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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 2020 and 2021**

January 10, 2022

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## **Introduction - Compliance and Enforcement Overview**

This report is submitted by the Department of Environmental Quality (DEQ) to the Montana Environmental Quality Council as required by Section 75-1-314 of the Montana Code Annotated (MCA). The report summarizes the permitting, compliance assistance, and enforcement work conducted by DEQ during the FY2020 and FY2021 reporting period. The report is organized alphabetically by statute name. Information is presented in order of the reporting requirements listed below.

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 clear 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 a 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 obtain and 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 violation.

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

Most of DEQ's enforcement actions are resolved administratively, not in court. DEQ generally proposes a settlement within a consent order, which allows both parties to come to an agreeable corrective action and/or penalty for the violation(s). Certain statutes and circumstances lead DEQ to issue unilateral administrative orders that include corrective action and/or assess a penalty. These unilateral orders may be appealed before the Board of Environmental Review. 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 Program. Staff track and manage the response to the calls and investigate to determine if the complaint is valid. If valid, staff make phone calls when possible and send warning or violation letters to inform the responsible party of what is required to correct the violation in a reasonable timeframe.

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

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

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

The ACP provides compliance assistance by:

- providing on-site asbestos regulatory guidance at non-permitted sites;
- performing inspections at 77 sites in FY2020 and 71 sites in FY2021;
- delivering formal presentations throughout 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; improving work practices; and promoting licensing efficiencies; and worked with other elements of DEQ to implement the recommendations of the Asbestos Advisory Group. ACP worked with Enforcement and Legal to develop an enforcement response guidance document (R9). ACP also worked with the Department of Labor and Industry (DLI) to identify state building code applicants potentially subject to the ACA to promote compliance before any impact to building materials occurs (R1 and R6).

### **2. Regulated Community**

The regulated community under the 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 ACP issued 476 asbestos permits during FY2020 and 380 permits during FY2021. ACP also processed 756 accreditations in FY2020 and 665 accreditations in FY2021.

### **3. Noncompliances**

ACP inspects asbestos projects and will investigate suspected noncompliance by asbestos permit holders related to performance of asbestos projects, storage of asbestos-containing material, or maintenance of records related to asbestos projects pursuant to §75-2-518, MCA. When DEQ believes a violation of the Montana Asbestos Control Act, rules adopted under that Act, or the terms and conditions of a permit issued under that Act have occurred, it may initiate informal enforcement activities, including warning and violation letters or formal enforcement actions. Formal enforcement activities, including Administrative Orders, Judicial Orders, assessing administrative or civil penalties may be pursued by DEQ's Enforcement Program.

### **4. Enforcement Efforts**

The Enforcement Program received 131 citizen complaints regarding violations or questions about the ACP regulations. Of those complaints:

- 20 were closed by referral to the Asbestos Control Program;
- 5 were closed referred to outside agencies;
- 10 were closed with no violations;

- 57 were actively managed and closed; and
- 39 remain active.

The Enforcement Program wrote 61 warning letters and 50 violation letters regarding the requirement to get an asbestos inspection prior to renovation or demolition, and the requirement to file an asbestos NESHAP prior to demolition.

During the reporting period, the Enforcement Program closed 1 Asbestos Control Act enforcement case that was ongoing from the previous reporting period and managed one case from the current reporting period. The violation included the failure to obtain an asbestos project permit prior to conducting an asbestos project. An administrative penalty of \$2,875 was collected during the reporting period, going into the General Fund.

## **5. Quantitative Trend Information**

During FY2021 ACP conducted fewer inspections due to staffing shortage and COVID-19.

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

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

The Air Quality Bureau implements the requirements of the Montana and Federal Clean Air Acts. To that end, the Air Quality Bureau conducts a breadth of activities including planning, monitoring, permitting, and compliance assurance. Common to all those activities is an underlying bureau foundation that prioritizes the provision of assistance to regulated facilities to attain and maintain compliance with air quality rules and requirements, and to provide education on the “what” and “why” of those requirements to both the regulated community and the public. During FY2020 and FY2021 the Air Quality Bureau provided compliance assistance, education, guidance, and outreach through:

- Communication during facility inspections;
- Annual emissions inventory reviews; report reviews and responses;
- Permitting and registration processes;
- Responses to requests for information;
- Communication during facility upset events and throughout enforcement actions;
- Investigations into air quality complaints;
- Implementation of a new registration program for portable sources;
- Prepared presentations to various groups;
- Presentation of air quality impact data via the internet; and
- Reports via the news media.

Air Quality Bureau staff used these opportunities to explain regulatory requirements, suggest appropriate compliance procedures, discuss anticipated or upcoming federal regulations, remind stakeholders of upcoming deadlines, discuss issues of concern, negotiate appropriate enforcement outcomes, and to solicit input. In addition, staff addressed public concerns by describing applicable rules and authorities; by explaining applicable permit and/or registration conditions, processes, and intended outcomes; and by providing background and context for current and

historic air quality challenges and responses. Air Quality Bureau staff also made informational and educational presentations to various groups on a variety of air quality topics.

## 2. Regulated Air Quality Community

The community of regulated air quality facilities generally consists of four broad categories of sources:

- STATIONARY FACILITIES.** In general, these facilities have the potential to emit greater than 25 tons per year of any one regulated air pollutant, but also includes all incinerators regardless of their potential to emit. The types of sources included in this category vary considerably in size and complexity and represent a diverse industrial mix such as: wood products processing; oil and gas production, storage, and processing; mining; manufacturing; power generation; and the storage and processing of agricultural crops. There are 1,473 stationary sources regulated in Montana as of December 7, 2021. Most require a Montana Air Quality Permit (MAQP) to operate, though regulated oil and gas well production sources can elect to register with the State of Montana instead of obtaining an air quality permit; 1,175 sources have chosen to pursue this more efficient option. Large stationary sources that have the potential to emit greater than 100 tons per year of any one regulated air pollutant, such as Montana’s four petroleum refineries, must obtain a Major Source Permit (Operating Permit) in addition to an MAQP. Facilities that have the potential to emit greater than 10 tons per year of any listed hazardous air pollutant generally must also obtain an Operating Permit.
- PORTABLE FACILITIES.** This category principally includes asphalt plants, concrete batch plants, and aggregate crushing and screening plants. There are 290 sources of this type regulated in Montana as of December 7, 2021. Historically, these facilities have each required an air quality permit to operate; however, the Air Quality Bureau has developed a registration program for most portable facilities similar to the registration program that is in place for oil and gas production facilities. This registration program began transitioning from permitting in April of 2019 with a focus on asphalt plants, concrete batch plants, and aggregate crushing and screening plants. The Air Quality Bureau experienced regulatory efficiency gains resulting from the streamlined registration process. There are 166 companies participating in the portable registration program and 289 register asphalt plants, concrete batch plants, and aggregate crushing and screening equipment.

Tables B.2-1 and B.2-2 provide a breakdown of the types and numbers of the stationary and portable categories of regulated air quality sources in Montana.

**Table B.2-1. State Regulated Air Quality Community Industrial Sources by Industry Type**

Source Type	Number of Sources
Agricultural Storage	19
<b>Asphalt Plants (Registered)</b>	59
Asphalt Plants (Permitted)	1
Concrete Batch Plants (Registered)	43
Concrete Batch Plants (Permitted)	0
Compressor Stations	85
Aggregate Crushing/Screening (Registered)	187



Aggregate Crushing/Screening (Permitted)	0
Incinerators	55
Manufacturing Facilities	36
Mines	27
Other	23
Power Generation Facilities	17
Petroleum Production (Registered)	1,175
Petroleum Production (Permitted)	5
Petroleum Refining	4
Petroleum Storage	25
Wood Products	9
<b>Total</b>	<b>1,770</b>

Data as of December 7, 2021

**Table B.2-2. State Regulated Air Quality Community Industrial Sources by Permit Type**

Permit Type*	Number of Sources
Montana Air Quality Permit (MAQP) Only	252
Major Source (Title V) Operating Permits	54
Oil and Gas Production Registrations	1,175
Portable Facility Registrations	289
<b>Total</b>	<b>1,770</b>

\*46 facilities have both an MAQP and an OP, and 8 facilities have only an OP. Hence, there is currently a total of 306 permitted facilities. Data as of December 7, 2021.

- **NON\_PERMITTED SOURCES.** This classification of regulated sources includes facilities that do not require an air quality permit or registration based on potential air pollutant emissions from distinct points, but that are still covered by specific regulations including Maximum Achievable Control Technology (MACT) standards and/or New Source Performance Standards (NSPS). These types of sources are frequently referred to as “area sources,” and include facilities such as gasoline filling stations, dry cleaners, and automotive paint booths. Efforts were made in 2008 and 2011 to identify and contact affected sources in this category. The 2011 effort identified 447 affected sources. The number of facilities in this category will vary from year to year.
- **OPEN BURNING.** These sources are required to obtain a permit to combust certain materials directly into the open air, such as for purposes of forest or vegetation management. The Air Quality Bureau currently oversees 11 Major Open Burning Permits that are issued to conduct prescribed wildland open burning. Permittees in this category are governmental entities such as the United States (U.S.) Forest Service and Montana Department of Natural Resources and Conservation, but private entities such as SPP Montana, LLC (formerly Weyerhaeuser) are also included. The Air Quality Bureau also oversaw 30 Minor Open Burning Permits in 2020 and 41 in 2021. The Minor Open Burning Permits are conditional burn permits that are required for licensed landfills to burn untreated wood waste, for other companies to burn wood byproduct trade wastes, and for firefighters to conduct training activities. Minor Open Burning Permits are also required for

Christmas tree disposal and for commercial filming activities. No permits for Christmas tree disposal were issued in 2020 and 2021 and one permit for commercial filming was issued during 2020 and 2021.

Table B.2-3 provides a summary of all four categories (stationary, portable, area, and regulated open burning) of air quality regulated sources.

**Table B.2-3. State Regulated Air Quality Community Regulated Entities by Source Category**

<b>Category Type</b>	<b>Number of Sources</b>
Stationary Sources	1,473
Portable Sources	297
Area Sources*	447
Major Permitted Open Burners	11
Minor Permitted Open Burners	41
<b>Current Total of all Regulated Entities</b>	<b>2,269</b>

\*Data from 2008 and 2011. The current number of area sources is likely much higher than what is listed here. All other data as of December 7, 2021.

### 3. Noncompliance

Noncompliance situations are documented actions at a facility or a company that are not in conformance with specific air quality requirements. These situations are typically discovered through the Air Quality Bureau’s review of industrial self-monitoring reports, permit applications, or registrations; from on-site inspection observations; and from citizen complaints. The Air Quality Bureau uses a wide range of responses to noncompliance based on the significance or repetition of the situation. Normal responses to noncompliance actions by the bureau include:

- An email, phone call, or in-person discussion to offer compliance assistance or redirection;
- A letter documenting noncompliance and recommending corrective action;
- A Warning Letter documenting noncompliance and requesting a response;
- A Violation Letter documenting noncompliance and requesting a response; and/or
- An enforcement action requiring corrective action and/or assessing a financial penalty.

The significance of a violation is dependent upon several factors, such as the air quality impact of the violation, the type of violation, the frequency and duration of the violation, the size of the facility, and the compliance history of the facility or company. Areas of marginal compliance, administratively minor violations, or industry-wide noncompliance are often documented in correspondence other than a formal warning or violation letter. Moderately significant violations are typically documented in a warning letter, and more significant violations are normally documented in a violation letter.

Compliance assistance is offered to facilities whenever practical. As an example of compliance assistance, the Air Quality Bureau 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 emails are sent to let the companies know of their obligations. Only

after these efforts have been taken, with no response from the facility, does the bureau typically send violation letters to facilities. Compliance assistance is also provided through interactions with facilities about inspections, annual emissions inventory reviews, report reviews and responses, permitting and registration processes, and requests for information.

Compliance assistance actions are an everyday activity of the Air Quality Bureau, and a record of the numbers of those actions and associated informal communications is impractical to estimate. In contrast, the issuance of warning and violation letters is a more formal and documented process, and records of those actions are maintained and may be communicated. Table B.3-1 provides a summary of the numbers of warning and violation letters issued by the Air Quality Bureau to air quality facilities during FY2020 and FY2021.

**Table B.3-1. Air Quality Warning and Violation Letters issued to Regulated Facilities**

	<b>FY2020</b>	<b>FY2021</b>
<b>Air Program Regulated Facilities (Total)</b>	<b>1,727</b>	<b>1,692</b>
<i>Permitted Facilities</i>	<i>378</i>	<i>366</i>
<i>Registered O&amp;G Well Facilities</i>	<i>1,198</i>	<i>1,175</i>
<i>Registered Portable Facilities</i>	<i>151</i>	<i>151</i>
<b>Warning/Violation Letters Issued<sup>1</sup></b>	<b>29</b>	<b>15</b>
<i>Permitted Facilities</i>	<i>19</i>	<i>12</i>
<i>Registered O&amp;G Well Facilities</i>	<i>9</i>	<i>0</i>
<i>Registered Portable Facilities</i>	<i>1</i>	<i>3</i>
<b>Number of Field Inspections</b>	<b>116</b>	<b>78</b>
<i>Permitted Facilities</i>	<i>53</i>	<i>67</i>
<i>Registered O&amp;G Well Facilities</i>	<i>53</i>	<i>0</i>
<i>Registered Portable Facilities</i>	<i>10</i>	<i>11</i>
<b>WL/VL from Field Inspections (Rate)</b>	<b>4 (3.5%)</b>	<b>4 (5.1%)</b>
<i>Permitted Facilities</i>	<i>3 (5.7%)</i>	<i>1 (1.5%)</i>
<i>Registered O&amp;G Well Facilities</i>	<i>0 (0.0%)</i>	<i>0 (0.0%)</i>
<i>Registered Portable Facilities</i>	<i>1 (10.0%)</i>	<i>3 (27.3%)</i>
<b>Number of File Reviews<sup>2</sup></b>	<b>1,004</b>	<b>1,048</b>
<i>Permitted Facilities</i>	<i>817</i>	<i>891</i>
<i>Registered O&amp;G Well Facilities</i>	<i>50</i>	<i>6</i>
<i>Registered Portable Facilities</i>	<i>137</i>	<i>151</i>
<b>WL/VL from File Reviews (Rate)</b>	<b>25 (2.5%)</b>	<b>11 (1.0 %)</b>
<i>Permitted Facilities</i>	<i>16 (2.0%)</i>	<i>11(1.2%)</i>
<i>Registered O&amp;G Well Facilities</i>	<i>9 (18.0%)</i>	<i>0 (0.0%)</i>
<i>Registered Portable Facilities</i>	<i>0 (0.0%)</i>	<i>0 (0.0%)</i>

1. Notices of Noncompliance based on issue date of warning and violation letters.

2. File reviews consist of semi-annual report reviews, quarterly report reviews, source test reviews, annual production information review, Registration Form reviews, etc.

Of the 44 total warning and violation letters issued by the Air Quality Bureau in FY2020 and FY2021, zero remain open or unresolved. The Air Quality Bureau pursued 11 violation letters with the Enforcement Program for further action as discussed in Section 4 below. Zero additional enforcement actions were pursued by the Air Quality Bureau and the Enforcement Program without beginning with a violation letter. No warning letters were referred to the Enforcement Program.

Direct representation of the percentage rate of compliance or noncompliance at any facility, company, or industry class, or representation of compliance trends over several years are not functions of Table B.3-1 and should not be inferred from it. This is true for the following reasons:

- Most facilities are not inspected annually. The noncompliance rates shown above are determined by comparing the number of facilities issued a violation/warning letter within the fiscal year against the number of facilities inspected/reviewed, rather than against the total number of permitted/registered facilities. Depending on complexity and the significance of compliance challenges, a given facility may be visited by bureau staff several times in a given year, while others are not visited at all for several years. More complex facilities are required to submit a large number of compliance reports that must be reviewed, while others may require very few. Consequently, the numbers in the table present a description of the actual work performed by the Air Quality Bureau and reflect the numbers of staff positions filled or vacant within the indicated timeframe, but not necessarily a complete representation of the actual measured rate of compliance or noncompliance of all permitted/registered sources in Montana.
- Each inspection or report review represents a limited compliance snapshot. The snapshot may not represent long-term or overall air quality compliance. Individual warning or violation letters differ in the timeframes they address and could correspond to violations that occurred from time periods ranging from hours to days or longer. The table represents numbers of warning or violation actions taken by the Air Quality Bureau, but not the length of time in the year that a facility or company was out of compliance. In addition, a field inspection or file review action might occur in one fiscal year, while a corresponding warning or violation letter may be issued in a subsequent fiscal year. The resulting rate of noncompliance does not directly correlate to a given calendar period.
- Numbers of compliance actions are not a reliable indicator of actual impacts to air quality or the environment. As discussed above, warning and violation letters are appropriately issued for a range of noncompliance severities. For example, failure to register or to submit a report within a required timeframe are both actions of noncompliance that may result in a warning or violation letter, as are failures to install or operate required control equipment, or emissions of air pollutants in excess of allowable limits. Though those actions are all counted in the table above, the potential or actual impacts to Montana's citizens and environment can be considerably different.

Table B.3-1 does not represent the total of the Air Quality Bureau's compliance actions. The bureau conducts many more compliance actions than those documented in warning or violation letters, often with very positive results. The table does not address non-permitted sources in Montana, or minor source facilities overseen by county air quality programs. Compliance actions addressing noncompliance at non-industrial sources (e.g., an action addressing a violation of the Open Burning Program) are not included in the table.

#### 4. Enforcement Efforts

The Enforcement Program received 225 citizen complaints regarding air quality. The primary complaints were dust, emissions, odors, and open burning. Of those complaints:

- 97 were referred to the Air Quality Bureau;
- 21 were referred to outside agencies;
- 1 was closed with not enough information;
- 2 were closed with no violation;
- 90 were actively managed and closed; and
- 14 remain active.

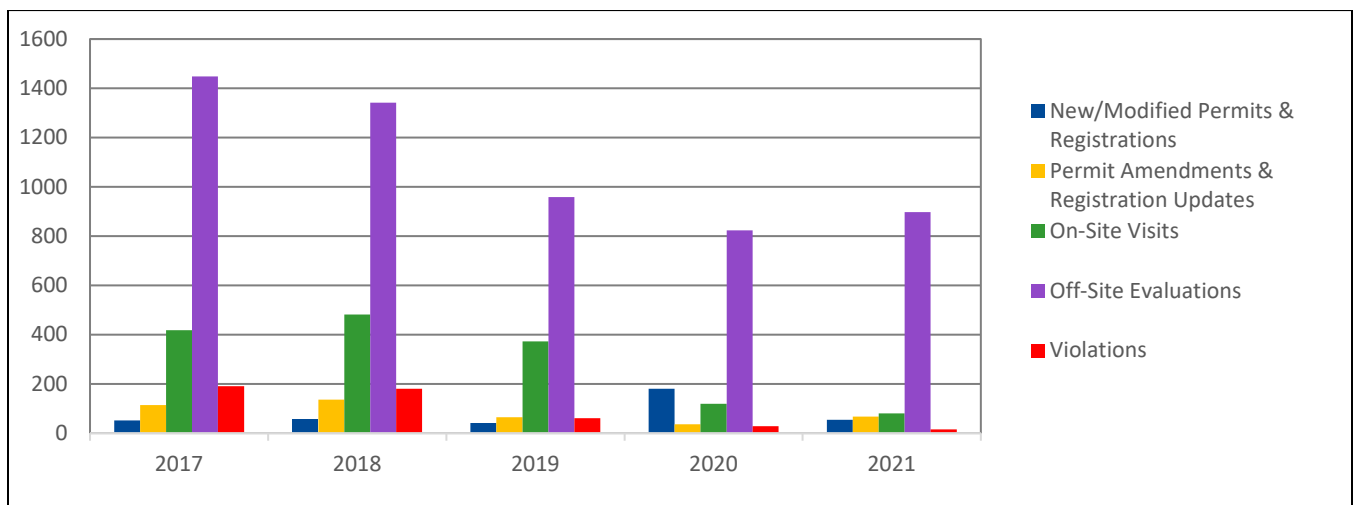
The Enforcement Program wrote 73 warning letters and 9 violation letters regarding dust, open burning, and emissions.

During the reporting period, the Enforcement Program managed 36 Clean Air Act enforcement cases. Twenty-seven cases were ongoing from the previous reporting period and 9 cases were developed during the FY2020 and FY2021 reporting period. Several ongoing cases are longstanding federal enforcement cases that DEQ signed onto under a consent decree. The primary violations addressed by the enforcement actions during this reporting period involved failure to permit or register equipment, failure to control volatile organic compounds at oil and gas sites, and exceeding permit emission limits. As of the end of this reporting period, 1 case was withdrawn, 10 were under order, 3 were referred, and 21 cases had been closed. A total of \$398,770 in administrative penalties were assessed during the reporting period. Of the assessed penalties, a total of \$224,887.50 was collected during the reporting period. Additionally, \$161,500 in civil stipulated penalties were collected during the reporting period, going to the Alternative Energy Revolving Loan account.

#### 5. Quantitative Trend Information

Figure B.5-1 provides a graphic representation of the trend of numbers of industrial source Air Program compliance activities over the last five fiscal years.

**Figure B.5-1. Numbers of Industrial-Source Air Quality Compliance Activities Over Time**



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

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

The Waste Management and Remediation Division's State Superfund Unit (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 or other programs. 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 persons (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 of soil can be accomplished in less than five years and groundwater in less than ten years. The Controlled Allocation of Liability Act (CALA), also part of CECRA, provides for allocating liability where liable persons can complete cleanups and seek reimbursement of some cleanup costs from the Orphan Share Fund. Other provisions of CECRA allow noticed PLPs to conduct proper and expeditious cleanup at sites without the necessity of a DEQ order.

The Superfund Program also conducts stakeholder meetings to provide updates on rule and policy changes, legislation, or other information. The Superfund Program 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 175 listed sites in Montana, CECRA activities focus primarily on maximum and high priority sites. During FY2020 and FY2021, 1 site was delisted. Current resources only allow the Superfund Program to address 48 sites. For the actively addressed sites, 96 percent 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. During FY2020 and FY2021, one PLP failed to perform required operation and maintenance activities as outlined in its approved VCRA cleanup plan, and there were some PLPs that failed to pay DEQ's oversight costs and they were assessed interest. Superfund Program staff identify noncompliance issues during review of required documents and the monthly review of accounts receivable. However, site visits and public complaints may also identify other noncompliance issues.

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

The Enforcement Program received 4 complaints regarding CECRA facilities or potential facilities. Those complaints were referred to the Superfund Program and work with the PLPs is continuing.

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 Program 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. Failure to pay may stop work until payment is received or ultimately may lead to legal action. Consent decrees or administrative orders are in place for 16 CECRA sites. During the reporting period, the Superfund Program had ongoing judicial actions at 2 facilities.

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

No quantitative trend information can be developed. However, cooperation and quality of PLPs' documents and work efforts were maintained since the last reporting period. Lack of payment of DEQ's oversight costs is periodically an issue.

### **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; and
- 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 of hazardous waste, hazardous waste handlers, and used oil handlers. There are currently nine permitted treatment, storage, and disposal facilities and 1676 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 percent of permit holders are either in substantial compliance with MHWAs 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, but that does not pose a 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 are repeated instances of SVs. These may be forwarded to Enforcement Program staff if not resolved. The Hazardous Waste Program has 5 open violations.

**Table D.3-1. Hazardous Waste Violations**

<b>Violations</b>	<b>FY2020</b>	<b>FY2021</b>	<b>Open</b>
Secondary Violations	32	47	5
Significant Noncompliance	0	0	0

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

- 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 verbal informal responses issued in FY2020 and zero in FY2021.
- 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 FY2020, the Hazardous Waste Program issued 26 written informal responses and 28 in FY2021.
- 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. Zero violation letters were issued in FY2020 and FY2021.

### 4. Enforcement Efforts

The Enforcement Program received 46 citizen complaints regarding hazardous waste and used oil. Of those complaints:

- 6 were closed by referral to the Hazardous Waste Program;
- 3 were referred to an outside agency;
- 4 were closed with no violation;
- 26 were actively managed and closed; and
- 6 remain active; and
- 1 became an enforcement request.

The Enforcement Program sent 8 warning letters and 9 violation letters regarding improper management of used oil and hazardous waste.



During the reporting period, the Enforcement Program managed 4 MHWAs enforcement cases. Three cases were ongoing from the previous reporting period and 1 case was developed during FY2020. The violation for the case developed in FY2020 included unlawful disposal of hazardous waste without a permit. Two cases were closed during the reporting period. A total of \$10,000 in administrative penalties was assessed and collected during the reporting period.

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

No quantitative trend information can be developed because of the many variabilities which influence waste generation.

## **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 began in February of 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 provided technical guidance to transporters who registered with DEQ.

### **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 (a commercial autoclave), which is in compliance with the law and the applicable requirements of the Solid Waste Management Act. Currently there are three registered infectious waste transporters.

### **3. Noncompliances**

There were no violations of the Infectious Waste Act over the last two fiscal years. In FY2020 and FY2021, the Enforcement Program did not receive any complaints regarding the law.

Noncompliances are typically identified through citizen complaints, 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

### **4. Enforcement Efforts**

The Enforcement Program did not receive any complaints or cases regarding the Infectious Waste Act.

## **5. Quantitative Trend Information**

DEQ does not have or conduct systematic, quantitative trend analysis on infectious waste transporters at this time.

## **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 Talen 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;
- minimization of adverse environmental impacts;
- consistency with regional plans for expansion of the appropriate grid of the utility systems;
- the facility will serve the interests of utility system economy and reliability; and
- 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 provide 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 participate 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 monitor the construction of certified facilities to determine compliance with provisions set forth in a Certificate.

DEQ staff also review monitoring reports submitted periodically by regulated entities to determine Certificate compliance. In most cases where DEQ staff observe a condition that is believed to be a violation of a Certificate, the inspector will draw the attention of the regulated entity to the condition 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 certain generating facilities. Thirty-one facilities, several of which are listed in Section 1 above, were covered under MFSA during this reporting period.

### **3. Noncompliances**

In August of 2012, DEQ and PPL Montana (now Talen Montana) entered into an Administrative Order on Consent to address groundwater contamination from ash disposal ponds at the Colstrip generating facility. DEQ entered into the AOC pursuant to its enforcement authority under the Montana Water Quality Act and the Major Facility Siting Act. Administration of the AOC is ongoing.

### **4. Enforcement Efforts**

Administration of the August 2012 AOC with Talen Montana to address groundwater contamination from ash disposal ponds at the Colstrip generating facility continues. Site characterization and risk assessment is complete, including determination of cleanup criteria limits for the identified constituents of concern for 3 areas that require cleanup: the Plant Site, Units 1 & 2 coal ash ponds, and Units 3 & 4 coal ash ponds. All 3 areas have submitted remedy evaluations, and DEQ has selected remedies for 2 of the areas and conditionally selected a remedy for the third area. In December of 2020, Talen invoked dispute resolution concerning the selected remedy for Units 1 & 2 coal ash ponds. DEQ and Talen worked through dispute resolution in 2021 and reached a Settlement Agreement in October 2021 that retained DEQ's selected remedy for Units 1 & 2 coal ash ponds and provided deadlines for Talen to move forward into design. The Settlement Agreement also allows Talen to evaluate and design one additional remedy alternative concurrently with the DEQ-chosen remedy and have the opportunity to submit to DEQ a Request to Amend by October of 2023. While Talen designs the selected remedies for all three areas, they are also conducting interim actions to capture groundwater that is impacted by seepage from the ponds and properly close ponds according to EPA's Coal Combustion Residual rules. DEQ is providing oversight of the remediation activities and design.

As part of Settlement of a lawsuit, Talen committed to closure of Units 1 and 2 of the Colstrip Steam Electric Station, and Talen stopped operation of these units in January 2021. Pursuant to the Coal Fired Generating Unit Remediation Act (75-8-101 through 110, MCA), Talen Montana submitted a Remediation Plan to DEQ in August 2020 and the plan was approved by DEQ, after public comment, in December 2020. Remediation of the Units 1 & 2 was completed to the extent practicable and will be continued at a later date due to proximity of the operations buildings and structures to Units 3 & 4, which are still in operation.

During the 2021 legislative session 75-8-110, MCA, was added to the Coal Fired Generating Unit Remediation Act and requires the owners of the plant to conduct a water feasibility study to evaluate costs and infrastructure needs that the local government, City of Colstrip, would require if the plant was to close in order for the community to access the public water supply and water rights associated with that public water supply. In fall of 2021, DEQ facilitated meetings between the owners of Colstrip and local stakeholders to discuss the water feasibility study. DEQ will continue to facilitate these discussions and the water feasibility study will be submitted by the owners in November 2022 for DEQ to review.

### **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, and a dated federal energy policy. Future electrical transmission lines may increase soon as utilities in the western U.S. have made a concerted effort to increase integration of the Western electrical grid,

and the recently passed federal infrastructure bill has a focus on transmission line development and interconnection of the Western and Eastern electrical grids. A transmission line developer is in the early stages of a potential project to interconnect the western and eastern electrical grids, which would have a terminus in southeastern Montana. DEQ expects a MFSA application for this potential transmission line project in 2023. Also, DEQ expects to be part of the NorthWestern Energy hydroelectric relicensing process under FERC for the Thompson Falls dam in late-2023.

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

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

The Hard Rock Mining (HRM) Section of the Mining Bureau implements the Montana Metal Mine Reclamation Act (MMRA), the Montana Environmental Policy Act (MEPA), and the corresponding administrative rules on hard rock mining. The functions of HRM are: (a) administration of the Operating Permit Program, (b) regulation of hard rock mining and reclamation activities; (c) calculation of reclamation bonds; (d) reclamation of bankrupt or recently abandoned mine sites with forfeited or relinquished reclamation bonds; and (e) implementation of environmental review provisions of MEPA and MMRA. While still conducted by the Mining Bureau, the implementation of the Small Miner Exclusion Statement Program and Exploration Program is now conducted by the Field Services and Technology Section.

Compliance assistance is provided by HRM through a combination of interactions with the regulated entities, including discussion of (a) pre-application plans of study, (b) application review, (c) MEPA coordination, and (d) post-permit issuance inspection. HRM technical staff members also spend considerable time with the regulated entities discussing the implementation of the MMRA, including future permit amendments, and future permit revisions. Furthermore, staff regularly look for ways to implement the program more efficiently, while still meeting the intent of the MMRA. For example, in the past year, HRM staff have continued to make process and efficiency changes to the Small Miner Exclusion Statements, Exploration Licenses, and Operating Permit programs.

Identification and analysis of baseline data for the potentially affected environment is the first step in preparing an application for an operating permit. Consultation with the applicant on the development of this plan provides an opportunity for HRM staff to work with the mining company to “do it right the first time.” During the permit application review period, staff work with applicants so that they can develop a mine plan that complies with mining, air, and water laws. The consultation effort includes coordination with several other state and federal agencies to assist in identifying diverse resource areas that may be affected.

Compliance assistance continues after a permit is issued. HRM staff members conduct at least one inspection of every operating permit each year. Depending on the mine characteristics and the corresponding activity at a mine, additional inspections may be conducted to ensure adherence to the provisions in the permit. Inspection visits are also used to discuss details of future amendment and revision submittals. Staff members strive to become familiar with projects and to assist permittees in recognizing potential violations before a noncompliance occurs.

HRM staff members have also regularly participated in the Mine Design, Operations, and Closure Conference each year. The conference reflects a joint effort between DEQ, the US Forest Service, US Bureau of Land Management, Montana Tech, consultants, and industry sponsors to create a forum for discussion of MMRA topics.

**2. Regulated Community**

The regulated community for hard rock mining covers a broad spectrum. HRM regulates sources ranging from major international corporations to small partnerships and individuals with Small Miner Exclusion Statements.

HRM administers 73 operating permits for mines and associated facilities. Not all operating permits cover active mines. Some permits (i.e. multiple quarry permits) cover multiple mining sites.

**Table G.2-1. Metal Mine Reclamation Act Permits**

Status	Number
Active Permit w/Active Operations	49
Active Permits, but only for Reclamation Activities	5
Active Permits, but not Actively Operating	13
Active and Closed Permits with only ongoing Water Treatment	4
Suspended Permits	5
Total	73

The active operating permits include metal mines, limestone quarries, a gypsum mine, an iron ore mine, talc mines, and various rock product mines. DEQ oversees 77 active exploration licenses and roughly 189 Small Miner Exclusion Statements.

As of the date of this report, HRM was actively regulating 339 entities (permits, exploration licenses, and Small Miner Exclusion Statements). Many Small Miner Exclusion Statements and exploration sites may be inactive in any given year for a variety of reasons.

**3. Noncompliances**

Each operating permit site was visited at least once per year during FY2020 and FY2021. Due to staff limitations and an assessment of staff resource priorities, HRM staff do not visit every Small Miner Exclusion Statement site and exploration license site each year. Instead, HRM staff prioritize the Small Miner Exclusion Statement and Exploration License on-site visits with other program implementation duties, including the review of exploration license applications, the review of Small Miner Exclusion Statement submittals, the review/calculation of bonds, the development of environmental reviews, etc. During the reporting period, HRM staff regularly communicated with permittees, licensees, and small miner exclusion statement holders in the office and in the field about the requirements of the MMRA and the corresponding administrative rules.

**Table G.3-1. MMRA Facilities and Letters**

	<b>FY2020</b>	<b>FY2021</b>
MMRA Regulated Facilities (Total)	414	394
<i>Operating Permits</i>	71	77
<i>Exploration Licenses</i>	87	84
<i>Small Miner Exclusion Statements</i>	256	233
Minor Violation Letters/Violation Letters Issued	37	31
<i>Operating Permits</i>	27	26
<i>Exploration Licenses</i>	4	0
<i>Small Miner Exclusion Statements</i>	6	5

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

The Enforcement Program received 16 citizen complaints regarding the MMRA. Of those complaints:

- 12 were closed through referral to HRM
- 2 were closed with no violation; and
- 1 was actively managed and closed by the Enforcement Program; and
- 1 was referred to a county sanitarian.

The Enforcement Program wrote one warning letter during the reporting period.

During the reporting period, the Enforcement Program managed 21 MMRA enforcement cases. Ten cases were ongoing from the previous reporting period and eleven were new. Common violations of the MMRA included exceeding the limit of a Small Miner Exclusion Statement, engaging in mining activities without first obtaining a final operating permit, operating outside the boundaries of an operating permit, and failing to complete reclamation activities. As of the end of the reporting period, 10 cases were under order, 1 was under appeal with the BER, and 5 cases had been closed. A total of \$77,130 in administrative penalties and \$150 in administrative stipulated penalties were collected during the reporting period, going into the Environmental Restoration and Rehabilitation Account.

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

The number of new mine operating permit applications is similar to year's past. HRM staff worked on four new mine operating permit application during the evaluation period (Bullock Contracting LLC, Huppert Brothers Construction Inc., Montana Frontier Sandstone LLC, Potentate Mining LLC). All of the new operating permit applications were a result of compliance assistance to bring existing Small Miner Exclusion Statement sites that had extended their disturbance areas beyond five acres into compliance with the MMRA.

The number of mines in closure/reclamation or some form of closure/reclamation remains similar to the previous reporting period. No specific trends are evident for Small Miner Exclusion Statement holders or exploration license holders.

## **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 training providers and certified contractors conducting cleanups following meth manufacturing evidence in properties. In FY2020, the Meth Program certified 17 cleanup contractors. In FY2021, the Meth Program certified 11 cleanups. There is only one approved training provider in Montana. The requirements of the Methamphetamine Cleanup Act are voluntary and the majority of the public follow the guidance issued by the Meth Program.

### **3. Noncompliances**

There were no noncompliances during FY2020 and FY2021. 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.

### **4. Enforcement Efforts**

The Enforcement Program did not receive any complaints pertaining to the Methamphetamine Cleanup Act.

In FY2020 and FY2021, guidance information continued to be shared with individuals who have elected to participate, including the standards for appropriate cleanup of contaminated properties. As the Methamphetamine Cleanup Act is voluntary, no formal enforcement actions have been initiated.

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

The contaminated property list indicates 142 properties remain to be cleared.

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

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

The Motor Vehicle Recycling and Disposal Program MVR&DP: licenses and regulates motor vehicle wrecking facilities (MVWFs) and motor vehicle county graveyards; 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 MVR&DP 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; and
- 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 FY2020, there were 147 licensed motor vehicle recycling facilities and in FY2021 there were 146. During the reporting period there were 51 county MVWFs.

The estimated proportion of the regulated community in full compliance with the requirements of the MVRDA is 90 percent. A facility in violation of the statute is given a compliance date to have the violation corrected. The MVWF 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 FY2020 and FY2021, Motor Vehicle Recycling and Disposal Program identified:

- no major violations – (violations taking up to 15 days to correct);
- no moderate violations – (violations taking up to 10 days to correct); and
- and 42 minor violations – (violations taking up to five days to correct).

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.

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

## **4. Enforcement Efforts**

The Enforcement Program received 31 citizen complaints regarding motor vehicle recycling and disposal. Of those complaints:

- 4 were closed by referral to the MVR&DP;
- 3 were referred to an outside agency;
- 10 were actively managed and closed; and
- 14 remain active.

The Enforcement Program sent 8 warning letters and 16 violation letters regarding operating a motor vehicle recycling facility without a license and not shielding junk vehicles from public view.



During the reporting period, the Enforcement Program managed 5 MVRDA enforcement cases. All 5 cases were ongoing from the previous reporting period. The violations addressed by the enforcement actions included operating without a license. As of the end of this reporting period, 1 case was in litigation, 4 cases were under order, and 1 case was closed. \$1,000 in administrative penalties were collected during the reporting period, going into the General Fund.

## **5. Quantitative Trend Information**

Over FY2020 and FY 2021, the number of license applications received for new wrecking yards has decreased, likely because the price of scrap metal has fluctuated dramatically. These fluctuations have led to an increase in the number of cars hauled by county programs. The number of direct hauling contracts administered by the MVR&DP has remained the same at 7.

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

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

The Opencut Mining Section (Opencut Section), which is part of DEQ's Mining 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 Section provides compliance assistance and education, both in person and through information available on our website. The Opencut Section's greatest source of compliance assistance and education is through pre-application meetings. DEQ staff meets 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 Section staff also provide trainings for operators to help them 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 Section, as do all 56 counties and some state agencies (mainly the Montana Department of Transportation and Montana Department of Natural Resources and Conservation). A few federal agencies also have permits.

The Opencut Section, at any given time, has: roughly 1,850 permitted operations; 100 pending permit applications, amendments, and assignments; and 10 to 25 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 Section's resources are focused on meeting statutory deadlines associated with permitting activities. Subsequently, the Opencut Section does not have resources to conduct regular inspections of the approximately 1,850 permitted mines, and has no current information relating to the percentage of the regulated community that is in compliance. However, with the passage of HB599, Opencut expects to be able to conduct compliance inspections in 2022.

### **3. Noncompliances**

Opencut manages non-compliance using their “How To” document to help guide them in a consistent and legally defensible manner. For non-compliance violations not requiring enforcement, Opencut does the following:

- Inspects Site (when applicable, exception being inadequate bond)
- Prepares violation letter with timelines by which the Operator can bring the site back into compliance and avoid enforcement
- Calls Operator to inform them of a forthcoming violation letter and to answer questions the Operator may have
- Sends violation letter giving operator 15-days to refute violation.

### **4. Enforcement Efforts**

The Enforcement Program received 59 citizen complaints regarding the Opencut Mining Act. Of those complaints:

- 37 were closed by referral to the Opencut Section;
- 3 were referred to an outside agency;
- 5 were closed with no violation;
- 1 was closed with not enough information;
- 8 were actively managed and closed; and
- 7 remain open.

The Enforcement Program sent 5 warning letters and 1 violation letter regarding mining without a permit.

During the reporting period, the Enforcement Program managed 70 Opencut Mining Act enforcement cases. Thirty-nine cases were ongoing from the previous reporting period and 31 were initiated during the FY2020-FY2021 reporting period. The majority of new cases were sites with expired reclamation dates, in which operators chose to work with the Enforcement Program and Opencut Section to re-permit sites under Administrative Consent Orders. The Administrative Consent Orders allowed operators to continue operating during the re-permitting application process. As of the end of this reporting period, 21 cases were under order, 7 were in case development, 2 were under BER appeal, and 37 cases had been closed. A total of \$50,731.50 in administrative penalties were collected during the reporting period, going into the Environmental Restoration and Rehabilitation Account.

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

The Opencut Section’s permitting activity doubled from 2009 to 2012 (see chart below). This was a direct result of the oil boom in eastern Montana and western North Dakota. Although there is still activity in eastern Montana, the number of applications has diminished. The Opencut Section has seen a trend of applications near urban areas across Montana, which leads to greater permitting complexity especially when groundwater was involved. With the passage of HB599, much of this complexity has been reduced. Applications in these more populated areas also lead to increased public participation in the permitting process in the form of public comment and required public meetings.

**Table J.5-1 Annual number of Opencut Mining Applications**

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
170	141	189	265	323	259	238	229	210	149	150	152	142	157

## **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, reporting, and treatment requirements.

Public Water Program staff offer 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, the Public Water Monitoring Section sent out sampling reminder e-mails and pre-recorded telephone messages. Monitoring schedules were also sent out to all new systems and to systems that requested them. An electronic monitoring schedule tool with a “real time” interface is available on the website that reflects a system’s current monitoring status. It 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, conduct system assessments, and to evaluate overall system performance. These inspections and technical assistance visits give the system the opportunity to discuss their specific needs and issues with DEQ staff on a one-on-one basis and the opportunity to fix issues under a corrective plan and timeline.

The Engineering Bureau reviews plan and specifications for conformance with minimum design standards. This helps to ensure long-term life-of-system components and minimizes the possibility of noncompliance problems related to system construction. The Engineering Bureau spends an estimated 30 percent 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 2,215 public water supply systems during the reporting period, which included 767 community systems, 299 non-transient non-community systems, and 1149 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**

#### Monitoring and Reporting Section

- Number of noncompliances (systems with one or more violations) - 1033.
- 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 - 53 percent.

#### Field Services Section

- Number of sanitary survey inspections - 542 (required every three or five years, depending on system classification).
- Number of noncompliances (systems with at least one significant deficiency) - 53 systems with 77 significant deficiencies
- Description of noncompliances and significance - 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 – 94.1 percent (includes systems with no significant deficiencies and those that repaired their significant deficiency – total 542 systems, 53 systems w/ sig def, 21 of the 53 have repaired the sig def leaving 32 systems with outstanding sig def).

The Public Water Program uses 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 Program 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.

### **4. Enforcement Efforts**

The Enforcement Program received 43 citizen complaints regarding public water supply law. Of those complaints:

- 40 were closed by referral to the Public Water Program;
- 2 were referred to outside agencies; and
- 1 was closed no violation.

During the reporting period, the Enforcement Program managed 76 Public Water Supply enforcement cases. Of the cases managed, 59 were ongoing from the previous reporting period and 17 were new cases. Enforcement actions were initiated to address a failure to monitor for a regulated contaminant, failure to install appropriate filtration or disinfection, and exceedance of a maximum contaminant level. As of the end of this reporting period, 28 cases were under order, 6 cases were referred to the EPA, and 36 cases had been closed. A total of \$7,023.50 in administrative penalties were collected during the reporting period, going into the General Fund.

## 5. Quantitative Trend Information

There does not appear to be any clear trend regarding the number of enforcement actions that occur each year however, there has been a slight increase in compliance rate for monitoring and reporting.

**Table K.5-1 Annual number of new Public Water Supply Cases 2012 through 2021**

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
40	18	27	33	20	10	13	7	15	2

## 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. Technical assistance is provided by phone, video chat or in the office. Staff interacts with applicants on a daily basis. To facilitate daily communications, staff members are assigned on-call duties.

The Subdivision Program has increased efforts to provide a better interface with applicants and a more streamlined process for submissions and review. A full comprehensive review of Subdivision Administrative Rules are underway that includes several design circulars. This work is scheduled to be complete and accepted prior to October 2022.

Formal education and training of contracted county reviewers on the new rules will occur after the formal adoption of the comprehensive rule update. Formal training opportunities will also be offered to the development and consulting community. Efforts taken at this level will increase consistency and set expectations for the reviewers and the applicants.

### 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 several years has been:

	FY15	FY16	FY17	FY18	FY19	FY20	FY21
<b>Applications</b>	682	687	718	710	690	730	816
<b>Lots</b>	2,363	2,495	2,178	2,663	2,397	2242	2244

### 3. Noncompliance

The most common noncompliance issue associated with the Sanitation in Subdivisions Act is 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.

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 Program 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.

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

The Enforcement Program received 144 Sanitation in Subdivisions Act complaints. Of those complaints:

- 14 were closed and referred to the Subdivision Program;
- 29 were closed and referred to outside agencies
- 26 were closed no violation;
- 14 were actively managed and closed; and
- 61 remain active.

The Enforcement Program sent 28 warning letters and 30 violation letters regarding the need to operate within the approved COSA, or to update the COSA.

During the reporting period, the Enforcement Program managed 7 Sanitation in Subdivisions Act enforcement cases. Four cases were ongoing from the previous reporting period and 2 new cases were developed during the reporting period. Enforcement action violations involved creating or operating a subdivision without the required certificate of subdivision approval (COSA). As of the end of this reporting period, 3 cases were under order, 1 case was under BER appeal, and 1 case had been closed. A total of \$7,000 in administrative penalties were assessed during the reporting period, going into the General Fund.

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

There is a slight trend up in the number of informal complaints being filed regarding COSA, but there is no clear trend regarding the number of enforcement actions that occur each year.

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

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

The Septic Tank Pumper Program (STP) regulates solid and liquid wastes removed from septic tanks, grease traps, and sump pumps, while also regulating the pumpers and land application sites.

The STP 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 (not conducted during 2020-2021 due to COVID-19);
- responding to thousands of calls and emails during the reporting period;

- inspecting at least 25 percent of the land application sites each year; and
- staffing the Septic Pumper Advisory Committee (committee to be re-established in 2022).

## **2. Regulated Community**

In FY2020, the regulated community consisted of 154 licensed pumpers and 177 land application and disposal sites. In FY2021, the regulated community consisted of 156 licensed pumpers and 185 septage land application and disposal sites. The STP estimates that 87 percent of the regulated community is in full compliance with the requirements of the septage laws.

## **3. Non-compliances**

In FY2020 and FY2021 there were six major and four minor violations identified through site inspections. All the violations were corrected prior to the license renewal period, with the exception of FY2021 violations which are still open.

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

The Septic Program does a regular inspection cycle of all licensees and land application sites. Violations are documented in an inspection report and result in a 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.

## **4. Enforcement Efforts**

The Enforcement Program received 9 citizen complaints regarding septic disposal and licensure laws. Of those complaints:

- 6 were closed by referral to the Septic Program;
- 2 were actively managed and closed; and
- 1 remains closed

During the reporting period, the Enforcement Program managed 2 ongoing Septage Disposal and Licensure Law enforcement cases. The cases were initiated for pumping without a license and both cases are under order. No penalties were paid during the reporting period. Penalty payments would have gone to a Special Revenue Account for Environmental Rehabilitation and Response.

## **5. Quantitative Trend Information**

In FY2020 and FY2021, the availability of environmentally suitable land application sites in western Montana continues to be limited, which requires the regulated community to find

alternatives for waste disposal. In FY2021, the Septic Tank Pumper Program has increased efforts to inspect existing sites to make up for setbacks caused by COVID-19. Additional emphasis has been placed on ensuring that septage is not over-applied and that litter does not become an unmanageable problem. Soil samples are collected periodically in accordance with the Septage Land Application Monitoring project to verify available nitrate levels. The volume of septage in eastern Montana counties has stabilized and or decreased due to the reduction in oil and gas exploration activities.

## **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, waste 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; and
- 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 FY2020 and FY2021, the regulated community under the Solid Waste Program consisted of:

- 81 solid waste management facilities, including municipal solid waste landfills, construction and demolition waste landfills, inert material landfills, clean wood waste burn sites, and resource recovery facilities;
- 39 composters broken down into four large commercial composters, 24 small composters, and 11 animal composting operations;
- 11 waste transfer stations;
- three full-time and 19 one-time landfarms for petroleum contaminated soils and sump solids;
- 33 recycling and electronic waste collection facilities.

The Solid Waste Program estimates that 91 percent of the regulated community was in full compliance with the SWMA during FY2020 and FY2021.

### **3. Noncompliances**

During FY2020 and FY2021, the Solid Waste Program identified:

- 5 major violations, and
- 10 minor violations.



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

The Enforcement Program received 121 citizen complaints regarding solid waste. Of those complaints:

- 20 were referred to the Solid Waste Program;
- 15 were referred to outside agencies;
- 2 were closed with not enough information;
- 3 were closed with no violation;
- 54 were actively managed and closed; and
- 27 remain active.

The Enforcement Program sent 13 warning letters and 36 violation letters regarding illegal dumping or improper management of solid waste without a license.

The Enforcement Program received notice of 356 spills impacting soils. Of those spills:

- 36 were closed referred to the Waste Management and Remediation Division;
- 7 were closed referred to outside agencies;
- 6 were closed not enough information;
- 6 were closed no violation;
- 174 were actively managed and closed; and
- 127 remain active.

The Enforcement Program sent 7 warning letters and 299 violation letters regarding spills impacting soils. Most of the letters required hiring a qualified consultant to conduct cleanup and send a cleanup report.

Ten spills from the previous reporting period were escalated to formal enforcement during the current reporting period for failure to cleanup the sites.

The Enforcement Program also received notice of 134 pipeline releases. Of those releases:

- 130 were closed referred to outside agencies
- 1 was actively managed and closed; and
- 3 remain active.

During the reporting period, the Enforcement Program managed 17 Solid Waste Management Act enforcement cases. Seven cases were ongoing from the previous reporting period and 10 cases were initiated during the FY2020-FY2021 reporting period. The majority of cases were initiated for operating a solid waste management facility without a license, improper disposal of solid waste, and failure to cleanup fuel spills. As of the end of this reporting period, 12 cases were under order, 2 cases were in litigation, and 2 cases had been closed. A total of \$30,173 in administrative penalties were assessed during the reporting period, but no penalties were collected. Payment would have gone to a Special Revenue Account for Solid Waste Management.

## **5. Quantitative Trends**

The Solid Waste Program received two complete applications for new landfills and one application for the expansion of an existing facility. The Solid Waste Program also issued eight licenses for one-time collection events for household hazardous wastes and electronic wastes statewide.

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

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

The Coal Mining Section inspects mining operations according to the 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 Coal Mining Section uses routine inspections to observe mining activities, promote compliance, highlight achievements, and provide education. Coal Mining Section 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 an 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 Mining Section has nine active coal mining permits, one is an underground longwall operation and the others are open pit strip mining operations. Additionally, the Coal Mining Section oversees the reclamation process on three inactive coal mining permits. Total bond held for the coal mining activities is approximately \$480,647,687.

The Coal Mining Section 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 seven active coal prospecting permits. There are currently no uranium mining activities in the state.

### **3. Noncompliances**

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

During the FY 2020 and FY 2021 reporting period, the Coal Mining Section issued three Notices of Noncompliance (NON). All three NONs were abated by the permittee and resolved with DEQ during the reporting period. No Cession Orders (major or significant violations that meet the definition of imminent harm) were issued. At the end of the reporting period, there are no unresolved or outstanding Notice of Noncompliances (NONs).

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

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

The Enforcement Program received 3 citizen complaints. All 3 were referred to the Coal program.

During the reporting period, the Enforcement Program managed a total of 4 coal mining administrative enforcement cases. At the end of the reporting period, 1 case is under BER appeal, 1 is under order, and 2 were closed. A total of \$78,575 in administrative penalties were collected during the reporting period. Penalty payments go to the General Fund.

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

The Coal Mining Section has had a relatively stable regulated community of seven operators over the previous ten years. During the reporting period, there are two active applications for mine expansion (amendment). Most of the approved major permitting actions were appealed to the Board of Environmental Review.

### **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, installers, and removers, removers only, and conducting regular oversight inspections of licensed compliance inspectors.

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

In FY2020 and FY2021, the regulated community under the Installer and Inspector Licensing and Permitting law consists of 90 licensees as follows:

- 49 installers/removers;
- One cathodic protection licensee;
- 6 (3 individuals and 3 companies) cathodic protection designers
- 11 removal only; and
- 23 compliance inspectors.

All 90 licensees are in compliance with the law.

#### **3. Noncompliances**

In FY2020 and FY2021, the UST Licensing and Permitting Program did not identify any noncompliance for the provisions of the IILPA.

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.

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

The Enforcement Program did not receive any citizen complaints regarding the Underground Storage Tank Installer and Permitting Act.

During the reporting period, the Enforcement Program did not manage any ILLPA enforcement actions for failing to complete installation permit paperwork.

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

In FY2020 and FY2021, 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 ILLPA and the accompanying administrative rules.

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

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

The purpose of the Montana DEQ's Underground Storage Tank (UST) Leak Prevention Program is to protect human health and the environment by preventing releases of petroleum and hazardous substances from UST systems. The release of these regulated products into the environment threatens groundwater and drinking water resources and can cause explosive vapors to seep into confined spaces and occupied dwellings.

Montana has been administering the program in lieu of the Environmental Protection Agency (EPA) since 1989. Administering a state program is important because state government is closer to the situation in their domain and are in the best position to set priorities unique to Montana. Further, owners and operators in states that have an approved UST program do not have to deal with two sets of statutes and regulations (state and federal) that may be conflicting.

On July 15, 2015, EPA published final amendments to 40 Code of Federal Regulations Parts 280 and 281. These revisions strengthen the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. DEQ is required to update their administrative rules to be as stringent as EPA's 2015 regulations to maintain state primacy.

To maintain state primacy, DEQ's UST Leak Prevention Program published updated rules that are in accordance with EPA's UST 2015 regulations. DEQ provided stakeholder outreach before noticing the rules to explain to the new updates. DEQ's UST Leak Prevention program achieved state program approval (SPA) on October 15, 2019. SPA regulations set criteria for states to obtain the authority to operate in lieu of the federal program. State programs must be at least as stringent as EPA's. By maintaining SPA, DEQ has the lead role in UST program enforcement. Achieving SPA enables better communication with the regulated community and stakeholders.

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:

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

## 2. Regulated Community

The regulated community under the USTA consists of:

- 1,231 facilities, and
- 3,760 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
2011	520	85%
2012	446	78%
2013	434	83%
2014	452	81%
2015	462	80%
2016	494	89%
2017	431	91%
2018	391	94%
2019	445	86%
2020	500	79%
2021	476	80.5%

## 3. Noncompliances

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.

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.

## 4. Enforcement Efforts

The Enforcement Program received 54 citizen complaints regarding the Underground Storage Tank Leak Prevention Act. Of those complaints:

- 48 were referred to the UST Licensing and Permitting Program, or the majority to Petroleum Technical Section for fuel releases;
- 1 was referred to outside agencies;
- 3 were actively managed and closed; and
- 2 remain active.

The Enforcement Program wrote 4 warning letters for the compliance period.

During the reporting period, the Enforcement Program managed 33 Underground Storage Tank Act, Leak Prevention enforcement cases. Most of the enforcement actions were initiated to address operating without a permit, tank leak detection monitoring violations, and inspection violations. As of the end of this reporting period, 2 cases are in development, 1 is in litigation, 3 have settlement offers, 15 are under order and 10 were closed. A total of \$24,997.50 of administrative penalties were collected during the reporting period. UST penalties go into the General Fund.

## **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, Section 75-11-501, MCA**

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

The Remediation Division's Petroleum Tank Cleanup 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 provide 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 with work plans. 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 MUST News Web Log (BLOG).

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 4,781 releases have been confirmed from the beginning of the program through June 30, 2021. The UST Cleanup Program has resolved 3,861 of these releases. A total of 70 new releases were confirmed in FY2020 and FY2021. At the end of this reporting period, 920 releases were active and needing additional work to be resolved.

## **3. Noncompliances**

Noncompliance occurs when an owner or operator fails to comply with a cleanup requirement by missing a deadline or completing work efforts that do not meet appropriate quality required by law. The vast majority of owners and operators comply with the requirements to investigate and clean up releases.

The UST Cleanup Program uses a progressive enforcement strategy that includes warning letters, violation letters, staff field visits, or follow-up telephone calls to achieve voluntary compliance. Of the 916 active releases, the UST Cleanup Program issued 2 warning letters and 1 violation letter during the reporting period.

Cleanup work is progressing at all releases 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, the UST Cleanup Program conducted 2 emergency responses; petroleum contamination was found around a sewer line in Geraldine, and petroleum contaminants were detected in a secondary drinking water well in a Helena neighborhood.

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 bankrupt 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.

In addition to working with owners to find financial assistance, the UST Cleanup Program's progressive enforcement process works effectively to convince people to complete cleanup actions for which they are responsible. 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.

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

The Enforcement Program did not receive any complaints regarding UST leak cleanups.

During the reporting period, the Enforcement Program did not manage any UST cleanup cases.

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

There has been a general decrease in noncompliance during this reporting period compared to previous periods. This is a direct reflection of Senate Bill 96 passed in 2015 along with a one-time-only appropriation of \$7,000,000 during this same timeframe, and a 2019 Special Legislative Transfer of \$1,000,000 that allowed DEQ to address hazardous substance and petroleum release sites where there is no readily apparent person who is financially viable to conduct the cleanup. The UST Cleanup Program continues to work with owners of contaminated properties to find funding for cleanup.

### **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 FY2020 and FY2021, the Program held two Water and Wastewater Operator Advisory Council meetings per fiscal year. Training new operators about certification requirements is ongoing and the Program continually explores new methods, such as compact discs and internet-based courses to make training more accessible. The Operator Certification Program provides new operator training in conjunction with examination sessions.

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

There are approximately 767 community public water supply systems and 299 non-transient non-community public water supply systems that must retain the services of a certified operator. At present, there are also 344 public sewage systems that must retain the services of a certified operator. There are approximately 1,597 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 WTPOL 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; and, failure of the operator to act responsibly may result in a revocation of certification through an enforcement action.



#### 4. Enforcement Efforts

The Enforcement Program did not receive any complaints regarding the WTPOL law.

The Enforcement Program did not manage any WTPOL enforcement cases during the period.

#### 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 two fiscal years shows improved compliance with number of systems. That may be attributable to better program outreach to communities about the requirement to retain a certified operator and quality of operator training sessions.

**Table S.5-1: Systems Out of Compliance: Monthly Averages for FY2020- FY2021**

<b>Fiscal Year</b>	<b>Violation Letters Sent (Total/Year)</b>	<b>Systems Out of Compliance (Monthly Averages/Year)</b>
<b>2020</b>	16	2
<b>2021</b>	24	3

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

##### 1. Compliance Assistance and Education

The Compliance, Training, and Technical Assistance Program promotes compliance through inspections, training, and technical assistance and provided compliance assistance, education and outreach to both the regulated community and the public during FY2018 and FY2019 through the following:

The following tables list the number of compliance inspections and the number of facilities in compliance during FY2020 and FY2021.

**Table T.1-1.**

<b>Compliance Assistance and Education Activities FY2020</b>		
<b>Regulated Community</b>	<b>Inspections</b>	<b>In Compliance</b>
Surface Discharger	74	40
Ground Water Discharger	4	2
Storm Water Discharger	39	11

**Table T.1-2.**

<b>Compliance Assistance and Education Activities FY2021</b>		
<b>Regulated Community</b>	<b>Inspections</b>	<b>In Compliance</b>
Surface Water Discharger	66	39
Ground Water Discharger	8	1
Storm Water Discharger	93	29

## Inspections

- Conducted 117 compliance inspections in FY2020 and 167 in FY2021, covering Wastewater, Industrial, & General permits: Confined Animal Feedlot Operations (CAFOs), Storm Water (Construction & Industrial), Produced Water and Construction Dewatering.

## Training

- Provided storm water, domestic wastewater, sample collection and monitoring, and Wastewater Operator Certification trainings each year to regulated community.
- Formulated training programs to support ongoing operations for regulated community to better understand permitting requirements and minimize or prevent violations.
- Provided compliance outreach and education to non-regulated community and industries who may require permit coverage.
- Developed new Wastewater Operator Certification exam review training.

## Technical Assistance

- Provided customer service, consultation, information, and/or support to facilities during inspections to reduce impacts to water quality and improve compliance.
- Provided customer service, consultation, information, and/or support to facilities that have potential to discharge wastewater (unpermitted and permitted) regarding water quality rules and permit requirements to understand their role in compliance (on the phone, site visit and industry/trade organization conferences).
  - Assisted in completing application materials.
  - Offered informational public meetings to educate participants on changing permitting requirements.
- Provided assistance to Wastewater System Operators through operations and maintenance (O&M) inspections, conducted comprehensive performance evaluations at wastewater treatment facilities, provided technical expertise to wastewater operators when requested, performed optimization studies at sites, and provided industry information on innovative technologies and operational procedures to improve operations, maintenance, and performance of wastewater treatment systems.

## 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.

Permittees 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 FY2020 and FY2021 as seen in Tables T.2-1 and T.2-2.

**Table T.2-1. Status of Permits for FY2020**

Type	Total	Admin Extended	Effective	Expired	Not Needed	Pending	Terminated
Surface Water	423	85	234	7	4	16	77
Stormwater	1169	26	698	20	5	14	406
Groundwater	100	34	60	3	0	3	0
<b>Total</b>	<b>1692</b>	<b>145</b>	<b>992</b>	<b>30</b>	<b>9</b>	<b>33</b>	<b>483</b>

**Table T.2-2. Status of Permits for FY2021**

Type	Total	Admin Extended	Effective	Expired	Not Needed	Pending	Terminated
Surface	554	161	312	2	6	23	50
Stormwater	1641	26	1218	0	8	32	357
Groundwater	131	34	60	1	1	6	1
<b>Total</b>	<b>2326</b>	<b>221</b>	<b>1590</b>	<b>3</b>	<b>15</b>	<b>61</b>	<b>408</b>

Based on the number of violations formally documented in FY2020 and FY2021, the estimated compliance rate for the three general categories of permit holders averaged 32-38 percent. 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**

2020 PERMITS		1692		
Type	Total	Total Facilities in Violation	% Noncompliance	% Compliance
Surface Water	423	74	18%	85%
Stormwater	1169	66	6%	94%
Groundwater	100	56	56%	44%
2021 PERMITS		2326		
Type	Total	Total Facilities in Violation	% Noncompliance	% Compliance
Surface Water	554	154	28%	72%
Stormwater	1641	49	3%	97%
Groundwater	131	50	38%	62%

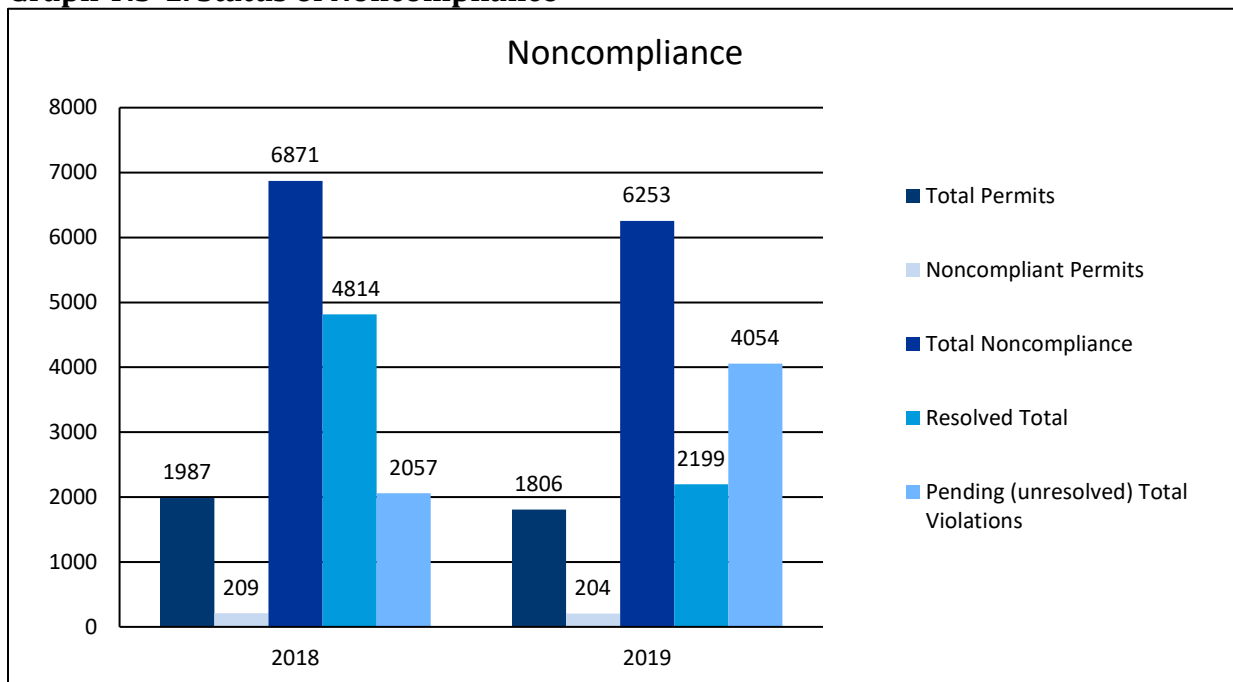
### 3. Noncompliances

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; management practice violations; failing to conduct required monitoring; failing to operate and maintain treatment systems; and not complying with recordkeeping requirements. Compliance, Training and Technical Assistance (CTTA) section staff in the Montana Pollutant Discharge and Elimination System (MPDES) program monitor the compliance status of all facilities during compliance inspections and by evaluating self-monitoring reports. Permitted facilities are required to submit self-monitoring reports via NetDMR, a web-based tool for regulated permittees to submit discharge monitoring reports (DMRs). Any facility that exceeds permit effluent limits or fails to submit self-monitoring reports receives a violation letter issued by the data management program within the CTTA.

A facility will have an inspection conducted in accordance with the CTTA section annual work plan to assess the overall compliance status. Any violations from the compliance evaluation inspection are documented in a violation letter that requests the permittee to provide an explanation of what actions were taken to prevent recurrence of the violations. Most violations are resolved at the program level through the corrective actions of the permittee. However, if a facility is consistently failing to meet permit limits due to failing treatment systems or improper operations, a formal enforcement action may be initiated by the CTTA section with the Enforcement Program to require the facility return to compliance.

A single permitted facility may have multiple violations. Graph T.3-1 below illustrates the status of noncompliances for FY2020 and FY 2021.

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



**4. Enforcement Efforts**

The Enforcement Program received 413 citizen complaints regarding the Water Quality Act. The primary complaints were: 233 water quality; 121 spills to surface or groundwater; 44 MPDES permits and 5 municipal waste water; 4 310 or 318 permits; and 6 Concentrated Animal Feedlot or Animal Feedlots. Of those complaints:

- 59 were referred to the Water Protection Bureau;
- 65 were referred to outside agencies;
- 13 were closed with not enough information;
- 47 were closed with no violation;
- 154 were actively managed and closed;
- 74 remain active; and
- 1 became an enforcement request.

The Enforcement Program sent 35 warning letters and 32 violation letters regarding discharge without a permit and placement of a waste where it will impact water quality.

The Enforcement Program sent 1 warning letter and 60 violation letters for fuel or other materials being spilled into surface or ground water.

The Enforcement Program sent 1 warning letter and 2 violation letters to Animal Feedlot and Confined Animal Feedlot Operations.

During the reporting period, the Enforcement Program managed 36 Water Quality Act enforcement cases. Twenty-one were ongoing from the previous period and seven were new. Most of the cases were initiated for discharge without a permit, wastewater monitoring and reporting violations, and exceeding permit effluent limits. As of the end of this reporting period, 1 has a settlement offer, 2 are under BER appeal, 18 are under order, and 10 were closed.

Many of the 18 cases under order are consent orders with municipalities under a compliance schedule to construct major upgrades to their wastewater treatment systems. Additionally, some of the cases were for unpermitted discharge to state waters or exceedance of permit limits for discharge to state waters.

For all Water Quality Act cases managed during the reporting period, a total of \$3,000 in Stipulated Administrative penalties was paid during the reporting period, going into the General Fund.

## **5. Quantitative Trend Information**

Compliance rates over the past two years are on a very slight upward trend moving from 86 percent to 87 percent of permitted facilities in compliance in FY 2020 and FY 2021, respectively. Overall, compliance rates for the past four years have averaged approximately 83.5 percent of permitted facilities in compliance and 16.5 percent noncompliant. The CTTA section continues to coordinate across DEQ for improved data management and reporting, as well as with the regulated community to increase compliance assistance efforts such as outreach, education and technical trainings offered throughout the state.