation Permit. One is a dry flood control dam that is in the process of being decommissioned.

The **Board of Water Well Contractors** program is to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells. Water well construction standards are set in the administrative rules and enforced to insure competency in the drilling of water wells and monitoring wells.

The Board directs investigations of complaints of unlicensed drillers and driller's violations of water well construction standards submitted by the public, by regulatory agencies, and by other drillers. The Board holds hearings on complaints and, as warranted, prescribes education, remedial action, fines, bond forfeiture, license suspension, license revocation to enforce state law and regulations. The program manager administers apprenticeship, training, testing, licensing, and annual training and re-licensing of 247 Water Well Drillers, Monitoring Well Constructors, and Water Well Contractors in Montana.

Complaints to the Board are analyzed and field investigated. There were 30 complaint calls of which 4 were filed formally in a written complaint. Of those 4 formal complaints; two decisions of the Board favored the complainant; two decisions favored the driller. 25 complaints were settled without Board action. Two Water Well Contractors and one Water Well Driller were placed on one year probation. Typically there is voluntary compliance or correction of a construction standard based on the finding of the field investigator. Complaints that result in some remedial action by the driller have occurred on about 1% of all water wells drilled in a year.

The **Montana Water Measurement** program was created with the responsibility of identifying chronically dewatered watercourses. The program provides water data,

water right information, and water measurement expertise to watershed groups and user groups to improve local management of water resources. The program seeks to reduce adverse impacts to beneficial uses, such as agriculture, municipal, fisheries and recreation and reduce conflicts between competing uses.

The Musselshell River, and Mill Creek, a tributary of the Yellowstone River are the two watercourses regulated. Compliance and enforcement efforts in the Musselshell basin have improved with the creation of the "Musselshell River Enforcement Project". Involvement of the District Court has dramatically increased the number of measuring devices in the basin, and improved local management. As a result, compliance is estimated at close to 100 percent. In Mill Creek, installation of measuring devices and reporting reached 90 percent compliance in 2001. In the past several years, measurement and reporting has fallen off completely. However, water measurement interest is strong again in Mill Creek. The program continues to work with the Water Management Bureau, NRCS, Mill Creek Subcommittee and local interests to investigate possible solutions to low flows in Mill Creek.

The **Floodplain Management** program includes reviewing and approving local proposed regulations and administrative and enforcement procedures to assure minimum state standards are met, and formally delineating floodplains and floodways.

The federal National Flood Insurance Program (NFIP) provides funds to provide outreach, training for local governments, technical, and administrative assistance and oversight to 130 local governments. Approximately 95% of the local governments have adopted and are regulating building and construction in the delineated floodway and floodplain according to state prescribed minimum standards. The State NFIP coordinator performs 25 formal audits per year for compliance with flood insurance program minimum requirements.

The Floodplain Management Program has the authority to take over local floodplain permitting if a situation arises where the local government cannot or is unwilling to perform its floodplain administration and regulation duties. No attempt has been made to take over local floodplain permitting activities. FEMA, through their National Floodplain Insurance Program has the authority to sanction communities and deny flood insurance availability. Such action by FEMA would result in the inability of banks or other loan institutions to sell home mortgages on the secondary market.

Through the Federal Emergency Management Agency (FEMA) Map Modernization and Risk MAP Programs the State of Montana is working on behalf of local communities and FEMA to convert paper floodplain maps to digital format and to update the existing information with new floodplain mapping studies. Projects ongoing include floodplain maps updates for 20 Counties representing areas involving approximately 70 % of the state population.