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Report to the  
Montana Environmental Quality Council

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**Department of Environmental Quality**

**ENVIRONMENTAL ENFORCEMENT  
AND COMPLIANCE**

**State Fiscal Years 2012 and 2013**

December 13, 2013

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## Table of Contents

	Page
Introduction: Compliance and Enforcement Overview .....	5
A. Asbestos Control Act, 75-2-501.....	6
B. Clean Air Act of Montana, 75-2-101 .....	7
C. Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701 .....	11
D. Hazardous Waste Act, 75-10-401 .....	13
E. Infectious Waste Management Act, 75-10-1001.....	16
F. Major Facility Siting Act, 75-20-101 .....	17
G. Metal Mine Reclamation Act, 82-4-301 .....	19
H. Methamphetamine Cleanup Act, 75-10-1301 .....	21
I. Motor Vehicle Recycling and Disposal Act, 75-10-501 .....	22
J. Opencut Mining Act, 82-4-401 .....	23
K. Public Water Supply Laws, 75-6-101 .....	25
L. Sanitation in Subdivisions Act, 76-4-101.....	27
M. Septage Disposal and Licensure Laws, 75-10-1201 .....	28
N. Solid Waste Management Act, 75-10-201 .....	29
O. Strip and Underground Mine Reclamation Act, 82-4-201.....	30
P. Underground Storage Tank Installer, Licensing and Permitting Act 75-11-201.....	32
Q. Underground Storage Tank Act, Leak Prevention 75-11-501 .....	33
R. Underground Storage Tank Act, Leaking Underground Tanks 75-11-501 .....	34
S. Water Treatment Plant Operators Laws, 37-42-101.....	36
T. Water Quality Act, 75-5-101 .....	38

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# Introduction

This report is submitted by the Department of Environmental Quality (DEQ) to the Montana Environmental Quality Council as required by Section 75-1-314, MCA. The report summarizes the permitting, compliance assistance, and enforcement work conducted by the DEQ during the FY2012 and FY2013 reporting period. The report is organized alphabetically by statute name. Information for each statute is presented in order of the following reporting requirements:

1. The activities and efforts taking place to promote compliance assistance and education
2. The size and description of the regulated community and the estimated proportion of that community that is in compliance
3. The number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending
4. A description of how the department has addressed the noncompliances identified in subsection (3) and a list of the noncompliances left unresolved
5. When practical, reporting required in subsection (1) should include quantitative trend information

The vast majority of the regulated community is in compliance with the laws and regulations administered by DEQ. The goal of DEQ is that the regulated community be in compliance. Enforcement is not the goal – it is simply the pathway to compliance. This report describes how DEQ staff offer compliance assistance through education and training to make the regulated community aware of regulations and to help them maintain compliance.

DEQ implements a progressive approach to compliance and enforcement. Noncompliances (or violations) are discovered in three ways: 1) site inspections, 2) review of self-monitoring reports, and 3) citizen complaints. If a violation is documented, a warning letter is usually sent in response to a minor violation, and a violation letter is sent for significant violations. The letters explain what actions are necessary to prevent or correct the problem.

If violations are not corrected or if the violations are deemed significant enough to justify an enforcement action, an enforcement request may be prepared. Upon the Director's approval of the enforcement request, Enforcement Division staff work with regulatory program staff and attorneys to write orders, calculate penalties, negotiate settlements and monitor compliance with final orders.

Most of the DEQ's enforcement actions are resolved administratively, not in court. DEQ issues an administrative order that includes corrective action and/or a penalty assessment. These orders may be appealed before the Board of Environmental Review. In 2013, in order to avoid appeal costs, the Enforcement Division began sending alleged violators settlement offers rather than issuing unilateral orders that can be appealed. Most cases have since been settled with consent orders. The filing of a complaint in district court is generally reserved for the most recalcitrant violators.

Citizen complaint calls and spill reports are channeled through the Enforcement Division. Staff track and manage the response to the calls, and investigate to determine if the complaint is valid. If valid, staff sends warning or violation letters to inform the responsible party of what is required to correct the problem.

## **A. Asbestos Control Act (ACA), Section 75-2-501, MCA**

### **1. Compliance Assistance and Education Activities**

The Asbestos Control Program (Asbestos Program) regulates the abatement of three or more linear square feet of asbestos-containing material by issuing asbestos project and annual facility permits, accrediting asbestos-related contractors, conducting compliance inspections, and approving third-party asbestos training course providers.

The Asbestos Program provides compliance assistance by:

- providing on-site asbestos regulatory guidance
- delivering formal presentations around the state to provide updated information and guidance to asbestos contractors, code officials, sanitarians, local officials and the public
- updating the Asbestos Program website and offering an online permitting system
- participating in educational activities with the Solid Waste Advisory Committee and asbestos contractors to ensure safe disposal of asbestos containing waste, improve work practices, and promote licensing efficiencies

### **2. Regulated Community**

The regulated community under Asbestos Control Act consists of building owners, contractors, consultants and individuals who conduct asbestos projects, provide asbestos training, and conduct other asbestos-related activities

The Asbestos Program issued 412 permits during FY2012 and FY2013. The estimated proportion of the regulated community in compliance with asbestos permit requirements is 85%. The remainder is working with DEQ staff to correct the minor violations.

### **3. Noncompliances**

In FY2012, the Asbestos Program received 39 complaints and closed 32. In FY2013, the Asbestos Program received 28 complaints and closed 19. The Asbestos Program continues to work with the regulated community to close 51 ongoing complaints. All of the complaints are minor violations.

In FY2012 and FY2013, the Enforcement Division received 126 citizen complaints regarding violations or questions about the regulations. Of those complaints:

- 13 were referred to the Asbestos Program and it closed 2
- 4 were referred to outside agencies
- 3 were closed with not enough information and 5 were closed with no violation
- 82 were actively managed and closed when minor violations were corrected and 16 remain active
- 1 complaint became a formal case

The Enforcement Division wrote 44 warning letters and 31 violation letters in FY2012-2013. The majority of letters were written about the requirement to get an asbestos inspection prior to renovation or demolition.

### **4. Enforcement Efforts**

The Asbestos Program addresses violations and complaints in two ways:

- a. Violations discovered by the Asbestos Program during routine site visits and inspections of permitted projects or through audits of accreditation courses are resolved using compliance assistance, warning letters, violation letters, or formal enforcement. Major violations or repeat offenses usually result in formal enforcement with a civil or administrative penalty.

- b. Complaints received by the Asbestos Program about alleged unpermitted activities and unpermitted asbestos projects are submitted directly to the Enforcement Division for processing.

During the reporting period, the Enforcement Division managed seven Asbestos Control Act enforcement cases. Four cases were ongoing from the previous reporting period and four were new cases. Violations included failure to conduct an inspection prior to an asbestos abatement project or obtain a permit, using unaccredited personnel, and asbestos handling violations. Four of the seven cases were administrative actions and three were complaints filed in district court. A total of \$16,620 in administrative penalties was paid during the reporting period. DEQ also settled a case with the Red Lodge School District by accepting a Supplemental Environmental Project (SEP) worth \$21,870 to offset the cash penalty. The SEP involved educating other school districts about the requirements of the Asbestos Control Act so they can avoid similar violations.

## **5. Quantitative Trend Information**

During FY2012 and FY2013, the Asbestos Program developed a web-based permitting and accreditation system. Use of the online system accounts for 43% of all applications over the past fiscal year. The Program anticipates use of the system will increase each fiscal year. Site inspections also increased 40% during the reporting period.

### **B. Clean Air Act (CAA), Section 75-2-101, MCA**

#### **1. Compliance Assistance and Education Activities**

The Air Resources Management Bureau (ARMB) implements the Air Program. It provided compliance assistance, education, and outreach to both the regulated community and the public during FY2012 and FY2013 through facility inspections, annual emissions inventory reviews, report reviews and responses, permitting and registration processes, and requests for information.

Air Program staff used these opportunities to explain regulatory requirements, discuss anticipated or upcoming federal regulations, remind permittees of upcoming deadlines, and discuss issues of concern. Staff alleviated public concerns by describing the applicable rules and authority and the applicable permit and/or registration conditions and processes. Air Program staff also made presentations to various groups on a variety of air quality topics.

During FY2012 and FY2013, the Air Program's reached out to natural gas compressor station operators via the Montana Clean Air Act Advisory Council (CAAAC). The Air Program requested that a subgroup be developed to discuss compliance issues and to develop a solution to testing and other issues. Several subgroup meetings were held and a collaborative solution was crafted.

The Air Program also provided significant compliance assistance to oil and gas well facilities (registered sources). Because the Registration Program is still fairly new, the Program focused on outreach to ensure that industry understands the requirements of the program. Through presentations to the industry, inspections, and verbal and written communication, the Air Program educated stakeholders about state and federal requirements and worked with companies to establish a timeline for compliance.

#### **2. Regulated Community**

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

not require an air quality permit but that are covered by specific regulations. These types of sources are frequently referred to as “area sources.”

Currently 635 facilities have active air quality permits with the DEQ and 43 other sources have active permits at the county level, for a total of 678 permitted sources. The state-regulated permitted community consists of 353 portable source permits and 282 stationary source permits.

There is also a regulated registered community that consists of stationary oil and gas well facilities that have the potential to emit greater than 25 tons per year of any one regulated pollutant. Registered facilities have chosen to register in lieu of obtaining a permit because it is a less complicated process. At the time of this report, 1,171 sources are currently registered with the ARMB. Approximately 200 new oil and gas well facilities registered during the reporting period.

The total number of sources regulated by DEQ, or by a county in lieu of DEQ, is 1,846 sources. See **Table B.2-1** for a breakdown of the permitted and registered sources in Montana.

**Table B. 2-1. State Regulated Air Quality Universe**

State Oversight – Stationary Sources		State Oversight – Portable Sources	
Permits	Registrations	Permits	Registrations
282	1171	353	0

Based on the number of violations formally documented in FY2012 and FY2013, the compliance rate for the permitted sources was typically  $\geq 90\%$ . **Table B.2-2** provides specific information regarding the compliance rate for permitted and registered sources.

	State Oversight – Stationary Sources		State Oversight – Portable Sources	
	Permits	Registrations	Permits	Registrations
Regulated Facilities	282	1171	353	0
Regulated Facilities in Compliance in FY 2012	253	182	335	0
2012 Compliance Rate	<b>89.7%</b>	<b>15.5%</b>	<b>94.9%</b>	<b>NA</b>
Sources in Compliance in FY 2013	267	937	340	0
2013 Compliance Rate	<b>94.7%</b>	<b>80%</b>	<b>96.3%</b>	<b>NA</b>

### 3. Noncompliances

Noncompliance situations are typically discovered through the routine review of industrial self-monitoring reports and from on-site inspection observations. Less significant violations are typically documented in a warning letter and more significant violations are typically documented in a violation letter. Areas of marginal compliance, administratively minor violations, or industry-wide noncompliance are sometimes documented in correspondence other than a warning letter. The significance of a violation is dependent on a number of factors,



such as the type of the violations, the impact of the violation, the magnitude of the facility, or the history of the facility in complying with requirements.

Compliance assistance is offered to facilities whenever practical. As an example of compliance assistance, the Air Program makes numerous efforts to communicate expectations to companies about annual operating fee obligations. Multiple billing notices are sent to companies, phone calls are made, and/or e-mails are sent to let the companies know of their obligations. Only after all of these efforts have been taken, with no response from the facility, does the Air Program typically send violation letters to facilities. See **Table B. 3-1** for information about the formally documented noncompliance issues at permitted and registered facilities for FY2012 and FY2013.

**Table B.3-1. Air Quality Noncompliance Notices for FY2012 and FY2013**

	State Oversight – Stationary Sources		State Oversight – Portable Sources	
	Permits	Registrations	Permits	Registrations
2012 Warning Letters	20	13	6	0
2013 Warning Letters	10	31	10	0
2012 Violation Letters	13	0	5	0
2013 Violation Letters	8	0	7	0

The number of warning letters and violation letters issued for stationary oil and gas well facilities was greatly affected by the Air Program’s proactive approach for bringing this industry class into compliance as described in Section 1. Rather than issue hundreds of warning/violation letters, the Air Program invested resources in industry outreach to help the companies understand their obligations. However, as a result of this approach, the number of violation letters and warning letters issued does not adequately represent the overall level of noncompliance.

The noncompliances associated with this approach given to registered sources were an industry-wide issue because traditional volatile organic compounds (VOC) emission controls at oil and gas well facilities did not meet state or federal requirements. The Air Program chose to educate the industry and set a time-frame for the industry to install appropriate controls, rather than take years to physically inspect each registered facility and to document each noncompliance with a warning letter or a violation letter. VOC emission controls at all registered facilities are scheduled to be in compliance by December 31, 2013.

In FY2012 and FY2013, the Enforcement Division received 263 citizen complaints regarding air quality. The primary complaints were dust, emissions, odors and open burning. Of those complaints:

- 25 were referred to the Air Program and they closed 28 (including a few complaints from previous fiscal year(s))
- 15 were referred to outside agencies
- 5 were closed with not enough information and 18 were closed with no violation
- 160 were actively managed and closed, 11 remain active
- 1 complaint became a formal case

The Enforcement Division wrote 70 warning letters and 10 violation letters in FY2012 and FY2013. The letters were primarily written regarding dust, open burning and emissions.

#### **4. Enforcement Efforts**

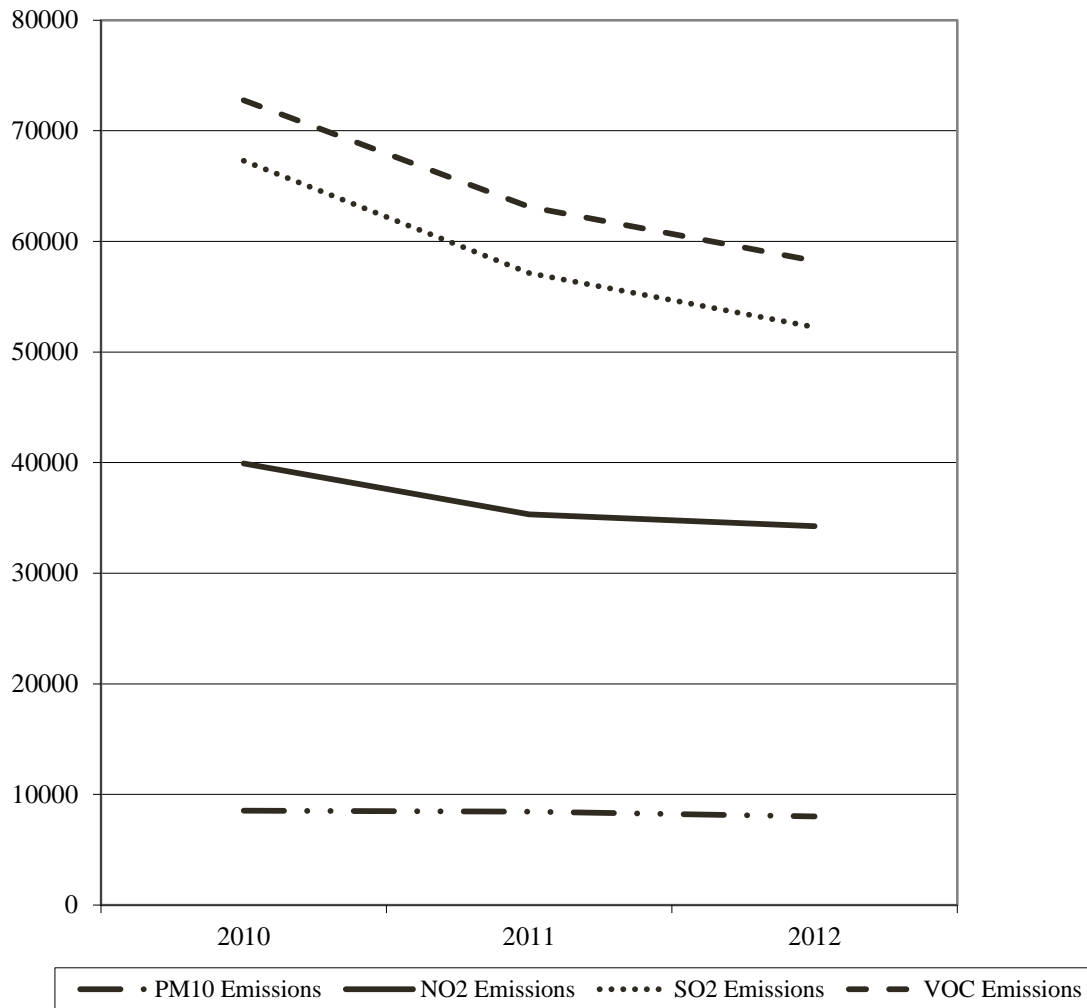
For FY2012 and FY2013, none of the items at issue in the warning letters that the Air Program sent to companies were formally referred the Enforcement Division. All of the Air Program's violation letters/enforcement activity for the FY2012 violations were addressed and resolved. Of the 15 violation letters issued in FY2013, only three issues have not been completely resolved at the time of this report.

During the reporting period, the Enforcement Division managed 39 CAA enforcement cases. Twenty six cases were ongoing from the previous reporting period and 13 were new cases. Some of the ongoing cases from the previous period are federal enforcement cases that DEQ signed on to under a consent decree. Most of the violations addressed by the enforcement actions during this reporting period involved exceeding permit emission limits. Twenty of the cases were administrative actions and eight were complaints filed in district court. Up to eleven of the cases during the reporting period were referred to the EPA as new violations covered under a federal consent decree. As of the end of this reporting period, 20 cases were closed, 14 were under orders, and 2 are under development. A total of \$368,943 in administrative penalties was paid during the reporting period. The penalties go to the Alternative Energy Revolving Loan account DEQ settled three cases that involved \$161,825 in SEPs. The largest was \$130,925 spent by Roseburg Forest Products Company to support expansion of Missoula County's wood stove replacement program.

#### **5. Quantitative Trend Information**

The one notable air quality trend for the last three years is the continuing decline of air emissions within the state. **Graph B.5-1** on the following page shows the air emissions for the last three years.

**Graph B.5-1. Statewide Actual Annual Emissions (tons per year)**



## **C. Comprehensive Environmental Cleanup and Responsibility Act, (CECRA) Section 75-10-701, MCA**

### **1. Compliance Assistance and Education Activities**

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

Montana law provides several opportunities for potentially liable parties (PLPs) to clean up contaminated sites under CECRA without formal enforcement. The Voluntary Cleanup and Redevelopment Act (VCRA), which is part of CECRA, allows for voluntary cleanup of sites so the property can be redeveloped without the use of DEQ orders. VCRA is appropriate where cleanups can be accomplished in less than five years. The Controlled Allocation of Liability Act (CALA), also part of CECRA, provides for allocating liability where liable parties

can complete cleanups and seek reimbursement of some cleanup costs from the Orphan Share Fund. Other provisions of CECRA allow noticed potentially liable parties (PLPs) to conduct proper and expeditious cleanup at sites without the necessity of a DEQ order.

The Superfund Program also conducts outreach to inform individuals and communities about VCRA opportunities, orphan share funding, and possible federal grants to clean up contaminated sites. DEQ receives grant funding from EPA to conduct this outreach. The Superfund Program also assists communities to obtain state and federal grants to investigate and clean up contaminated sites. In addition, the Superfund Program develops guidance documents to assist the regulated community and the public.

## **2. Regulated Community**

Under CECRA, sites are ranked based on the potential risks to human health and the environment. Because staff and financial resources are not sufficient to address all 208 listed sites in Montana, CECRA activities focus primarily on maximum and high priority sites. Current resources only allow the Superfund Program to address 33 sites. For the actively addressed sites, 91% of the regulated community is currently in compliance with CECRA (see below for compliance issues specific to CECRA).

## **3. Noncompliances**

The two most common noncompliance issues are failure to adequately incorporate DEQ's requirements while developing investigation and cleanup plans, and nonpayment of DEQ's oversight costs. Superfund Program staff identifies noncompliance issues during review of required documents and the monthly review of accounts receivables. However, site visits and public complaints may also identify other noncompliance issues.

In FY2012 and FY2013, the Enforcement Division received three complaints regarding CECRA. Of those complaints 2 were referred to the Superfund Program and 1 complaint became a formal enforcement case.

## **4. Enforcement Efforts**

Typically, the Superfund Program first works with the potential liable parties to obtain their cooperation in investigating and cleaning up the site. If the PLP is uncooperative, the Superfund Program may initiate an enforcement action to obtain cleanup.

For failure to adequately incorporate DEQ's requirements, the Superfund Program starts by identifying specific work requirements during scoping meetings with PLPs. After the scoping meeting, the Program reviews the document generated and identifies any deficiencies. The PLP is given an opportunity to correct the deficiencies. If a PLP fails to correct the deficiencies, the Superfund may choose to make the changes and offer the PLP the opportunity to finalize the document. If the PLP chooses not to finalize the document, DEQ will finalize the document and give the PLP the opportunity to implement the work. If the PLP fails to conduct the work, then the Superfund Program may conduct the work itself and recover its costs from the PLP; order the PLP to conduct the work; or pursue litigation to require the PLP conduct the work.

PLPs are required to pay DEQ's oversight costs. The failure to pay may stop work until payment is received or ultimately lead to legal action.

Consent decrees or administrative orders are in place for 18 CECRA sites. During the reporting period, the Superfund Program had ongoing judicial actions at two facilities and is defending a judicial action associated with an administrative decision at another facility. The Superfund Program issued three administrative orders on consent with three liable parties at two facilities, issued three amendments to unilateral administrative orders at three facilities and approved a stipulated agreement at one CALA facility.

## 5. Quantitative Trend Information

No quantitative trend information can be developed. However, cooperation and quality of PLPs' documents and work efforts has qualitatively improved since the last reporting periods.

### D. Montana Hazardous Waste Act (MHWA), Section 75-10-401, MCA

#### 1. Compliance Assistance and Education Activities

The Hazardous Waste Program regulates the generation and transfer of hazardous materials by permitted facilities and registered hazardous waste generators. The Hazardous Waste Program provides compliance assistance by:

- responding to requests for information
- conducting waste minimization reviews during compliance evaluation inspections
- providing training and contractor contact sheets, waste stream-specific handouts, a website and other information.
- providing pre-permit modification application assistance to facilities seeking changes to permits

#### .2. Regulated Community

The regulated community under MHWA consists of facilities that treat, store, and/or dispose hazardous waste; hazardous waste handlers; and used oil handlers.

There are currently nine permitted treatment, storage and disposal facilities and 1,406 active handlers, which includes large quantity, small quantity and conditionally exempt small quantity generators, transporters, transfer facilities, used oil handlers, and/or universal waste handlers.

The Hazardous Waste Program estimates that 99 % of permit holders are either in substantial compliance with MHWA requirements or are working with DEQ staff to correct any violations.

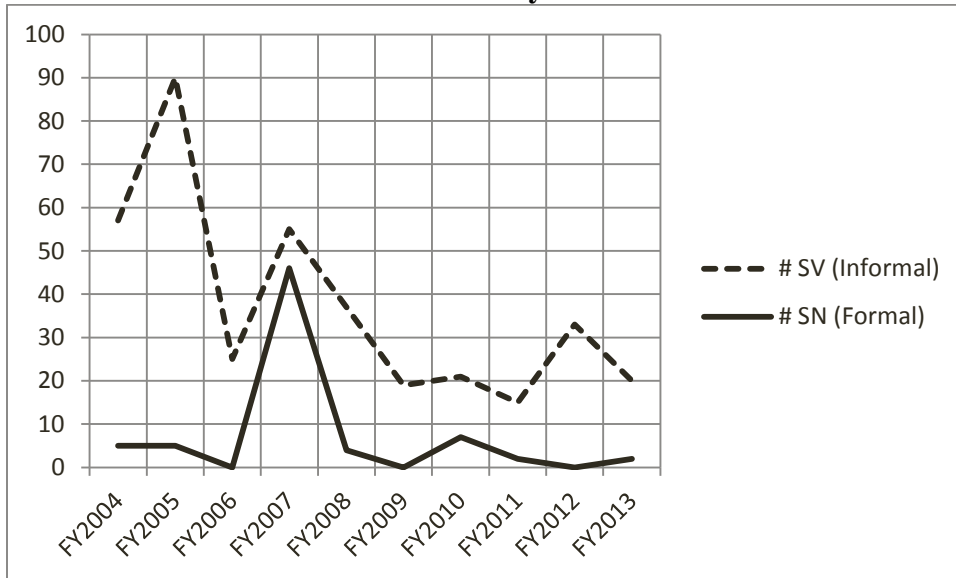
#### 3. Noncompliances

The Hazardous Waste Program generally characterizes violations as secondary or significant. Secondary Violations (SV) represent noncompliance with the required reporting and hazardous waste management requirements that does not pose an imminent danger to human health or the environment. These are addressed by the Hazardous Waste Program. Significant Noncompliances (SN) are major violations that pose a significant threat to human health and the environment, or repeated instances of SVs. These are forwarded to Enforcement Division staff. . EPA is the lead compliance agency for the open violations.

**Table D.3-1. FY2012 and FY2013 Violations.**

<b>Violations</b>	<b>FY2012</b>	<b>FY2013</b>	<b>Open</b>
Secondary Violations	33	20	5 <sup>1</sup>
Significant Noncompliance	0	2	2 <sup>1</sup>

**Chart D.3-1: 10-Year Violation History**



In FY 2012 and FY2013, the Enforcement Division received 82 citizen complaints regarding hazardous waste and used oil. Of those complaints:

- 11 were referred to the Hazardous Waste Program and they closed 2
- 5 were referred to outside agencies
- 5 were closed with not enough information and 19 were closed with no violation
- 37 were actively managed and closed and 3 remain active

The Enforcement Division sent 15 warning letters and 3 violation letters in FY2012 and FY2013. The letters were primarily written regarding failure to characterize waste and not applying used oil as a dust abatement product.

#### **4. Enforcement Efforts**

Noncompliance may be observed during complaint-related inspections or during normal compliance evaluation inspections. The response to noncompliance may be administered by verbal or written informal, or violation letter methods. All recorded violations are entered into the federal database.

- a. A verbal informal response would be issued in the field for an easily corrected violation. (e.g., an unmarked drum of used oil and the violation is corrected in the presence of the inspector). There were no verbal informal responses issued in FY2012 or FY2013.
- b. A written informal response (i.e. warning letter) is issued for relatively minor violations that cannot be corrected immediately (e.g., a minor used oil spill or not having a required manifest on site). A written informal response requires the submission of proof of compliance. In FY2012, the Hazardous Waste Program issued 33 written informal responses and 20 in FY2013.
- c. A violation letter, the first step in a formal enforcement proceeding, is issued in the case of a more serious violation, such as a spill of hazardous waste, or repeat violations, A violation letter allows the responsible party to submit mitigating evidence prior to a referral for formal enforcement. There were no violation letters issued in FY2012 and two violation letters were issued in FY2013.

All 7 ongoing noncompliances identified in FY2012 and FY2013 are the responsibility of the EPA.

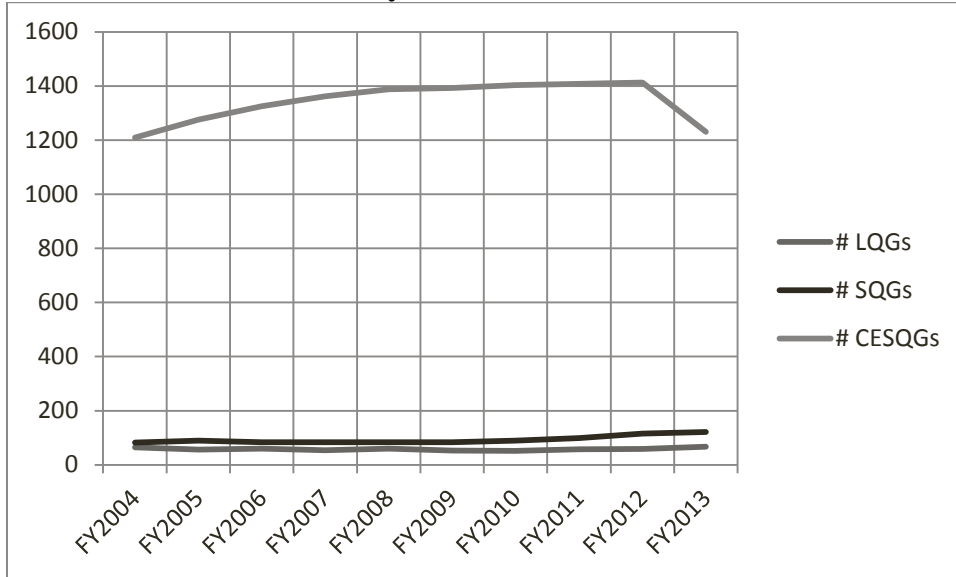
During the reporting period, the Enforcement Division managed 13 MHW A enforcement cases. All of the 13 cases were ongoing from the previous reporting period. Common violations addressed by the enforcement

actions involve hazardous storage or transportation violations. As of the end of this reporting period, ten cases were closed, two were under orders, and one is in litigation. A total of \$101,700 administrative penalties was paid during the reporting period.

### 5. Quantitative Trend Information

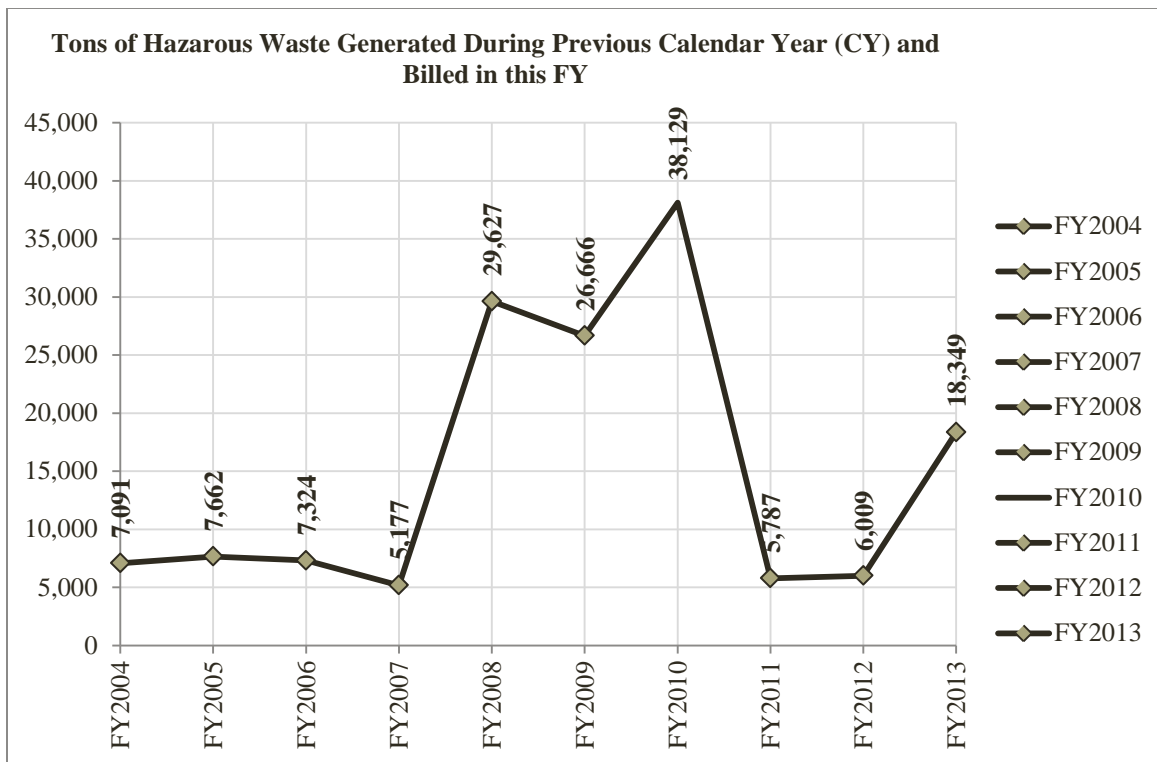
Notable trends over the past 10 years in the size of the regulated community and the volume of hazardous waste generated are included in **Tables D.5-1 and D.5-2**.

**Table D.5-1: 10 Year History of the Number of Hazardous Waste Generators by Designation.**



- Large Quantity Generators (LQG) generate 1,000 kg of hazardous waste per month.
- Small Quantity Generators (SQG) generate between 100 and 1,000 kg of hazardous waste each month.
- Conditionally Exempt Small Quantity Generators (CESQG) generate less than 100 kg of hazardous waste a month.

**Table D.5-2: Tons of Hazardous Waste Generated over a 10 Year Period**



The peaks in **Table D.5-2** indicate historically disposed of hazardous remediation waste encountered during site construction or facility expansion or closure. The baseline indicates as-generated hazardous waste produced by on-going commercial or industrial operations.

## **E. Infectious Waste Management Act (IWMA), Section 75-10-1001, MCA**

### **1. Compliance Assistance and Education Activities**

The Solid Waste Program governs regulation of the transportation and management of infectious waste by licensing infectious waste treatment facilities and requiring facility operation and maintenance plans for infectious waste treatment, storage, and disposal. The registration of infectious waste transporters will begin on January 1, 2014.

The Solid Waste Program provides compliance assistance by conducting site visits to proposed facilities, inspections of license holders, and responding to written and telephone requests for information. The Program will provide technical guidance to transporters who will be required to register with DEQ by January 1, 2014.

### **2. Regulated Community**

The regulated community under the Infectious Waste Act consists of facilities that treat infectious waste and infectious waste transporters. There is one licensed infectious waste treatment facility, which is in compliance with the law and the applicable requirements of the Solid Waste Management Act. The Solid Waste Program estimates that two infectious waste transporters will register by the January 1, 2014 deadline.

### **3. Noncompliances**

There were no violations of the Infectious Waste Act over the last two fiscal years. In FY2012 and FY2013, the Enforcement Division did not receive any complaints regarding the law.



#### **4. Enforcement Efforts**

There were no violations of the Infectious Waste Act or formal enforcement actions initiated during the reporting period.

Noncompliances are typically identified through inspections and site visits to licensed facilities. If a noncompliance is found during a site inspection, the Solid Waste Program generates a violation letter establishing a compliance assistance plan that must be completed by a certain date. Staff provides follow-up assistance to the facility to ensure the violation is corrected. Formal enforcement actions may be initiated if the facility fails to comply with the corrective action plan described in the violation letter.

#### **5. Quantitative Trend Information**

The Solid Waste Program estimates two infectious waste transporters will go through the registration process and the one treatment facility will continue to renew its annual license.

### **F. Major Facility Siting Act, Section 75-20-101, MCA**

#### **1. Compliance Assistance and Education**

The Major Facility Siting Act (MFSA) requires energy facility proponents to obtain a Certificate of Compliance (Certificate) from DEQ prior to the construction and operation of an energy facility. Energy facilities that are subject to regulation under MFSA include: qualifying transmission lines such as the Montana Alberta Tie Ltd. (MATL) transmission line, qualifying pipelines such as the Keystone XL Pipeline Project, and electrical generating facilities such as the Colstrip Steam Electric Station operated by PPL Montana. DEQ has authority to issue a Certificate if it is able to make requisite findings. These findings include, but are not limited to:

- the basis of the need for the facility
- that the facility minimizes adverse environmental impacts
- that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems
- that the facility will serve the interests of utility system economy and reliability
- that the facility will serve the public interest, convenience and necessity.

DEQ also has responsibility as the lead state agency for qualifying hydroelectric dams licensed or being relicensed by the Federal Energy Regulatory Commission (FERC). DEQ staff provides compliance assistance to dam operators for the required submittals under their FERC license. This requires staff to review and coordinate state agency approval of emergency operating variances as necessary. DEQ staff also participates in the administration of a settlement agreement, to which DEQ is a signatory, in regard to Avista's hydroelectric projects on the lower Clark Fork River.

In general, DEQ staff monitors the construction of certified facilities to determine compliance with provisions set forth in a Certificate. In FY2012 and FY2013, DEQ staff monitored the construction and related reclamation activities of the MATL transmission line, Bonneville Power's rebuild of the Libby-Troy transmission line, and the Western Area Power Administration's (WAPA) rebuild of the Havre-Rainbow transmission line. DEQ staff also review monitoring reports submitted periodically by regulated entities to determine Certificate compliance. In most cases where DEQ staff observes a condition that is believed to be a violation of a Certificate, the inspector will draw the condition to the attention of the regulated entity for corrective action. If the regulated entity readily corrects the condition, enforcement action is usually not taken. Enforcement action *may* be taken as a first step if warranted by the size or severity of the violation. Outside of site inspections and monitoring report reviews, DEQ staff answer any questions as to the requirements of a Certificate and/or the procedures that must be followed to amend the provisions of a Certificate.

## **2. Regulated Community**

The regulated community consists of operators of large energy facilities, including transmission lines, pipelines, and qualifying generating facilities. Thirty one facilities, several of which are listed in Section 1 above, were covered under MFSA during this reporting period. DEQ is taking an enforcement action against PPL Montana in regard to its operation of the Colstrip Steam Electric Station.

## **3. Noncompliances**

The Certificate of Compliance (Certificate) for Units 3 and 4 of the Colstrip Steam Electric Station was issued by the Montana Board of Natural Resources and Conservation in July of 1976. Under the Certificate, coal ash waste is deposited in sludge ponds, more commonly referred to as ash disposal ponds. Conclusion of Law 12(d) of the Certificate provides as follows:

*The sludge pond or ponds shall be completely sealed. If the conventional means such as compactions and bentonite application do not seal the ponds, as indicated by monitoring wells the Applicants shall install and operate, then extreme measures even up to complete sealing by a plastic membrane shall be taken.*

Conclusion of Law 12(d) was subsequently interpreted in litigation between the Board of Natural Resources and Conservation and the prior operator of Colstrip Units 3 and 4. The Montana First Judicial Court interpreted Conclusion of Law 12(d) as follows:

*The clear meaning of condition 12(d), taken in the context of the Board's findings that some seepage was expected (see BNR findings numbers 61, 64, 68, 71 and 89 and BHES finding XXXIX), is that the pond as constructed by Relators may leak in small amounts but if the leakage is detected by the monitoring wells, the Relators will have to resort to more stringent measures, up to and including the installation of a plastic liner.*

Monitoring wells installed around the ash disposal ponds have indicated that seepage from the ponds has contaminated groundwater. Groundwater is being adversely affected by the release of process water with, among other things, elevated total dissolved solids, specific electrical conductivity, boron, and sulfate. PPL Montana has been responsive in addressing the groundwater contamination. As required by the Certificate, PPL Montana has installed synthetic liners in the ponds currently in use. With DEQ oversight and approval, the company has installed a network of wells to capture the contaminated groundwater. PPL Montana has also instituted "paste technology," depositing the coal ash as a paste to assist in sealing the ponds and to reduce the volume of water in the ponds. In addition, PPL Montana has constructed two treatment facilities to treat some of the captured contaminated groundwater.

While many of these and other systems have been effective, the migration of seepage has continued beyond the recovery systems in certain areas. DEQ and PPL Montana concluded that a comprehensive, risk-based approach incorporating all tools and requirements applicable under Montana's generally applicable environmental laws was necessary to address the groundwater contamination from seepage. As a result, DEQ and PPL Montana entered an Administrative Order on Consent (AOC).

In FY2012 and FY2013, the Enforcement Division did not receive any complaints regarding the MFSA.

## **4. Enforcement Efforts**

In August of 2012, DEQ and PPL Montana entered into an Administrative Order on Consent Regarding Impacts Related to Wastewater Facilities Comprising the Closed-Loop System at Colstrip Steam Electric Station,

Colstrip Montana. DEQ entered into the AOC pursuant to its enforcement authority under the Montana Water Quality Act and the Major Facility Siting Act.

The AOC sets forth the following multi-step framework which will ultimately require PPL Montana to remediate the groundwater contamination at Colstrip:

- a. PPL Montana is required to submit Site Reports characterizing the existing conditions at the site, including potential sources of contamination, and the steps that have been taken so far to address the groundwater contamination.
- b. PPL Montana is required to submit Cleanup Criteria and Risk Assessment Reports identifying the applicable cleanup standards.
- c. PPL Montana is required to submit Remedy Evaluation Reports evaluating feasible remedial alternatives that are capable of satisfying the cleanup criteria.

The reports are subject to DEQ review and approval, a process that includes public participation. DEQ then selects a remedy which PPL Montana is required to implement. The AOC also requires PPL Montana to submit financial assurance at various stages of the process to ensure the operation and maintenance of remedial and closure actions carried out under the AOC.

## **5. Quantitative Trend Information**

DEQ does not have or conduct systematic, quantitative trend analysis, due to the unpredictability of factors affecting markets and the demand for new transmission line capacity or pipelines. These factors include, but are not limited to, international oil politics, environmental issues, federal extensions of production tax credits for wind farms, the current oversupply and low price of natural gas, and relatively flat demand in energy usage across the West. It is for these reasons that most of the projected development in the state is focused on transmission line rebuilds and upgrades.

## **G. Metal Mine Reclamation Act, Section 82-4-301, MCA**

### **1. Compliance Assistance and Education**

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

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

Identification and analysis of baseline data for the potentially affected environment is the first step in preparing an application for an operating permit. This plan provides an opportunity for the Hard Rock Program to work with the mining company to “do it right the first time.” During the permit application review period, staff works with applicants to produce a mine plan that complies with mining, air, and water laws. This effort includes coordination with other state and federal agencies to assist in identifying diverse resource areas that may be affected.

Compliance assistance continues after a permit is issued. Hard Rock Program staff performs from one to three regularly scheduled inspections of every operating permit area each year to ensure adherence to the provisions

in the permit. Staff becomes familiar with projects and assists permittees in recognizing potential violations before a noncompliance occurs.

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

## **2. Regulated Community**

The regulated community is a broad spectrum, ranging from at least four major international corporations through a host of American and Canadian junior mining companies to dozens of small partnerships and individuals with Small Miner Exclusions.

The Hard Rock Program administers 73 operating permits for mines and associated facilities. These include six metal mines: four are actively producing, one is shut down awaiting financing for a pit expansion, and production at another has been curtailed since late 2012 by underground stability issues. There are also four major limestone quarries (three with associated cement plants), a gypsum mine, and three talc mines, along with other operations that produce building stone, riprap, and aggregate. Other properties are inactive or in reclamation, with two former heap-leach gold mines (Zortman and Landusky) being reclaimed at the direction of the Hard Rock Program. There are 115 current and 4 pending exploration licenses and 449 Small Miner Exclusions.

As of the end of FY2013, the Hard Rock Program administered 592 permits, exploration licenses, and Small Miner Exclusions. Many Small Miner and exploration sites are inactive in any given year for a variety of reasons. Due to staff limitations, it is not possible to visit every Small Miner and exploration site each year, or to give a specific compliance percentage. Based on past experience, though, it is reasonable to say that at any given time, the great majority of the regulated community universe, in excess of 95%, is believed to be in compliance.

## **3. Noncompliances**

The majority of noncompliances are minor and are dealt with in the field under the Hard Rock Program's policy of compliance assistance, such as advising small miners to reclaim property to within the 5-acre limit or apply for an operating permit, or telling drillers to dig deeper sumps to contain fluids.

In FY2012 and FY2013, the Enforcement Division received 13 citizen complaints regarding Metal Mining Reclamation Act. Of those complaints:

- 1 was referred to the Hard Rock Program
- 1 was closed with not enough information and 1 was closed with no violation
- 8 were actively managed and closed and 1 remains active
- 1 complaint became a formal enforcement case

The Enforcement Division sent two warning letters in FY2012 and FY2013 that dealt with the need to apply for a license prior to conducting mining operations.

## **4. Enforcement Efforts**

As stated in Section 3, the majority of noncompliances are minor and are dealt with in the field under the Hard Rock Program's long-standing policy of compliance assistance. Since this is an informal, but effective process, the Program does not formally track noncompliances.

During the reporting period, the Enforcement Division managed six MMRA enforcement cases. Four of the cases were ongoing from the previous reporting period. Common violations involve conducting exploration

without a license. As of the end of this reporting period, two cases were closed, one is in litigation, one is under an order, one was denied and one is being elevated to a district court action. A total of \$12,350 administrative penalties was paid during the reporting period.

## **5. Quantitative Trend Information**

Most metal prices have rebounded, and in late 2013, gold, silver, and copper are attractive exploration targets. Since cyanide heap leaching was banned in 1999, there has been a basic shift in the nature of mineral exploration in the state. Most large mining companies see little incentive to renew exploration in the state, although one or two are active in any given year. Most exploration is carried out by individuals or junior companies, which have encountered serious challenges to raising capital in recent years.

There is one long-pending application for a permit for a new underground copper-silver mine (Rock Creek), and an old permit for another is undergoing an analysis and update (Montanore), but no significant increase in the size of the regulated community should be expected anytime soon. Smaller companies, however, have seen a niche created by higher gold prices, and are actively pursuing the development of additional underground high-grade reserves at historic mines (Butte Highlands Joint Venture and Mayflower). Higher copper prices have led to advanced-stage exploration of an underground copper-cobalt-silver deposit (Black Butte). These kinds of projects often involve private land, and are likely to result in a number of new or reopened mines with smaller footprints. A prolonged boom in home construction led to an increased demand for landscape rock and building stone from small-scale excavations. The Program has the authority to issue operating permits for quarry sites. Although housing construction has also been affected by the recession, many stone producers remain active, and some have been forced by expansion beyond the limits of Small Miner Exclusions to apply for operating permits. Four operating permits were issued in FY2012 and FY2013 to meet the demand for riprap for flood control and aggregate for reclamation projects and general uses. A draft permit has also been issued for an industrial garnet mine.

## **H. Methamphetamine Cleanup Act (MCA), Section 75-10-1301, MCA**

### **1. Compliance Assistance and Education Activities**

The Methamphetamine Cleanup Program (Meth Program) is a voluntary program that guides the collection and exchange of information regarding the effective cleanup of properties contaminated by the manufacture of methamphetamine by administering recommended cleanup standards, posting the status of contaminated properties, and providing guidance to property owners about cleanup standards.

The Meth Program provides compliance assistance by responding to written and telephone requests for information, implementing a public outreach effort to educate property owners of the need to participate in the cleanup program and maintaining the EPA voluntary guidelines for meth lab cleanup that provides technical guidance to state and local authorities.

### **2. Regulated Community**

The voluntary regulated community under the Meth Program consists of certified contractors conducting cleanups following meth manufacturing evidence in properties and training providers. In FY2012, there were 28 certified cleanup contractors and 3 training providers. In FY2013, there were 24 certified cleanup contractors, 3 training providers, and 1 training-only provider. The requirements of the Methamphetamine Cleanup Act are voluntary. The majority of the public follow the guidance issued by the Meth Program.

### **3. Noncompliances**

There were no noncompliances during FY2012 and FY2013. DEQ has adopted rules to guide the certification of contractors and trainers and has established cleanup standards property owners must follow if the owners have elected to participate in the Meth Program guidelines.

In FY2012 and FY2013, the Enforcement Division did not receive any complaints pertaining to the Methamphetamine Cleanup Act.

### **4. Enforcement Efforts**

In FY2012 and FY2013, guidance information was sent to individuals who have elected to participate including the standards for appropriate clean-up of contaminated properties. As the Methamphetamine Cleanup Act is voluntary, no formal enforcement actions have been initiated.

### **5. Quantitative Trend Information**

The law enforcement community reports that their education efforts and targeted presence has steadily reduced the number of meth production locations across the state. However, 212 properties remain on the contaminated property list maintained by the Program.

## **I. Motor Vehicle Recycling and Disposal Act (MVRDA), Section 75-10-501, MCA**

### **1. Compliance Assistance and Education Activities**

The Junk Vehicle Program: licenses and regulates motor vehicle recycling facilities (RFs) and motor vehicle county graveyards (CGs); administers a program for the collection, recycling, and disposal of junk vehicles; and oversees the operation of the county programs, provides grants and approves their annual budgets.

The Junk Vehicle Program provides compliance assistance by:

- responding to requests for information
- conducting regular inspections
- delivering assessments of required regulations and guidance on how to meet those requirements
- providing counties with a comprehensive Motor Vehicle Recycling and Disposal Reference and Guidance Manual and annual training
- offering interactive online forms and applications for members of the regulated community and the public

### **2. Regulated Community**

The regulated community under the Motor Vehicle Recycling and Disposal Act is any governmental or commercial entity active in or possessing junk vehicles. During FY2012 and FY2013, there were 155 licensed motor vehicle recycling facilities and 48 motor vehicle county graveyards.

The estimated proportion of the regulated community in full compliance with the requirements of the MVRDA is 90%. A facility in violation of the statute is given a compliance date to have the violation corrected. The Recycling Facility license must be renewed annually and if the facility in question has not corrected the earlier violation the license will not be renewed.



### **3. Noncompliances**

During FY2012 and FY2013, Junk Vehicle Program identified:

- 7 major violations – (violations taking up to 15 days to correct)
- 7 moderate violations – (violations taking up to 10 days to correct)
- 9 minor violations – (violations taking 5 days to correct)

All of these violations were corrected prior to the facilities' license renewal period and none were submitted for formal enforcement action.

In FY2012 and FY2013, the Enforcement Division received 76 citizen complaints regarding motor vehicle recycling and disposal act. Of those complaints:

- 2 were referred to the Junk Vehicle Program
- 1 was referred to an outside agency
- 12 were closed with no violation
- 47 were actively managed and closed and 12 remain active
- 2 complaints became formal enforcement cases

The Enforcement Division sent 9 warning letters and 46 violation letters in FY2012 and FY2013. The letters were primarily sent regarding operating a Recycling facility without a license and not shielding junk vehicles from public view.

### **4. Enforcement Efforts**

When noncompliance is noted during facility inspections, the violation is recorded in the inspection report and brought to the operator's attention and scheduled for correction. If the violation continues unabated into the next scheduled inspection or beyond the scheduled date for compliance, enforcement action may be required.

During the reporting period, the Enforcement Division managed 14 Motor Vehicle Recycling and Disposal enforcement cases. Twelve of the cases were ongoing from the previous reporting period. Common violations addressed by the enforcement actions involve operating without a license. As of the end of this reporting period, one is in development, one violator was given a settlement offer, seven were closed and six are under order. Of the six under order, two are under a permanent injunction to prohibit any future operation of a RF. DEQ is having a difficult time returning the remaining four responsible parties under order to comply because of their recalcitrance. No MVRDA penalties were collected during the reporting period.

### **5. Quantitative Trend Information**

Over the last two fiscal years, the Junk Vehicle Program has seen an increase in the number of new license applications received for new wrecking yards, because the price of scrap metal has been rising. This accounts for a decrease in county graveyard crushing and an increase in the number of direct haul contracts administered by the Junk Vehicle Program.

## **J. Opencut Mining Act (OMA), Section 82-4-401, MCA**

### **1. Compliance Assistance and Education Activities**

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

The Opencut Program provides compliance assistance and education both in person and through information available on our website. The Opencut Program's greatest source of compliance assistance and education is

through pre-application meetings. DEQ staff will meet with the operator on a proposed site for a pre-application meeting and answer any questions and provide guidance and direction on how to best complete the application. Opencut Program staff also provides trainings for operators to help better understand the permitting process and the Opencut application.

## **2. Regulated Community**

Permit holders vary from small entities that mine a few hundred or thousand cubic yards of material annually to multinational companies that have several hundred employees, mine millions of cubic yards of material annually, and have several permits. Several cities have permits with the Opencut Program, as do all 56 counties and some state agencies (mainly the Montana Department of Transportation). A few federal agencies also have permits.

The Opencut Program, at any given time, has roughly 2,000 permitted operations; 100 pending permit applications, amendments, and assignments; and 50 pending bond release applications. These numbers fluctuate in response to new applications being submitted and decisions being made on pending permits and bond releases.

The Opencut Program's resources are focused on meeting statutory deadlines associated with permitting activities. Subsequently, the Opencut Program does not have resources to conduct regular inspections of the approximately 2,000 permitted mines, and has no current information relating to the percentage of the regulated community that is in compliance.

## **3. Noncompliances**

In FY2012 and FY2013, the Enforcement Division received 69 citizen complaints regarding the Opencut Mining Act. Of those complaints:

- 2 were referred to the Opencut Program and they closed 18
- 2 were closed with not enough information and 13 were closed with no violation
- 25 were actively managed and closed and 3 remain active
- 6 complaints became formal enforcement cases

The Enforcement Division sent 12 warning letters and 2 violation letters in FY2012 and FY2013. The letters were primarily sent regarding mining without a permit.

## **4. Enforcement Efforts**

During the reporting period, the Enforcement Division managed 72 Opencut Mining Act enforcement cases. Thirty-five of the cases were ongoing from the previous reporting period and 37 were initiated during the reporting period. Common violations addressed by the enforcement actions involve conducting opencut operations without a permit or beyond a permitted boundary. As of the end of this reporting period, 47 cases were closed, 16 are under order, 7 are in litigation in either an administrative appeal or district court, and 2 cases are in development. A total of \$193,829 in administrative penalties and \$303,978 judicial civil penalties were collected during the reporting period. The money goes to the Environmental Restoration and Rehabilitation Account.

## **5. Quantitative Trend Information**

The Opencut Program's permitting activity has doubled since 2009. This is a direct result of the oil boom in eastern Montana and western North Dakota. Gravel development has also increase as a result of the boom. The majority of permitted sites are in Richland County.



## **K. Public Water Supply Law (PWSL), Section 75-6-101, MCA**

### **1. Compliance Assistance and Education**

The Public Water Supply Program (Public Water Program) implements and enforces the PWSL and has primary enforcement authority for implementing and enforcing the federal Safe Drinking Water Act requirements. Public water suppliers must comply with construction, operation, monitoring, and treatment requirements.

Public Water Program staff offers compliance assistance and education in a variety of methods. The Program emphasizes owner/operator and consultant training, technical assistance, best available treatment techniques, and monitoring tools. Technical assistance is provided via telephone, email, onsite visits, DEQ offices, direct mailings, and at water schools and conferences.

To assist systems with sampling periods, the Public Water Monitoring Section sent out sampling reminder post cards. Monitoring schedules were also sent out to all new systems and to systems that requested them. A newly created electronic monitoring schedule tool is a “real time” interface that reflects a system’s current monitoring status. It and has proven very beneficial for the systems and for the program in terms of compliance. Drinking Water Watch allows the public to check on a system’s water quality and compliance status. It also gives public water suppliers the ability to track their monitoring data, noncompliance history, and water sampling requirements online.

The Field Services Section performs routine sanitary survey compliance inspections of public water systems to identify potential system deficiencies. It also provides technical assistance to address specific noncompliance issues such as boil orders and health advisories. These inspections give the system the opportunity to discuss their specific needs and issues with DEQ on a one-on-one basis.

The Engineering Section reviews plans and specifications for conformance with minimum design standards. This helps to ensure a long-term life of system components and minimizes the possibility of noncompliance problems related to system construction. The engineering section spends an estimated 30% of its staff time working with owners, operators, and consultants to identify and correct deficiencies in submitted plans and specifications.

### **2. Regulated Community**

The Program regulated approximately 2,151 public water supply systems during the reporting period, which included 709 community systems, 278 non-transient non-community systems, and 1,173 transient systems. System type determines monitoring requirements, which are based on exposure risk (i.e., number of people served, source water type, and duration of exposure).

### **3. Noncompliances**

#### **a. Monitoring Section**

- Number of noncompliances (systems with one or more violations): 899
- Description of noncompliances and significance: Monitoring and reporting violations were the majority of all violations and are less significant than violations of the maximum contaminant levels (MCL). In addition, each system may have more than one violation for the period.
- Method of Discovery: Noncompliance was identified through self-reporting, inspections, and via review of the databases.
- Compliance rate 58%

#### b. Field Services Section

- Number of sanitary survey inspections: 1,084 (required every 3 or 5 years, depending on system classification)
- Number of noncompliances (systems with at least one significant deficiency): 145
- Description of noncompliances and significance: By definition, significant deficiencies have a high potential to adversely affect public health.
- Method of discovery: Inspections were routine, conducted as a function of technical assistance, or as the result of a complaint
- Compliance rate: 99% (Includes systems with no significant deficiencies and those that repaired their significant deficiency)

#### c. Engineering Section

- Total number of plan reviews: 724
- Total number of violation letters: 25
- Description of noncompliance: Failure to submit plans and specifications meeting the minimum design standards, failure to construct according to approved plans and specifications, and failure to operate according to approved plans and specifications can have the potential for significant adverse effects on public health, and can cause premature system failure and significant additional costs.
- Method of discovery: Violations are identified through inspections, complaints, and database review.

In FY2012 and FY2013, the Enforcement Division received 60 citizen complaints regarding public water supply law. Of those complaints:

- 34 were referred to the Public Water Program and they closed 6
- 6 were referred to outside agencies
- 1 was closed with no violation
- 8 were actively managed and closed and 4 remain active
- 1 complaint became a formal enforcement case

The Enforcement Division sent 1 violation letter in FY 2012-2013.

### **4. Enforcement Efforts**

The Public Water Program used a stepped approach to ensure fair and consistent application of enforcement tools. The steps include technical assistance, warning letter, violation letter, and last, referral to the Enforcement Division for formal enforcement action. Some noncompliance issues cannot be resolved after the fact and enforcement is used to prevent a similar violation in the future.

During the reporting period, the Enforcement Division managed 167 Public Water Supply enforcement cases. Fifty six were new cases initiated during the reporting period and 111 were ongoing from the previous period. A total of 28 cases have been referred to EPA, 14 within this reporting period. Enforcement cases were referred to EPA to resolve an unmanageable backlog of enforcement work, which has since been resolved. Most of the enforcement actions were initiated to address monitoring and maximum contaminant level (or MCL) violations. As of the end of this reporting period, 96 cases were closed, 70 are under order, 8 are under development, 2 have been provided a settlement offer, and 5 are in litigation in either an administrative appeal or district court. A total of \$11,951 of administrative penalties and \$29,679 of judicial civil penalties were collected during the reporting period.

## **5. Quantitative Trend Information**

A valid compliance rate trend is not observable.

## **L. Sanitation in Subdivisions Act (SSA), Section 76-4-101, MCA**

### **1. Compliance Assistance and Education**

The Subdivision Review Section (Subdivision Program) provides technical assistance and training about subdivision laws and regulations to county health departments, county commissioners, and to developers and their consultants. Most technical assistance is provided by phone or in the office, and staff interacts with applicants on a daily basis.

The Subdivision Program has increased efforts to provide more formal education and training about rule interpretations and technical analyses to county sanitarians and consultants. Subdivision Program staff provide a minimum of two off-site training sessions per year. Staff will occasionally conduct field investigations of proposed subdivisions; however, personal contact by phone and in-office meetings is the most effective means to provide compliance assistance.

Several administrative rules were modified through the efforts of a focus group consisting of DEQ employees, local health officials, developers, and consulting engineers. An ongoing goal of the focus group is to streamline the application process and provide greater consistency, thereby promoting greater compliance.

### **2. Regulated Community**

The regulated community includes all subdivisions approved by DEQ that hold a Certificate of Subdivision Approval (COSA). This does not include lots that were exempt from review or reviewed as Municipal Facilities Exemption lots. The number of individual lots included within a subdivision application can range from one to several hundred. The annual number of subdivisions reviewed and approved over the past two years has increased from 466 applications for 2,158 lots in FY2012, to 520 applications for 1,750 lots in FY2013.

### **3. Noncompliance**

The most common noncompliance issue associated with the Sanitation in Subdivisions Act are lots that do not have a valid COSA from DEQ. This type of noncompliance occurs when facilities are constructed that have not been reviewed and approved for adequate water, wastewater, solid waste, or storm water. In this situation, water quality protection standards may be exceeded and public health may be threatened.

There were eight formal complaints of potential violations of the Sanitation in Subdivisions Act during the reporting period that were addressed by the Subdivision Program.

In FY2012 and FY2013, the Enforcement Division received 99 citizen complaints regarding the Sanitation in Subdivision Act. Of those complaints:

- 5 were referred to outside agencies
- 13 were closed with no violation
- 31 were actively managed and closed and 39 remain active
- 11 complaints became formal enforcement cases

The Enforcement Division sent 14 warning letters and 25 violation letters in FY2012 and FY2013. The letters were primarily sent about the need to operate within the approved COSA or to update the COSA.

## **4. Enforcement Efforts**

The Subdivision Program uses a stepped approach and its enforcement response guidance to ensure fair and consistent application of enforcement tools. The steps include technical assistance, warning letter, violation letter, and finally referral to the Enforcement Division for formal enforcement action. The Subdivision Program attempts to resolve the noncompliance issue through the least formal enforcement process available, preferably through technical assistance. Some noncompliance issues cannot be resolved and enforcement is escalated to prevent a similar noncompliance issue in the future.

Of the eight formal complaints handled by Subdivision Program, one has been resolved, two have resulted in revocation of DEQ approval, and the remaining five are currently working toward compliance. The two formal revocations were due to new information regarding the location of surface water to approved drainfield locations and an invalid water-user agreement.

During the reporting period, the Enforcement Division managed 15 Sanitation in Subdivisions Act enforcement cases. Ten were new cases initiated during the reporting period and five were ongoing from the previous period. Most of the enforcement actions involved creating a subdivision without the required COSA, the majority of which were in eastern Montana. As of the end of this reporting period, five cases were closed, five are under order, two are under development, one has been provided a settlement offer, and two are in administrative appeal. A total of \$15,120 of administrative penalties was collected during the reporting period.

## **5. Quantitative Trend Information**

There does not appear to be any clear trend regarding the number of enforcement actions that occur each year. However, considering the activity associated with the current oil boom in eastern Montana, the Subdivision Program anticipates there will be an increase in the number of citizen-generated complaints that may lead to formal enforcement actions.

## **M. Septage Disposal and Licensure Laws (SDLL), Section 75-10-1201, MCA**

### **1. Compliance Assistance and Education Activities**

The Septage Disposal Program (Septic Program) regulates septic tank pumping wastes, grease traps and sump pumping wastes, septage pumpers, and land disposal sites.

The Septic Program provides compliance assistance by:

- publishing a pumper guide and brochures that are mailed and posted on the program website for the regulated community and county offices.
- conducting annual training for licensed pumper and county sanitarians
- responding to thousands of calls and emails during the reporting period
- inspecting at least 25% of the land application sites each year
- staffing the Septic Pumper Advisory Committee

### **2. Regulated Community**

In FY2012 and FY2013, the regulated community under the septage laws consisted of 160 licensed septage pumpers and 169 septage land application and disposal sites. The Septic Program estimates that 98% of the regulated community is in full compliance with the requirements of the septage laws.

### **3. Non-compliances**

In FY2012 and FY2013, there were six minor violations identified through site inspections. All of the violations were corrected prior to the license renewal period.

In FY2012 and FY2013, the Enforcement Division received 14 citizen complaints regarding septic disposal and licensure laws. Of those complaints:

- 5 were referred to the Septic Program
- 2 were closed with no violation
- 6 were actively managed and closed and 1 remains active

The Enforcement Division sent three violation letters in FY2012-2013, primarily for pumping without a license or at an unapproved site.

#### **4. Enforcement Efforts**

The Septic Program does regular inspection cycle of all licensees and land application sites. Violations are documented in an inspection report and result in noncompliance letter to the licensee with a timeframe for correcting the violation. The Septic Program also receives complaints about septage pumping or land application of waste. The Program follows up on the complaints. This may result in the Program issuing new licenses or sending noncompliance letters. The Septic Program seeks to close violations or complaints by providing the needed compliance assistance to the regulated community. Occasionally, violations are referred for formal enforcement action.

During the reporting period, the Enforcement Division managed five septage laws enforcement cases. One was a new case initiated during the reporting period and four were ongoing from the previous period. Most of the cases were initiated for pumping without a license. The four ongoing cases are under district court orders, and the one new case is under an administrative appeal. A total of \$2,500 administrative penalties and \$1,497 judicial civil penalties were collected during the reporting period.

#### **5. Quantitative Trend Information**

In FY2012 and FY2013, there has been a reduction in available and environmentally suitable land application sites in western Montana, which requires the regulated community to find alternatives for waste disposal. Alternative sites have been identified, and the Program has dedicated additional resources to ensure applicants and the community are aware of the minimum standards in place so that sites are appropriate and protective of human health and the environment. A rapid increase in the volume of septage in eastern Montana counties due to oil and gas exploration has resulted in an increase in applications for pumper licenses and land application site approvals.

### **N. Solid Waste Management Act (SWMA), Section 75-10-201, MCA**

#### **1. Compliance Assistance and Education Activities**

The Solid Waste Program regulates the proper disposal of wastes in Montana, including: municipal solid wastes, commercial and industrial non-hazardous wastes, infectious medical wastes, used tires and construction and demolition debris.

The Solid Waste Program provides compliance assistance by:

- conducting site visits to proposed facilities and inspections of licensed sites
- encouraging applicants to attend pre-submittal scoping meetings to facilitate the licensing process
- delivering regular training sessions for landfill operators and providing technical assistance through telephone calls or by email
- staffing the Solid Waste Advisory Committee which allows solid waste managers to exchange information and work with program staff to set policy and guidance priorities

## **2. Regulated Community**

During FY2012 and FY2013, the regulated community under Solid Waste Program consisted of 149 licensees, including:

- 86 municipal solid waste landfills, including construction and demolition waste landfills, inert material landfills and clean wood waste burn sites, and resource recovery facilities
- 4 large commercial composters, 9 small yard waste composters, 9 dead animal composting operations
- 11 waste transfer stations
- 7 full-time and 5 one-time landfarms for petroleum contaminated soils and sump solids
- 18 recycling facilities
- a variety of household hazardous waste and electronic waste collection event licenses

The Solid Waste Program estimates that 98% of the regulated community was in compliance with the SWMA during FY2012 and FY2013.

## **3. Noncompliances**

During FY2012 and FY2013, the Solid Waste Program identified:

- 6 major violations at 4 licensed facilities
- 23 minor violations at 12 licensed facilities

In FY2012 and FY2013, the Enforcement Division received 150 citizen complaints regarding solid waste. Of those complaints:

- 2 were referred to the Solid Waste Program and it closed 1
- 8 were referred to outside agencies
- 9 were closed with not enough information and 18 were closed with no violation
- 79 were actively managed and closed and 32 remain active
- 1 complaint became a formal enforcement case

The Enforcement Division sent 28 warning letters and 43 violation letters in FY2012 and FY2013. The letters were usually about illegal dumping/improper management of solid waste without a license.

## **4. Enforcement Efforts**

During the reporting period, the Enforcement Division managed nine solid waste enforcement cases. Of the eight previous violators, five are under district court orders; two for inadequate financial closure assurance and three for disposing of solid waste without a license. The one new case initiated during this reporting period is under an administrative order for disposing of solid waste without a license. A total of \$1,497 in judicial civil penalties was collected during the reporting period.

## **5. Quantitative Trend Information**

The Solid Waste Program received over 30 inquiries for licensure information about resource recovery operations or special waste landfills in eastern Montana due to the increase in oil and gas development.

## **O. Strip and Underground Mine Reclamation Act (SUMRA), Section 82-4-201, MCA**

### **1. Compliance Assistance and Education Activities**

The Coal Program inspects mining operations according to schedule required in the Administrative Rules. Each active site must be inspected monthly. One inspection per quarter is required to be a complete inspection. For each inactive site, only one complete inspection per quarter is required. Aerial inspections are conducted periodically as needed.



The Program uses routine inspections to observe mining activities, promote compliance, highlight achievements, and provide education. Coal Program inspectors work closely with mine operators, both in the field and from the office, to ensure that mining and reclamation activities are consistent with permit requirements. Issues identified during mine inspections that do not indicate resource loss or immediate environmental threat may become maintenance items. Maintenance items are used to ensure operator compliance and negate the need to issue a noncompliance.

## **2. Regulated Community**

The Coal Program has ten active coal mining permits of which one is an underground longwall operation and the remainders are open pit strip mining operations. Additionally, the Coal Program oversees the reclamation process on three inactive coal mining permits. One amendment was added to the underground mine operation during the report period. Total bond held for the coal mining activities is approximately \$468,648,000.

The Coal Program also regulates coal and uranium prospecting activities. These activities are conducted to determine the location, quality, and quantity of the mineral reserves. During the reporting period there were 11 active prospecting permits. There are currently no uranium mining activities in the state.

At the end of the reporting period, there was one unresolved or outstanding Notice of Noncompliance (NON). Since one violation existed at the end of the reporting period, the regulated community was 90% in compliance.

## **3. Noncompliances**

During the reporting period, the Coal Program issued eight Notices of Noncompliance. Eight were abated; one from the previous reporting period and seven from the current period (one issued during FY2012-13 remained unabated at the end of June 2013). No Cessation Orders (major or significant violations that meet the definition of imminent harm) were issued.

The violations were identified during field inspections, reviews of submitted annual reports, and through self-reporting. Violations included two for failure to properly publish blasting notice, two for not following approved water monitoring plan, two for not maintaining adequate sediment control, one for improper construction of roads and drill pads, and one for implementation of a minor revision prior to approval. Five of the violations were considered administrative and three were considered environmental harm.

In FY2012 and FY2013, the Enforcement Division received two complaints regarding the Strip and Underground Mining Reclamation Act. Both complaints were referred to the Coal Program.

## **4. Enforcement Efforts**

When the Coal Program issues a Notice of Noncompliance, it includes a requirement for abating the violation. An abatement timeline, not to exceed 90 days, is included in the notice. The Coal Program regularly works with the company to ensure proper abatement of a violation.

During the reporting period, the Enforcement Division managed 12 coal mining administrative enforcement cases. Six of cases were ongoing from the previous reporting period. Enforcement actions were initiated to address the variety of violations described above. As of the end of this reporting period, all 12 cases were closed. A total of \$63,138 of administrative penalties has been collection during the reporting period.

## **5. Quantitative Trend Information**

The Coal Program has had a relatively stable regulated community of six or seven operators over the previous ten years. However, two applications for new strip mine permits have been received during the reporting period. DEQ is awaiting responses to deficiency letters from those applicants.

## **P. Underground Storage Tank Installer and Inspector Licensing and Permitting Act (IILPA), Section 75-11-201, MCA**

### **1. Compliance Assistance and Education Activities**

The Underground Storage Tank Licensing and Permitting Program ensures proper installation and modification of underground storage tanks (USTs) through its permitting program, continuing education training opportunities, and licensing of inspectors, installers, and removers of UST systems. The UST Licensing and Permitting Program provides compliance assistance by conducting annual training and refresher courses, testing and licensing compliance inspectors, and conducting regular oversight inspections of licensed compliance inspectors

### **2. Regulated Community**

In FY2012 and FY2013, the regulated community under the Installer and Inspector Licensing and Permitting law consists of 108 licensees as follows:

- 65 installers/removers (2 installer/remover licensees are restricted to the design of UST system corrosion protection components)
- 16 removal only
- 25 inspectors

Of 108 licensees, 107 are in compliance with the law.

### **3. Noncompliances**

In FY2012 and FY2013, the UST Licensing and Permitting Program identified one licensee in violation of the provisions of the IILPA.

In FY2012 and FY2013, the Enforcement Division received 20 citizen complaints regarding the Underground Storage Tank Installer and Permitting Act. Of those complaints:

- 5 were referred to the UST Licensing and Permitting Program
- 6 were referred to outside agencies
- 1 was closed with no violation
- 7 were actively managed and closed and 1 remains active

### **4. Enforcement Efforts**

Complaints and violations are documented, and resolved through compliance assistance, warning letters, or violation letters. The DEQ may initiate a formal enforcement action in the event of unprofessional conduct by licensed installers or inspectors.

During the reporting period, the Enforcement Division managed one new IILPA enforcement action for installing an UST without a license. The case was resolved during the reporting period with an administrative order and payment of a \$3,000 administrative penalty.

### **5. Quantitative Trend Information**

In FY2012 and FY2013, licensees installing or removing USTs and the inspectors licensed to oversee the requirements of those activities has remained constant. The training, continuing education, and the regular oversight of licensees by UST Licensing and Permitting Program ensures very few individuals are out of compliance with the provisions of the IILPA and the accompanying administrative rules.



## Q. Underground Storage Tank Act (USTA), Leak Prevention Program, Section 75-11-501, MCA

### 1. Compliance Assistance and Education Activities

The Underground Storage Tank Leak Prevention Program implements the USTA’s requirements designed to prevent leaks from underground storage tanks (USTs). The UST Leak Prevention Program ensures proper installation, operation and maintenance of USTs; provides compliance assistance to owners and operators; and ensures installers, removers, and inspectors are properly trained and licensed.

The UST Leak Prevention Program provides compliance assistance by:

- providing follow up with violations and related required corrective actions.
- sending compliance inspection reports and operating permit renewal reminders to tank system owners and operators
- providing on-site UST regulatory guidance
- conducting continuing education classes for licensed installers, removers, and compliance inspectors

### 2. Regulated Community

The regulated community under the USTA consist of:

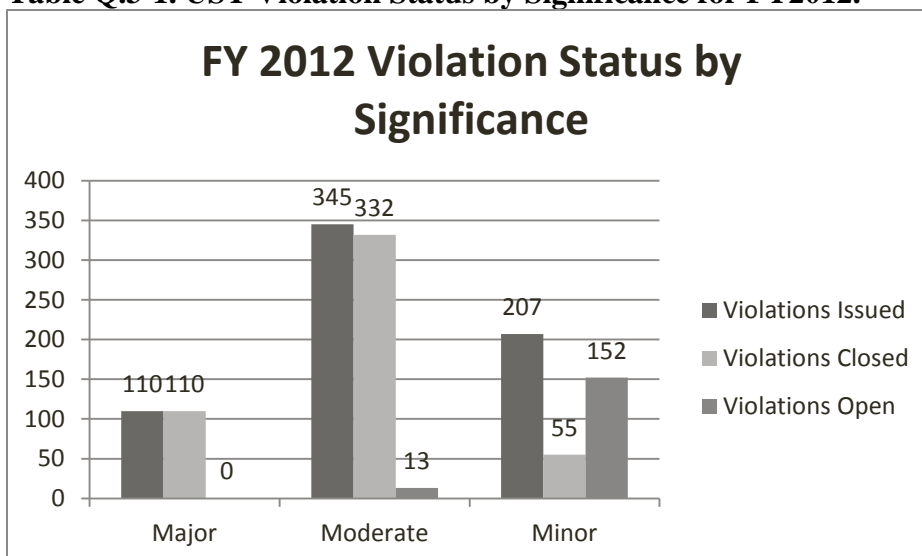
- 750 facility owners
- 1,346 facilities
- 3,750 active and inactive underground tanks

**Table Q.2-1. Percent of Regulated Community in Compliance with Significant Federal Operational Compliance Criteria**

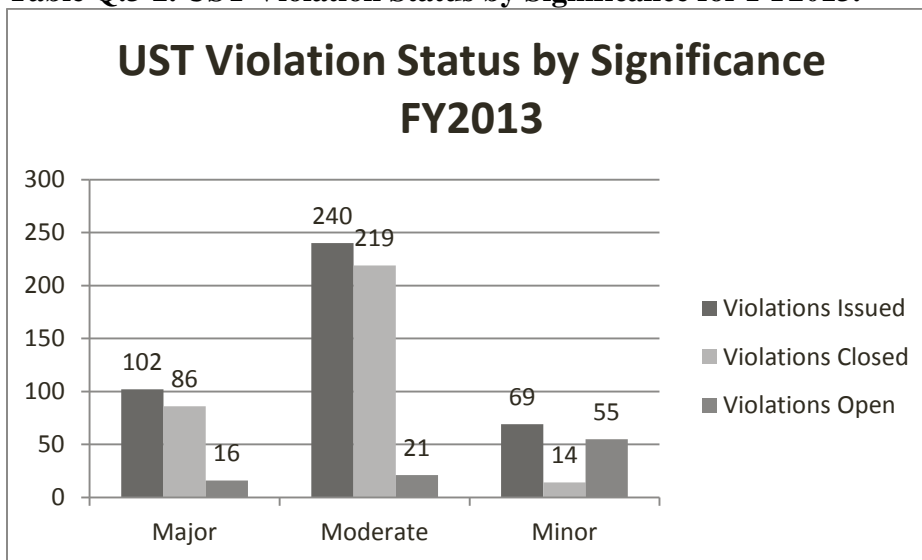
Fed FY	# of inspections	% in SOC compliance
2009	344	86.60%
2010	566	83.50%
2011	520	84.60%
2012	446	78.00%

### 3. Noncompliances

**Table Q.3-1. UST Violation Status by Significance for FY2012.**



**Table Q.3-2. UST Violation Status by Significance for FY2013.**



Major violations that are not corrected by the time an operating permit expires or within 90 days are referred for formal enforcement. Moderate violations are given a six-month corrective action window. If uncorrected after that window, they are referred for formal enforcement. Minor violations must be corrected by the next inspection cycle, three years hence. If they are not, they will be elevated to moderate significance.

In FY2012 and FY2013, the Enforcement Division did not receive any complaints regarding the UST Leak Prevention Program.

#### **4. Enforcement Efforts**

Compliance inspectors debrief the owner or manager at the end of a compliance inspection, identifying violations and corrective action. The violations are categorized by significance i.e. major, moderate, or minor. Compliance letters sent to owners also set a timeframe for the correction of each identified violation.

During the reporting period, the Enforcement Division managed 31 USTA enforcement cases. Twenty four cases were ongoing from the previous reporting period and seven were new. Most of the enforcement actions were initiated to address tank leak detection monitoring and inspection violations. As of the end of this reporting period, all 19 cases were closed and 12 were under an order. A total of \$6,626 of administrative penalties and \$3,000 of civil judicial penalties have been collection during the reporting period.

#### **5. Quantitative Trend Information**

The numbers of tank systems, owners/operators, and compliance rates have remained steady over the past five fiscal years. The UST Leak Prevention Program does not anticipate change in the coming biennium.

### **R. Underground Storage Tank Act (USTA), UST Cleanup Program, Section 75-11-501, MCA**

#### **1. Compliance Assistance and Education Activities**

The Remediation Division’s Petroleum Technical Section (UST Cleanup Program) utilizes the requirements of the USTA to address releases of petroleum and hazardous substances from underground storage tanks. Owners and operators of leaking USTs remain in compliance by conducting cleanup actions in accordance with the rules.

UST Cleanup Program staff provides compliance assistance and education to the owners and operators and their consultants through field site visits, meetings, phone calls and letters explaining reporting and cleanup requirements and assisting work plans. Staff work on over 600 petroleum releases a year and respond to more than 500 phone inquiries requesting information to facilitate property transactions.

The UST Cleanup Program hosts meetings for consultants where assistance, guidance, and updates are provided. Petroleum release cleanup and compliance information is also published in DEQ's quarterly MUST News publication.

Many sites are eligible to receive reimbursement for a portion of eligible costs associated with leak investigation, remediation, and third-party damages from Montana's Petroleum Tank Release Cleanup Fund. The fund laws require owners and operators to remain in compliance with cleanup requirements in order to remain eligible for reimbursement of ongoing cleanup costs.

Lack of finances is one of the primary reasons a small number of owners and operators are unable to clean up leak sites. Program staff assist owners and operators to secure funding as well as assist lending institutions and potential purchasers to understand site-specific release-related risks.

## **2. Regulated Community**

The regulated community includes anyone who owns or operates an underground storage tank and who has been identified as having a suspected or confirmed release of a petroleum product or hazardous substance from a tank. An owner or operator may be federal, state, and local governments, schools, hospitals, railroads, service stations, utilities, convenience stores, farms, and other industrial and commercial enterprises. A total of 4,577 releases have been confirmed since the beginning of the program through June 30, 2013. The UST Cleanup Program has resolved 3,186 of these releases. A total of 44 new releases were confirmed in FY2012 and FY2013. At the end of this reporting period, 1,367 releases were active.

Twenty three releases were reported at active retail or bulk petroleum facilities. Thirteen of these releases were surface releases, five releases were from line leaks, two were considered historic contamination, and one was discovered by a tank removal. At non-retail facilities, seven releases were found through environmental assessments related to property transactions or refinancing. Another six were confirmed based on property redevelopment or improvements. Two releases were malfunctions from home heating oil tanks. Four releases were found by government entities (one each local, state, and federal). One occurred at a Pennsylvania Power and Light facility and one was reported at an aviation facility.

## **3. Noncompliances**

Noncompliance occurs when an owner or operator fails to comply with a cleanup requirement. The vast majority of owners and operators comply with the requirements to investigate and clean up releases.

Noncompliances occur when deadlines are missed or work products do not meet appropriate quality required by law. Of the 1,367 active releases, eleven were not in compliance during the reporting period because of missed due dates. The noncompliance at these releases is considered minor because the extent of contamination has been characterized and some cleanup has occurred. Very significant noncompliance applies to releases when investigation and cleanup work have stopped and the owner or operator is unwilling or unable to comply. For the reporting period, this level of noncompliance did not occur.

None of the eleven minor releases in noncompliance are considered high risk to human health and the environment. Investigation and cleanup begins relatively quickly because owners and operators responsible for

a release are required to report a release within 24 hours and submit a more detailed 30-day release report. The highest noncompliance rate is for releases older than 10 years where owner/operators feel they have done enough work. For the biennium, only one catastrophic release was reported and the company was swift in responding to the situation and cleanup.

In FY2012 and FY2013, the Enforcement Division did not receive any complaints regarding the UST leaks cleanups.

#### **4. Enforcement Efforts**

The UST Cleanup Program utilizes a progressive enforcement strategy that includes warning letters, violation letters, staff field visits, or follow-up telephone calls to achieve voluntary compliance. During the reporting period, the UST Cleanup Program issued nine warning letters and five violation letters. The four warning letters and one violation letter led to compliance, so formal enforcement was not necessary.

In addition to traditional enforcement tools, the UST Cleanup Program has federal grant funding from the LUST Trust Fund to conduct necessary cleanup work when owners and operators are unwilling or unable to conduct the work. Costs incurred for these actions are recoverable from financially viable owners and operators. The UST Cleanup Program prioritizes the use of limited LUST Trust funds based upon the relative risks to human health, safety, and the environment, and pursues a parallel formal enforcement action when owners and operators are capable of conducting the work but refuse. Enforcement against insolvent or bankrupted responsible parties is typically not practical, and the agency may exert discretion in not pursuing parties that do not have the financial ability to pay for cleanup costs.

During the reporting period, the Enforcement Division managed 14 UST cleanup cases. Ten cases were ongoing from the previous period and four were new. Most of the cases were initiated for the failure to conduct the necessary cleanup work. Five cases are under development, seven are under district court orders, and three are in district court litigation. One case has been closed and a settlement offer was provided to one other violator. No penalties have been collected during the reporting period as the UST Cleanup Program wants violators to focus resources on cleanup.

#### **5. Quantitative Trend Information**

Five of the 11 releases were forwarded to the Enforcement Division for formal enforcement. The progressive enforcement process worked for the other six releases by convincing people to understand that work had to proceed. The progressive enforcement process allows DEQ to be persistent, yet gives the owner/operator time to realize cleanup is required by them before a release can be resolved.

One of the 11 noncompliant releases has been closed and two others are nearly ready to close.

Another trend is the increase in the number of releases that required enforcement. The increase is due to the UST Cleanup Program being more aware of noncompliance in cleanup and taking an aggressive approach to closing releases.

### **S. Water Treatment Plant Operators Laws (WTPOL), Section 37-42-101, MCA**

#### **1. Compliance Assistance and Education Activities**

The Water and Wastewater Operator Certification Program (Operator Certification Program) implements and enforces these laws. The Operator Certification Program provides training, examination, certification, and continuing education tracking services for water and wastewater operators and provides general assistance to the public and other state and federal agencies.

During FY2012 and FY2013, the Program held two Water and Wastewater Operator Advisory Council meetings. Training new operators about certification requirements is ongoing and the Program continually explores new methods, such as CDs and Internet-based courses to make training more accessible. The Operator Certification Program provides new operator training in conjunction with examination sessions. Special training and exams were offered in eastern Montana in operators representing 11 communities and industries.

## 2. Regulated Community

There are approximately 710 community public water supply systems and 280 non-transient non-community public water supply systems that must retain the services of a certified operator. At present, there are also 303 public sewage systems that must retain the services of a certified operator. There are approximately 1,630 certified operators in Montana. Compliance rates vary across the year, mainly based on renewal requirements. In addition, operators are required to complete their continuing education credits every two years, so noncompliance increases in years when credits expire.

## 3. Noncompliance

Noncompliance under the Water Treatment Plant Operators law occurs in three areas. Failure of a system to retain a properly certified operator is addressed through the Public Water Supply Program. Failure of an operator to maintain compliance is not considered a noncompliance issue but it results in the revocation of certification. Failure of the operator to act responsibly may result in a revocation of certification through an enforcement action.

In FY2012 and FY2013, the Enforcement Division did not receive any complaints regarding this law.

## 4. Enforcement Efforts

The Enforcement Division managed one WTPOL enforcement case during the period against a public water supply that failed to retain a certified operator. The owner obtained a certified operator and paid a \$2,521 penalty.

## 5. Quantitative Trend Information

The trend for public systems in compliance with the certified operator requirement for community and non-transient non-community systems over the past five fiscal years shows an increase in noncompliance. The increase in noncompliance is due in part to operators leaving for jobs in the oil and gas industry, unapproved systems being constructed and operated without a required operator, and aging workforce retirements.

**Table S.5-1**

<b>Systems Out of Compliance: Monthly Averages for FY2009 - FY2013</b>		
<b>Fiscal Year</b>	<b>Violation Letters Sent (Total/Year)</b>	<b>Systems Out of Compliance (Monthly Averages/Year)</b>
2009	214	17.83
2010	254	21.6
2011	234	19.5
2012	315	26.25
2013	471	39.25

## T. Water Quality Act (WQA), Section 75-5-101, MCA

### 1. Compliance Assistance and Education

The Wastewater Permit Program provided compliance assistance, education, and outreach to both the regulated community and the public during FY2012 and FY2013 through the following:

- assistance in completing permit application materials
- facility site visits and compliance inspections to assess regulatory applicability
- training program development for applying effective best management practices (BMPs)
- regulatory presentations at wastewater operator certification trainings and to commodity groups
- informational public meetings to educate members on permitting requirements
- presentations to eastern Montana small businesses regarding regulatory requirements related to oil and gas development

The following tables list the compliance activities completed during the reporting period:

**Table T.1-1.**

<b>Compliance Assistance and Education Activities FY2012</b>			
<b>Regulated Community</b>	<b>Inspections</b>	<b>BMP Trainings</b>	<b>Regulatory Presentations</b>
Surface Discharger	92	-	44
Ground Water Discharger	6	-	5
Storm Water Discharger	54	11	4

**Table T.1-2**

<b>Compliance Assistance and Education Activities FY2013</b>			
<b>Regulated Community</b>	<b>Inspections</b>	<b>BMP Trainings</b>	<b>Regulatory Presentations</b>
Surface Discharger	100	-	28
Ground Water Discharger	2	-	4
Storm Water Discharger	129	12	3

### 2. Regulated Community

The regulated community for water quality consists of entities that have sought to obtain a permit authorizing the discharge of pollutants into state waters.

Permit holders are divided into three general categories: (a) entities that discharge to surface water; (b) entities that discharge to ground water; and (c) those using best management practices to manage storm water discharges. The regulated community includes all applications reviewed and processed, as well as permits issued during FY2012 and FY2013 as seen in **Tables T.2-1** and **T.2-2**.

**Table T.2-1. Status of Permits for FY2012**

<b>Grouping</b>	<b>Total</b>	<b>Admin Extended</b>	<b>Effective</b>	<b>Expired</b>	<b>Not Needed</b>	<b>Pending</b>	<b>Terminated</b>
Surface Water	1514	46	408	879	135	25	21
Stormwater	1389	18	429	425	38	22	457
Groundwater	117	16	68	3	21	7	2
Total	3020	80	895	1307	194	54	480

**Table T.2-2. Table of Permit Status for FY2013**

<b>Grouping</b>	<b>Total</b>	<b>Admin Extended</b>	<b>Effective</b>	<b>Expired</b>	<b>Not Needed</b>	<b>Pending</b>	<b>Terminated</b>
Surface Water	1,677	50	527	914	135	26	25
Stormwater	1,711	18	869	478	38	22	286
Groundwater	119	16	70	3	21	7	2
Total	3,507	84	1,466	1,385	194	55	314

Based on the number of violations formally documented in FY2012 and FY2013, the estimated compliance rate for the three general categories of permit holders ranges from about 43% to 93%. The compliance rate for facilities that had active permit coverage is based on violations discovered through inspections or self-monitoring reports that received a notice of violation. **Table T.2-3** provides specific information regarding the compliance rates for permitted entities.

**Table T.2-3. Compliance Rates.**

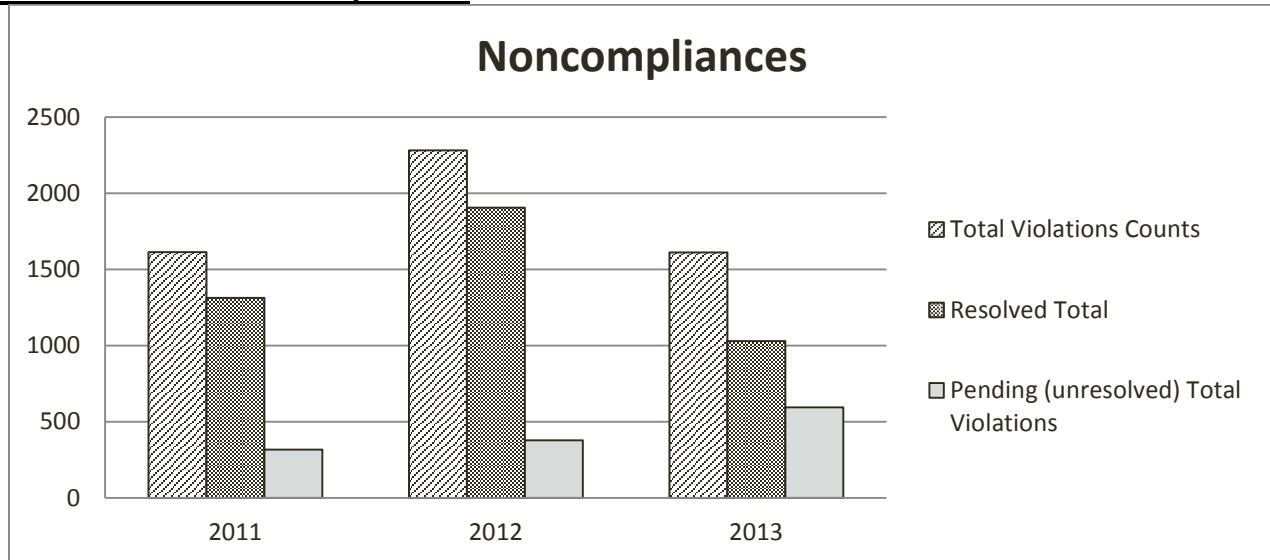
<b>2012 PERMITS</b>				
<b>Grouping</b>	<b>Total</b>	<b>Total Facilities in Violation</b>	<b>% Noncompliance</b>	<b>% Compliance</b>
Surface Water	1375	354	25.75%	<b>74.25%</b>
Stormwater	1329	133	10.01%	<b>89.99%</b>
Groundwater	89	51	57.30%	<b>42.70%</b>
<b>2013 PERMITS</b>				
<b>Grouping</b>	<b>Total</b>	<b>Total Facilities in Violation</b>	<b>% Noncompliance</b>	<b>% Compliance</b>
Surface Water	1541	255	16.55%	<b>83.45%</b>
Stormwater	1651	105	6.36%	<b>93.64%</b>
Groundwater	91	45	49.45%	<b>50.55%</b>

### 3. Noncompliances

Noncompliance at a permitted facility is discovered through the monthly review of discharge self-monitoring reports and from on-site inspection observations. The most common noncompliances are discharging without a permit, discharging from an unauthorized location, exceeding permitted limits, failing to conduct required monitoring, failing to operate and maintain treatment systems, and not complying with recordkeeping requirements. A single permitted facility may have multiple violations.



**Graph T.3-1. Status of Noncompliances.**



In FY2012 and FY2013, the Enforcement Division received 222 citizen complaints regarding the Water Quality Act. The primary complaints were MPDES Permits, municipal waste water and water quality. Of those complaints:

- 11 were referred to the Water Protection Bureau and it closed 1
- 21 were referred to outside agencies
- 3 were closed with not enough information and 30 were closed with no violation
- 76 were actively managed and closed and 48 remain active
- 1 complaint became a formal enforcement case

The Enforcement Division sent 18 warning letters and 23 violation letters in FY2012 and FY2013. The letters were primarily regarding discharge without a permit and placement of a waste where it will impact water quality.

In FY2012 and FY2013, the division received 68 complaints regarding spills impacting water. Most were regarding fuel or material releases from truck wrecks. The Enforcement Division sent 3 warning letters and 22 violation letters for the releases.

In FY2012 and FY2013, the Enforcement Division received 352 complaints regarding spills impacting soils. Most were regarding fuel releases from truck wrecks. The division sent 12 warning letters and 140 violation letters for releases. Although the releases impacted soils only, if the releases are not mitigated they often migrate to ground and/or surface water, so they are reported here.

#### **4. Enforcement Efforts**

Wastewater Permit Program staff monitors the compliance status of all facilities by reviewing and processing of self-monitoring reports and during annual compliance inspections. Permitted facilities that fail to submit self-monitoring reports are prompted to submit the required information via, telephone, letter or email. Self-monitoring reports regarding effluent quality are evaluated each month and monitored against significance criteria of 20 to 40% beyond the authorized limit. A facility that exceeds permitted limits on a monthly basis will have an inspection conducted to assess the overall compliance status and the most effective means to return the facility to compliance. If a facility is failing to meet permit limits due to faulty or deteriorating treatment plants or improper operations, a formal enforcement action will be initiated to assist the facility return to compliance. However, most violations do not result in formal enforcement actions and are resolved based on a



facility's response. In fact, most of the violations that are documented via letter request the permit holders to provide an explanation of how the violation occurred and what actions were taken to prevent the violation in the future. Most violations are resolved at the Program level through the corrective actions of the permit holders. There are approximately 300-500 unresolved violations at the permitted facilities.

During the reporting period, the Enforcement Division managed 85 Water Quality Act enforcement cases; 59 were ongoing from the previous period and 26 were new. Most of the cases were initiated for wastewater monitoring and reporting violations, and exceeding permit effluent limits. Twenty-three cases were closed during the reporting period and 53 remain under order. Three cases are in development, settlement offers have been provided to four violators, and one case has been vacated.

Because most of the violators are municipalities with outdated wastewater treatment systems, the DEQ chose to offer the communities administrative consent orders rather than issue unilateral orders with penalties. Most of the 53 cases under order are consent orders with a municipality that is under a compliance schedule to construct major upgrades to their wastewater treatment systems.

A total of \$405,845 in administrative penalties was collected during the reporting period. This money goes into the General Fund. ExxonMobil Pipeline Company (EMPC) agreed to pay a \$1,600,000 penalty violations caused by the July 2011 Silvertip Pipeline leak into the Yellowstone River. EMPC paid \$300,000 in cash and the remaining \$1,300,000 is being offset with Supplemental Environmental Projects (SEPs). The largest SEP, worth over \$800,000, involves the development of an area-wide contingency plan that will guide federal, state, and local entities along the Yellowstone River in their response to a future spill.

## **5. Quantitative Trend Information**

A notable water quality trend for the last two years is the decline in the number violations in relation to the increase in trainings, compliance assistance, and education and outreach provided throughout the state (training data is estimated for 2011). See **Graph T.5-1** on the following page for the information.

**Graph T.5-1. Graph of Annual Permit Violations Versus Training Events.**

