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December 12, 2011

To: EQC Members

From: EQC Staff

Re: DNRC Compliance and Enforcement Report

Attached are the compliance and enforcement reports submitted by the Department of Natural Resources and Conservation in accordance with 75-1-314, MCA. This includes data from the Water Resources Division, the Board of Oil and Gas Conservation, and the Forestry Assistance Program.

EQC
January 12, 2012
Exhibit 3

November 2011 DNRC Compliance and Enforcement Report

The **Board of Water Well Contractors** program is designed 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 254 Water Well Drillers, Monitoring Well Constructors, Water Well Contractors, and Inactive licenses in Montana.

Complaints to the Board are analyzed and field investigated. There were 14 complaint calls of which 3 were filed formally in a written complaint. Of those 3 formal complaints; 2 decisions of the Board favored the complainant; 1 decision favored the driller. 11 complaints were settled without Board action. 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 **Dam Safety Regulatory** program is designed to ensure that dams in Montana are operated and maintained in a safe manner. Primary regulatory responsibilities include: issuing operation permits; construction permits; and, conducting downstream dam hazard evaluations. Secondary regulatory responsibilities include: updating emergency action plans and responding to complaints on non-permitted dams. Permitted dam owners include irrigation districts, private irrigation companies, cities, counties, State of Montana, and private individuals. Federal dams are exempt from regulation. For more detailed information, please refer our web site at:

http://dnrc.mt.gov/wrd/water_op/dam_safety/default.asp .

The Dam Safety Program uses education and outreach to promote safe dams and compliance. The Dam Safety Program works with the Montana Association of Dam and Canal Systems to host annual dam owner workshops targeted towards permitted dams. A new program is underway in cooperation with the Montana Watercourse housed at Montana State University to provide education to rural non-permitted dam owners on proper dam operation and maintenance.

Non compliance with permitting requirements: A small dam in Lewis and Clark County has failed to conduct inspections as required. Enforcement efforts are underway to get inspections completed.

Non compliance with standards: A small dam in Madison County is out of compliance with required state spillway standards. An operation permit was issued for a shortened time period while hydrologic and hazard studies are completed.

Rehabilitation is planned or underway to bring the following dams in compliance with dam design standards:

Dam	County	Activities
EUREKA RESERVOIR DAM	Teton	Engineering underway – Construction fall 2012
KERNS LAKE Dam	Powell	Construction underway
NORTHERN PACIFIC RESERVOIR DAM	Lewis & Clark	Reservoir level restriction in place. Construction underway
SMITH LAKE DAM	Flathead	Reservoir level restriction in place; Engineering will be conducted in Winter 2012; Construction Fall 2012
RUBY DAM	Madison	Construction underway
COTTONWOOD COUNTRY CLUB DAM	Dawson	Construction Fall 2011

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”, and involvement of the District Court. As a result, compliance is close to 100 percent.

In Mill Creek, installation of measuring devices reached 90 percent compliance in 2001, and there is currently a high level of interest in water measurement in this watershed. The program continues to work with the Mill Creek Subcommittee, Trout Unlimited, FWP, and local interests to investigate solutions to low stream flows. We have installed and are operating a gauging network in Mill Creek as well as collecting baseline flow data and irrigation diversion information for use in this effort. The program is similar to the cooperative efforts in the Big Hole and Wise rivers.

The **Floodplain Management** program includes reviewing and approving local proposed regulations to assure minimum state standards are met, formally delineating floodplains and floodways, and reviewing community administrative and enforcement procedures for continued compliance with their regulations. The National Flood

Insurance Program (NFIP) provides funds to provide oversight, outreach, training, technical and administrative assistance to 130 local governments. Approximately 95% of the local governments have adopted and are regulating building and construction in the designated Special Flood Hazard Area (SFHA) as per their local regulations.

The State NFIP coordinator performs approximately 25 formal audits per year for compliance with the NFIP and state 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. This process could result in the state and community working hand-in-hand to come up with an immediate solution and/or the community being recommended to FEMA for probation. FEMA, through the NFIP, has the authority to put communities on probation or sanction. If sanctioned, then flood insurance would no longer be available in the community. Such action by FEMA would result in the inability of banks or other loan institutions to sell home mortgages on the secondary market. No communities have been put on probation or sanction over the last two years.

**Report to the Environmental Quality Council:
Natural Resources and Environmental Compliance and Enforcement
Section 75-1-314 MCA**

Calendar Years 2009 and 2010

**Board of Oil and Gas Conservation
Oil and Gas Conservation Division
Department of Natural Resources and Conservation**

December 2011

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 450 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 2009

Order Number	Operator	Violation	Penalty	Status
26-2009	Athena Energy LLC and Red Maple Energy	Failure to file production reports	\$70 fine for delinquent reports	Closed
116-2009	Mountain Pacific General, Inc.	Failure to plug Copenhaver #1 well by 8/20/11	\$1000 fine for failure to comply	Closed
117-2009	Hawley Hydrocarbons	Oil and water spill Copley Haber lease fined in 1-A-2009	\$2000 fine reduced to \$1000	Closed
132-2009	TOI Operating	Failure to complete plugging program established October 2005 – Keith Carver	Bond forfeiture	Closed
133-2009	Mountain Pacific General, Inc.	Failure to plug Fossum well and to pay \$1000 fine ordered in 116-2009	Must pay fine by November 15, 2009; and must plug Fossum well by June 2010	Continued
135-2009	Delphi International, Inc.	Failure to file production reports and failure to appear	\$300 fine-reports \$1700 fine-failure to appear Production shut-in till reports filed and fine	Closed
1-A-2009	Hawley Hydrocarbons	Failure to report oil spill at Copley Haber	\$1000 fine failure to report \$1000 fine – clean up done 10 days late @ \$100/fine/day	Closed
2-A-2009	TOI Operating	Bond forfeiture in 132-2009. Request to re-instate bond	Bond reinstated at request of ½ owner of TOI – Lenny Carver	Closed

Calendar Year 2010

Order Number	Operator	Violation	Penalty	Status
87-2010	Rocky Mountain Gas, Inc.	Failure to plug and abandon six wells	Bond forfeiture	Closed
250-2010	Native American Energy Group, Inc.	Failure to clean-up Sandvick 1-11 well site for change of operator	None. Clean-up completed. Change of operator processed by staff	Closed
318-2010	Bensun Energy, LLC	Failure to produce or plug BN 11-11 and clean up BN 11-12 well	\$5000 fine ordered in Order 2-A-2010 imposed	Continued
1-A-2010	Mountain Pacific General, Inc.	Failure to plug Fossum well	Bond increased from \$50,000 to \$250,000	Continued
2-A-2010	Bensun Energy, LLC	Failure to produce or plug BN 11-11 and clean-up BN 11-12 by December 1, 2010	\$5000 fine imposed if work not done by Dec 1, 2010	Continued
3-A-2010	Mountain Pacific General, Inc.	Failure to plug Fossum well	None- well being plugged in January 2011 by Liquid Gold	Continued

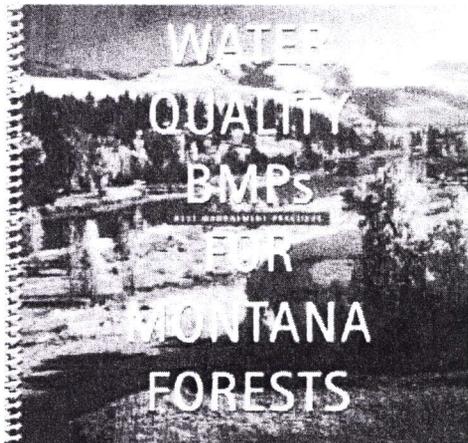
Compliance Results and Tracking

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.



Forestry Assistance Program 2012 HB 132 Compliance Report



Montana DNRC'S forest practices regulatory programs promote information, education, and technical assistance, and ensure compliance with applicable laws to protect Montana's water quality, reduce fire risk, and promote sustainable forest management and stewardship on state and private lands in Montana.

Executive Summary

Montana's Forest Practices regulations exist to protect our forest, soil, and water resources. The Montana DNRC administers several laws as they pertain to Forest Practices: the Streamside Management Zone Law & Rules, the Control of Timber Slash and Debris Law & Rules, and the Montana Forestry Water Best Management Practices Program.

These regulations are essential in aiding the DNRC with fire hazard reduction, protecting riparian areas, minimizing non-point source water pollution from forest practices, and the overall promotion of effective, sustainable forest management and resource protection.

The DNRC is required to prepare a compliance report pursuant to House Bill 132, passed by the Montana Legislature in 1997, which requires Montana agencies with natural resource and environmental programs to biennially report to the Environmental Quality Council (EQC) on the status of compliance with and enforcement of Montana's natural resource and environmental laws and programs.

Key findings with this year's compliance report are:

- The DNRC continues to manage a substantial number of Hazard Reduction Agreements (HRAs), designed to ensure that the fire hazard created through timber harvest – primarily forest residues (slash) left on-site – is mitigated per the guidelines of Montana's Timber Slash and Debris Law & Rules. Incidents of non-compliance – where DNRC has taken over an agreement and, thus, the responsibility for hazard mitigation, are down roughly 44% from the previous year.
- Over the past 13 years, violations of the Streamside Management Zone Law occurred on less than 1% of logging operations on private land. There were (4) in 2011.
- Montana's voluntary Best Management Practices program continues to show compliance rates approaching 100% for both application and effectiveness, due largely to self-regulating by forest owners and operators as well as extensive training and outreach by DNRC and its partners.

I. Regulated Programs

- a. The *Hazard Reduction Agreement (HRA) Program* is the operational/enforcement component of Montana's Hazard Reduction Law (76-13-401 through 415 MCA). The law requires the slash generated from any commercial timber harvest operation to be treated to minimize the resulting fire hazard. 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 tested and practical guidelines that protect natural resources (primarily soil and water) while they conduct forest management operations.

- c. *Montana's Streamside Management Zone Law (SMZ)*, (77-5-301 through 307 MCA) protects streams and adjacent lands during timber harvest activities. The SMZ law establishes buffers along streams where activity is regulated, yet limited timber harvesting is permitted.



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

- a. **BMP Audits (Field Reviews):** The DNRC Forestry Division coordinates field reviews every other year on Forestry Water Quality Best Management Practices in Montana. The field reviews evaluate how well BMPs are at protecting soil and water resources. The results also represent a report card for how well the DNRC's educational efforts are doing. The 2010 Field Reviews were at the 97% compliance level.
- 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. Attendance continues to be high. Completion of this class is a requirement to maintain Accredited Logging Professional (ALP) status.

BMP/SMZ	2009	2010	2011
# Workshops	5	5	5
# Participants	142	179	182

- c. **Alternative Practices:** The SMZ law allows for activities that are prohibited by the SMZ law, but implementation would meet the intent of the law. Requests for alternative practices

("alternative" to management standards stated in 77-5-303(1) MCA) are given site visits, technical review and MEPA review. If a request is granted, the Alternative Practice contains mitigation to protect the SMZ.

	2009	2010	2011
Alternative Practices Approved	13	9	23

III. The Regulated Community – Compliance

a. The regulated community under the **Control of 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	FY 10	FY 11
Open HRAs	3408	3511	3631	3429	3134	2696	2324	1896	1638

PURCHASERS

	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
Number of Mills Reporting	49	78	62	60	50	43

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	FY 10	FY 11
HRAs taken over by State of MT	51	19	31	30	25	14

ii. Mills. No formal mill audits were conducted during FY 2009, 2010, or 2011.

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

FY	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Warnings	16	15	8	2	10	15	9	8	6	2	4	2	3
Orders	0	2	6	1	0	2	3	3	5	2	1	4	1

SMZ violations/warnings over 13 years show violations/warnings at less than 1% of open HRA agreements.

c. **BMP**. Forestry BMP compliance is monitored every 2 years by conducting BMP Field Reviews on 45 sites across Federal, State, Industry and Non-industrial private lands. Forest practices are rated for the Application and Effectiveness of BMPs. Results over 10 cycles show progressive improvement to consistently high scores. Field Reviews will be conducted in 2012.

Comparison of BMP Audit Results – 2010 with All Previous Audits

Category	2010	2008	2006	2004	2002	2000	1998	1996	1994	1992	1990
Application	97%	97%	96%	97%	96%	96%	94%	92%	91%	87%	78%
Effectiveness	98%	97%	97%	99%	97%	98%	96%	94%	93%	90%	80%