

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members

**FROM:** Sarah Carlson, Senior Performance Auditor

**CC:** Department of Environmental Quality  
Shaun McGrath, Director  
George Mathieus, Deputy Director  
Tim Davis, Administrator, Water Quality Division  
Jon Kenning, Bureau Chief, Water Protection Bureau  
Julie Massey, Internal Control Compliance Specialist

**DATE:** August 2020

**RE:** Performance Audit Follow-Up (20SP-13): *Water Pollutant Discharge Permitting and Inspecting Processes* (orig. 17P-05)

**ATTACHMENTS:** Original Performance Audit Summary

### Introduction

We issued the *Water Pollutant Discharge Permitting and Inspecting Processes* (17P-05) report to the Legislative Audit Committee in October 2018. The audit included three recommendations to the Department of Environmental Quality (DEQ). In July 2020, we conducted follow-up work to assess implementation of the report recommendations. This memorandum summarizes the results of our follow-up work and provides background information on the oversight of water quality in Montana.

### **Overview**

Our audit identified DEQ's need to improve the timeliness of its water pollution permitting process and ensure the permit inspection site selection process was based on risk. We recommended DEQ use more deadlines throughout the permitting process and use additional management information to evaluate progress being made on permits in the application process. We also recommended development of a formal site selection process based on risk. Follow-up work found DEQ has taken positive steps to implement the audit's recommendations. We determined two of three recommendations made have been implemented; and one is being implemented, with a projected completion date of 2022.

### Background

The U.S. Environmental Protection Agency (EPA) has delegated authority to the Montana Department of Environmental Quality's (DEQ) Water Protection Bureau (WPB) for implementing water quality standards of the federal Clean Water Act (CWA). These standards are implemented via the Montana Pollutant Discharge Elimination System (MPDES) and Montana Ground Water Pollution Control System (MGWPCS) permitting programs. In these programs, an entity requests the ability to discharge pollutants into surface or ground water by paying a fee and applying for a permit. Details of these water pollutant discharge permits are designed to protect surface and ground water from excessive pollutant discharges

by stipulating how much, and in what circumstances, a permit holder may discharge particular types of pollutants into water. To verify ongoing permit compliance, permit holders are responsible for testing water quality and reporting test results to DEQ. In addition, WPB staff are required to inspect permitted facilities for compliance with permits. During our audit, we reviewed 150 individual surface water permits and 89 ground water permits. We also reviewed all compliance inspections that took place in calendar years 2013–2017. WPB has three funding sources to pay for permitting and inspecting activities. These include fees from permit holders, EPA funding, and the state General Fund. The funding pays for staff salaries, staff training, and travel to permit sites for inspections.

### **Audit Follow-Up Results**

Our audit included three recommendations to the department. For follow-up to the audit, we interviewed DEQ staff about steps taken to address the audit recommendations, including permit processing times and what process is used to determine inspection sites. We also reviewed DEQ’s recently implemented Fees, Applications, and Compliance Tracking System (FACTS) database to review its utility in tracking progress in meeting permit processing deadlines and providing other management information related to permit processing times. In addition, we reviewed the 2020 annual inspection workplan DEQ submitted to EPA to determine if risk to water quality was used to select the permit inspection sites. The following sections summarize the department’s progress toward implementing the three report recommendations.

#### **RECOMMENDATION #1**

**We recommend the Department of Environmental Quality implement and enforce deadlines for reviewing and issuing ground and surface water pollutant discharge permits.**

##### ***Implementation Status – Implemented***

Our audit identified DEQ’s need to improve the timeliness of its water pollution permitting process. We found limited timelines with 37 percent of surface water permits and 19 percent of ground water permits were expired and administratively continued. To better protect water quality, we determined DEQ should reduce the length of time it takes to review, and issue permits by establishing deadlines throughout the permitting process. During follow-up work, the department reported that it has developed and implemented deadlines for reviewing and issuing ground and surface water pollutant discharge permits. As part of our follow-up work, we reviewed the department’s recently implemented Fees, Applications, and Compliance Tracking System (FACTS) permitting and compliance system. The new deadlines developed are included in FACTS. There is a column in each permit’s record entitled, “next due date.” This column is populated by deadlines developed by the department that include 30-day deadlines for every internal process such as tentative determination completion, peer review, and supervisor review. According to department staff, these deadlines are tracked and can be organized in different ways such as by individual permit-writer or by steps in the process. These deadlines are tracked and discussed with staff individually and in staff meetings. In our follow-up interviews, we found DEQ staff aware of the importance of meeting deadlines, with timeliness a factor now incorporated into the permitting process.

#### **RECOMMENDATION #2**

**We recommend the Department of Environmental Quality develop, document, and implement a formal risk-based process for selecting ground water and surface water pollutant discharge permit sites for inspection.**

##### ***Implementation Status – Implemented***

Our audit found the inspection site selection process was not documented, and we found smaller surface water facilities and ground water facilities were not being inspected on a schedule that assures they will be inspected at least once a permit cycle. We did find larger facilities were inspected every other year as

required by EPA, but the process used to determine the sites was not documented. For example, during our audit, staff interviews indicated water quality risk determined the inspection schedule. However, the specific conditions that would indicate a high risk to water quality, such as quantity of pollution discharges and previous compliance problems, were not documented. Consequently, it was difficult to know what specific conditions would be considered in the selection of inspection sites in the future, and if it would be in a manner assuring the large facilities would continue to be inspected every other year. Follow-up work included reviewing DEQ's newly developed process for selecting ground water and surface water pollution discharge permits sites for inspection. The process was finalized in 2019 and used when the department developed its 2020 annual inspection workplan with EPA, which we also reviewed in our follow-up work. The site selection process is based on risk to water quality, which is established with factors such as quantity of pollution permitted to be discharged, previous discharge violations, and time since previous inspection. Our follow-up work found this rationale has now been formalized and documented, increasing the likelihood the rationale will be used consistently over time.

### **RECOMMENDATION #3**

**We recommend the Department of Environmental Quality develop and implement a plan to compile and use management information to actively manage the water pollutant discharge permitting and inspection programs.**

#### **Implementation Status – *Being Implemented***

Our audit identified the department's need to improve the timeliness of its water pollution permitting process. For example, we found 37 percent of surface water permits and 19 percent of ground water permits were expired and administratively continued. To better protect water quality, we determined DEQ should reduce the length of time it takes to review, and issue permits with the collection and use of management information. During follow-up work, we found this recommendation being implemented by the ongoing development of FACTS, and the continuing input of the WPB regarding the kinds of information it needs from FACTS to actively manage the water pollution permitting programs. In our review of the FACTS supervisor dashboards, we found it lists the number of permits at each stage of the process, as well as a list of all permits, with next due dates indicating when the current step in the process should be completed. Supervisors can run reports for each permit-writer, as well as all permits in certain steps in the process. Supervisors indicated they use this data in staff meetings, one-on-one conversations with staff, and staff annual evaluations. For example, if a permit-writer routinely misses deadlines, management can use information from FACTS to discuss with the permit-writer what they need to do to address the timeliness of their work. Also, another example is the ability of FACTS to identify if the deadline associated with one particular step in the permit-writing process is routinely missed by most permit-writers. Management can use this information to determine if there is a bottleneck in that step that can be alleviated or avoided to keep the process moving in a timely way. Currently there are instances in which FACTS is not providing all necessary management information to the water pollution permitting programs. However, supervisors are aware of this, and supplement the data in the system with the necessary management information they can gather in other ways. For example, permit applications sent to DEQ via U.S. Mail are not currently being put in the FACT system. Permitting program supervisors are aware of this and track work on these permits separately but with the same deadlines. DEQ anticipates full implementation of the FACTS system in 2022. It is anticipated that tracking management information in supplemental ways will not be necessary after full system implementation.