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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 2010 and 2011**

December 20, 2011

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## **A. Introduction**

### **Compliance and Enforcement Overview**

The Department of Environmental Quality (DEQ or Department) takes a progressive approach to compliance and enforcement. The initial step is to provide compliance assistance by informing the regulated community of the statutory and regulatory requirements to help them maintain compliance. Programs in the DEQ Permitting and Compliance Division, Remediation Division and Enforcement Division provide compliance assistance through education and training, communications at seminars, conferences, and meetings, and through publications, inspection reports, routine correspondence, and telephone conversations. The DEQ Planning, Prevention and Assistance Division implements business and community assistance programs and technical and financial assistance programs that help entities maintain compliance or assist them in returning to compliance.

Noncompliances or violations are discovered in three ways: site inspections, review of self-monitoring reports, and complaint or spill reports. Once a violation is documented, a warning letter is usually sent in response to a minor violation, and a violation letter is always sent for significant violations. Most programs have established criteria to determine when a violation is considered significant. The purpose of the warning or violation letters is to notify the responsible party that DEQ believes a violation has occurred, to explain the circumstances of the alleged violation, to describe what is required to return to compliance, and to invite the person to discuss the allegations.

The Enforcement Division operates a complaint clearinghouse to track the management of and the response to citizen complaints and spill reports submitted to DEQ. The Enforcement Division has managed over 900 complaints and spills each year, however for this reporting period the number dropped to 700-800 each year, likely attributable to the slower economy and fewer construction-related complaints. Approximately 16% of the complaints are associated with permitted facilities or sites subject to permit requirements and are therefore referred to the appropriate DEQ regulatory program for resolution. Ninety percent of the reports received are determined to be valid. The Enforcement Division issues warning or violation letters in response to valid complaints and provides compliance assistance to help responsible parties return to compliance. Up to 1% of the violations discovered during a complaint investigation may result in formal enforcement.

Formal enforcement actions are initiated when compliance assistance has been unsuccessful in achieving compliance or when the violations are deemed significant. Most formal enforcement actions are requested by the regulatory programs to address the most significant violations through an Enforcement Request process. Once a request is approved by the Director, the Enforcement Division staff, working with DEQ program staff and attorneys to write draft orders, calculate penalties, negotiate settlements and monitor compliance with DEQ orders. Over 90% of the Department's enforcement actions are administrative in nature where an order is issued that may include corrective action and/or a penalty assessment. Administrative orders issued by DEQ may be appealed before the Board of Environmental Review. Court complaints are filed in District Court but are generally reserved for the most recalcitrant violators.

During the reporting period, the Enforcement Division managed 664 formal enforcement cases. Four hundred eleven cases were carried over from the previous reporting period and 233 were new cases initiated during this reporting period. Most of DEQ's enforcement actions included a penalty and over \$650,000 was collected in penalties during the reporting period. Penalties are deposited into the General Fund or specific State Special revenue accounts as designated by statute.

This report is submitted to the Montana Environmental Quality Council pursuant to Section 75-1-314, MCA. The report is organized by bureau name and the statute(s) they administer.

## **B. Air Resources Management Bureau Clean Air Act of Montana, 75-2-101, MCA**

### **Description of Statute and Program**

The Air Resources Management Bureau (ARMB) is responsible for administering the Clean Air Act of Montana and corresponding administrative rules. Under the authority of these regulations, DEQ protects and maintains air quality in Montana. DEQ's efforts result in the protection of human health and the environment and, to the greatest extent possible, the promotion of public welfare.

### **Description of Regulated Community**

The regulated permitted community for air quality generally consists of stationary sources that have the potential to emit greater than 25 tons per year of any one regulated pollutant and portable sources that have the potential to emit greater than 15 tons per year of any one regulated pollutant. The type of sources making up the regulated community is diverse and includes such industries as wood products, oil and gas, mining, power generation, incinerators, asphalt plants, etc. Other regulated community sources include some facilities that do not require an air quality permit but that are covered by specific regulations. These types of sources are frequently referred to as "area sources."

Currently, ARMB has approximately 630 facilities with active air quality permits, with 40 other sources with active permits at the county level, for a total permitted universe in Montana of about 670 sources. The regulated permitted community consists of slightly more portable sources than of stationary sources.

In addition to the regulated permitted community, a regulated registered community exists. The regulated registered community for air quality generally consists of stationary oil and gas production sources that have the potential to emit greater than 25 tons per year of any one regulated pollutant. Approximately 985 sources are registered with ARMB.

The total number of sources regulated by ARMB, or by a county in lieu of ARMB, is approximately 1,615 sources. On average, ARMB processed around 200 permit actions each year and about 50 of these are for new facilities. ARMB also processed an average of 382 registrations per year and around 138 were for new facilities.

## **Compliance Assistance and Outreach**

ARMB provided compliance assistance and outreach in a variety of ways to both the regulated community and the public. ARMB assisted the regulated community during facility inspections, annual emissions inventories, report reviews and responses, permitting and registration processes, through responses to verbal and written requests for information, and in other forums. ARMB staff members used these opportunities to explain regulatory requirements, discuss anticipated or upcoming federal regulations, remind sources of upcoming deadlines, and discuss issues of potential concern.

ARMB also provided information to the public through responses to written and verbal information requests/comments and via other forums. Many times, ARMB staff alleviated public concerns by describing the applicable rules and authority, explaining the reviews conducted by ARMB, and explaining the permit processes that apply.

In addition to the outreach efforts mentioned previously, staff members routinely made presentations to various groups on a variety of air quality topics (the Clean Air Act, Clean Air Act of Montana, NESHAPS, Title V, NSPS, mercury, oil and gas production, permitting process, etc.). Whether making presentations to concerned local residents, special interest groups, college students, or affected industry representatives, the bureau is always looking for opportunities to use its staff as a resource for public and industry outreach.

ARMB also focused its efforts on sources that may not be aware of their regulatory obligations or sources that are not traditionally subject to regulation. ARMB staff members developed and distributed several compliance assistance publications about compliance requirements. The business sectors targeted by DEQ for outreach included residential and commercial construction, dry cleaners, auto body shops, hospitals, wood product users, pesticide applicators, educational institutions (both K-12 and universities), student transportation providers, septic tank pumpers, and other governmental agencies. The Department also reached out to tribes with pollution prevention/best practices information and assistance.

ARMB sponsored and/or participated in several training and outreach events. Specific examples of the training/outreach provided include: environmental seminars in Missoula, Helena, and Billings called “Environmental Permitting, Compliance, and Pollution Prevention,” co-sponsored with the Montana Contractors Association.

DEQ also actively participated in a multi-agency effort to target Montana businesses with safety and environmental regulatory requirements known as WorkSafeMT. In addition, staff dedicated additional time and resources on other multi-agency efforts such as the Statewide Asthma Plan, indoor air quality training, mercury collection and assistance, and K-12 environmental stewardship plans.

## **Other Compliance Activities**

ARMB has continued to conduct facility inspections and Full Compliance Evaluations (FCE) in accordance with the DEQ-EPA Performance Partnership Agreement (PPA) and the Compliance Monitoring Strategy (CMS) with EPA. Inspections entail site visits by ARMB staff for the purpose of witnessing the operations of a facility on a particular

day. FCEs are the in-depth assessments of a facility's compliance success for a specific time period. FCEs include a detailed assessment of various industry-submitted reports, staff site visit notes, public complaints, etc. for a particular facility over a specified time period. ARMB staff members use FCEs as an opportunity to fully evaluate the compliance aspects of the subject facility and to report the findings back to industry and other interested parties.

### **Complaints and Noncompliances**

DEQ received 88 complaints concerning air quality emissions during the reporting period. Of these complaints, many were self-reported emissions of NO<sub>2</sub>, H<sub>2</sub>S, or SO<sub>2</sub> due to malfunctions or equipment failures at the refineries in Billings. Most of the remaining complaints involved emissions from other industrial sources, crushers or concrete batch plants, paint spraying operations, and asphalt batch plants.

DEQ received 116 dust complaints during this reporting period. The largest single category of dust complaints involved dust from county roads. Another significant source of dust complaints was from gravel pits, subdivision construction, and large building construction projects. DEQ received 63 open burning complaints during the reporting period. Of these complaints, most were for disposing of prohibited materials and items by open burning.

DEQ documented 14 odor complaints during the reporting period. Most of the odor complaints were from unknown sources. The Department documented one indoor air quality complaint during the reporting period. DEQ does not typically regulate indoor air quality standards or regulations and most of these calls are referred to the Montana Department of Labor and Industry.

### **Program Response to Complaints and Noncompliances**

Complaints and noncompliances concerning air quality can typically be separated into three areas: fugitive dust emissions; open burning emissions/issues; and industrial sources emissions/issues.

Dust complaints are generally received in the late summer and early fall. Most dust complaints are resolved by requesting that the responsible party take reasonable precautions (water or other dust suppressant) to control the dust. As necessary, Department staff sends notices of reasonable precautions requirements to the responsible party to assist them in understanding the applicable rule. Such outreach generally prevents future complaints against the responsible party.

Open burning frequently generates complaints. The majority of the complaints are received during the early spring and late fall. When DEQ receives open burning complaints that indicate some type of noncompliance, the Department investigates the complaint. If the Department finds that the burning is not being conducted in compliance with the rules, it notifies the responsible party of the applicable regulations. Generally, this outreach prevents future noncompliance by the responsible party. Industrial sources also generate complaints and issues of noncompliance. ARMB staff investigate complaints against industrial sources to determine whether or not the source is complying with the air quality rules and permit requirements. Areas of noncompliance

are also discovered through inspections, report reviews, and emission source testing. If ARMB finds that areas of noncompliance exist, ARMB issues either warning letters or violation letters.

Warning letters are typically issued for those instances of noncompliance where ARMB has determined that the violations are not significant (for example, first time violations of a relatively minor permit condition or rule). Typically, ARMB uses enforcement discretion to resolve such issues without formal enforcement. Warning letters can be used to document a history or pattern of violations and may be considered in the future to determine how to respond to subsequent violations.

Violation letters are typically issued for those areas of noncompliance that ARMB determines are significant (for example, emissions violations, substantial recordkeeping/reporting violations, etc.). When a violation letter is sent, the intent is to document that a violation has occurred and that a formal enforcement action is likely unless the responsible party submits additional information to show that the violation did not occur as described in the violation letter. Typically, violation letters are issued to industrial facilities, but significant noncompliance issues caused by dust and open burning can also lead to violation letters. Violation letters can also be used to document a history or pattern of violations and may be considered in the future to determine how to respond to subsequent violations.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 52 enforcement cases: 22 were ongoing from the prior reporting period and 30 were new cases. In 36 of the 52 cases, administrative enforcement actions were taken; in eight of the remaining cases, judicial enforcement actions were filed; and eight cases were referred to EPA. Twenty-seven of the 52 cases have been closed; eleven are still active under an administrative order or judicial judgment; one case is in litigation before the Board of Environmental Review or District Court; in five cases, demand letters have been issued; three cases have been referred to EPA; one case in case development; and five enforcement requests were withdrawn.

The Enforcement Division settled 18 enforcement cases during the reporting period for penalties totaling \$328,537. During the reporting period, DEQ collected administrative and civil penalties totaling \$197,804. This amount includes some penalties that were assessed during the previous reporting period but which did not become due until this reporting period. Likewise, some monetary penalties that were assessed during this reporting period may not be due until some future date or are being paid in installments.

### **Trends/Benefits to Environment**

The size of the regulated permitted community has slightly decreased since the last reporting period (down from about 705 active permits last reporting period to about 670 active permits for this reporting period). The number of regulated registered facilities has increased from about 810 facilities the last reporting period to about 985 facilities this reporting period. The large increase in the number of regulated registered facilities is a direct result of the program's compliance assistance (education and outreach) efforts to the oil and gas production industry.

ARMB observed a continuation of the trend for an increase in the submittal of recordkeeping/reporting requirements from the Title V program. Not only are sources now beginning to fully understand the recordkeeping and reporting requirements of Title V, but the increase in applicable requirements has also led to the increase in the submittal of reports.

Because the oil and gas production industry was relatively new to air quality requirements, ARMB's efforts during the reporting period again focused on educating and training the industry. This outreach enhanced ARMB's ability to share information with sources that had registered with the bureau, but that did not fully understand their obligations under the state rules. For example, ARMB's education and training efforts included presenting information at Montana Petroleum Association meetings; spending an increased amount of time on the telephone with companies and consultants explaining various aspects of the registration program (and environmental regulation in general), and conducting detailed field inspections.

Unfortunately, many oil and gas sources in Montana did not realize that they were required to either obtain a permit or to register. ARMB undertook a large effort to identify and inform oil and gas production facilities of their responsibility to evaluate their facilities to determine the need to either apply for a permit or register. The effort to inform this sector of the oil and gas industry has been very time-consuming but has resulted in a more informed regulated community. Many oil and gas facilities learned through this outreach that they were required by state rules to either obtain a permit or to register.

### **C. Environmental Management Bureau Major Facility Siting Act, 75-20-101, MCA**

#### **Description of Statute and Program**

The Major Facility Siting (MFSA) Program (Program) includes certification that energy facilities such as large transmission lines and pipelines are needed; that their location, construction, and operation minimize impacts; and that public lands are considered and used. The Program also has responsibility as the lead state agency for hydroelectric dams greater than 50 megawatts (MW) being licensed or relicensed by the Federal Energy Regulatory Commission (FERC).

#### **Description of Regulated Community**

The regulated community consists of operators of large energy facilities covered by MFSA. Thirty facilities were covered under MFSA during this reporting period.

#### **Compliance Assistance and Education**

As necessary, program staff review and update PPL Montana's (PPLM) required submittals to FERC regarding its operation of hydroelectric facilities on the Missouri and Madison Rivers and coordinate state agency approval of emergency operating variances as necessary. Program staff participate in the implementation of a settlement agreement for Avista's hydroelectric projects on the lower Clark Fork River.

The program reviews results of monitoring reports and PPLM's proposed recovery measures for leaks and spills from the closed-loop ash disposal system for Colstrip Units 3 and 4, suggests follow-up investigations, proposes alternative cleanup and prevention measures as necessary, and works cooperatively to identify underlying causes and alternative solutions to seepage and leaks. More recently, staff worked with PPLM to identify sources of leakage from three process ponds, and reviewed plans for ground water interception systems that recover leakage. Additional investigations continue to identify the maximum extent of seepage from process and ash disposal ponds so that the major portion of leakage can be recovered and water quality standards attained. DEQ has also participated in negotiations with the company concerning longer-term cleanups, possible bonding for reclamation, and plans for eventual plant closure.

Program staff monitor the construction of certified facilities to determine compliance with conditions of certification. Two projects were monitored in the last year: construction of the Montana Alberta Tie line (MATL), and the portion of the 500kV transmission line from Colstrip which crosses Lake Broadview where bird deaths are occurring.

### **Complaints and Noncompliance**

Occurrences of noncompliance are found through on-site monitoring, review of required monitoring reports, response to reported spills, or through citizen complaints. No MFSA complaints were received in the Enforcement Division during this reporting period.

Colstrip Units 3 and 4: The certificate requires that the facilities be operated as a closed-loop system and that leakage from the wet process ash disposal system is recovered and returned to the ponds. The certificate also requires a network of monitoring wells. Ground water monitoring or spills reported to the program indicate where and when the facilities are not being operated as a closed-loop system. Ground water is being adversely affected by the release of process water with, among other things, elevated total dissolved solids, specific electrical conductivity, boron, and sulfate.

Prohibited releases from the system, which may violate water quality standards, are usually discovered through PPLM self-reports or complaints from nearby residents. Program staff, legal staff, and representatives of PPLM are nearing completion of an Administrative Order on Consent (AOC) for Colstrip Steam Electric Generating Units 1-4.

### **Program Response to Noncompliance**

Complaints are referred to the program. Violations may be resolved with phone calls or visits targeted at improving ash disposal and process pond system integrity and ground water interception systems. Staff also work with the Department of State's Western Area Power Administration, Bonneville Power Administration, Bureau of Land Management, US Department of State, US Forest Service, and two applicants to coordinate MFSA and Montana Environmental Policy Act (MEPA) compliance with other state and federal agencies.

## **Formal Enforcement**

No formal enforcement actions were initiated under this statute during the reporting period.

## **Trend/Benefits to Environment**

When facilities are not operating in compliance with the certificate, or when mitigating measures specified in a certificate are not adequately addressing problems, the program must wait for the applicant to propose a change in operation or design before the underlying cause can be addressed. Likewise, unforeseen circumstances arising over the life of a project (for example, a dam failure at Colstrip) must be addressed by applicant initiative rather than the program making a simple change to certificate conditions. In certain cases, it would be more expeditious for the program, in conjunction with the applicant and affected public, to propose a modification to a certificate condition to achieve a more timely solution.

There has been a significant increase in interest in new and/or modified transmission systems and wind power over the last four years, and this trend is expected to continue into the near future with an application for another 230kV line expected in 2012.

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

### **Description of Statute and Program**

The Hard Rock Program (Program) of the Environmental Management Bureau administers the Montana Metal Mine Reclamation Act, MEPA, and administrative rules on hard rock mining. The functions of the Program are: (1) regulation of hard rock mining and reclamation activities; (2) reclamation of bankrupt or recently abandoned mining sites with forfeited or relinquished reclamation bonds; (3) implementation of environmental analysis provisions of MEPA and the hard rock mining and reclamation statutes; and (4) administration of the Small Miner Exclusion and Exploration programs.

### **Description of Regulated Community**

The program has administered 70 permits covering 70 mines during this reporting period. These include six metal mines: four are actively producing, one is concluding a major stripping phase prior to resuming full production in 2012, and one is shut down awaiting financing for a pit expansion. A small underground gold mine has recently received an operating permit and is in a pre-production development stage. There are also four major limestone quarries (three with associated cement plants), and three talc mines, along with several other operations that produce building stone, riprap, and aggregate. The remaining properties are inactive or in reclamation, with two being reclaimed at the direction of the Program. There are 113 current exploration licenses and 449 Small Miner Exclusions.

As of the end of fiscal year 2011, the program administered 632 permits, exploration licenses, and Small Miner Exclusions. Since staff do not visit every site each year, particularly the Small Miner and exploration sites, it is not possible to estimate a specific compliance percentage. Based on past experience, though, it is reasonable to say that at any given time, the great majority of the regulated community universe, in excess of 95%, is believed to be in compliance.

## **Compliance Assistance and Education**

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

Identification and analysis of baseline data for the potentially affected environment is the first step in preparing an application for an operating permit. A plan of study to produce the baseline report is not required by law, but provides an opportunity for the Program to work with the mining company to “do it right the first time.” During the permit application review period, staff work with applicants to produce a mine plan that should comply with mining, air, and water laws. This effort includes coordination with other state and federal agencies to assist in identifying diverse resource areas that may be affected.

Compliance assistance continues after a permit is issued. Program staff perform from one to three regularly scheduled inspections of every permit area each year to ensure adherence to the provisions in the permit. Lead staff, hydrologists, soil specialists, and the bureau’s mining engineers become familiar with projects and assist permittees in recognizing potential violations before a noncompliance occurs.

The program also hosts a Mine Design, Operations & Closure Conference every year in a joint effort with the US Forest Service, US Bureau of Land Management, Montana Tech, consultants, and industry sponsors. The 20<sup>th</sup> annual conference will take place in April 2012. Conferences in recent years have attracted over 150 participants from regulatory agencies in several states, academia, consultants, and mining companies of all sizes.

## **Complaints and Noncompliance**

During the reporting period, DEQ’s Enforcement Division received eight complaints alleging potential violations at hard-rock mining and mineral exploration areas. The complaints were regarding accidental releases of equipment fluids, water quality, operating hours, and aesthetics.

## **Program Response to Complaints and Noncompliances**

The Enforcement Division refers all metal mining complaints to the Program for resolution. Minor violations are often resolved with phone calls or site visits that bring the operator back into compliance. Warning or violation letters may also be used to obtain compliance. These letters open communications with mining companies in order to assist in their return to compliance. Some complaints, especially those involving large releases of mine processing fluids, may generate a formal enforcement action. Violation letters are copied to the Enforcement Division to assist in coordination between the two divisions.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of four judicial enforcement cases from the prior reporting period. Three of these cases were litigated in District Court and one case was subject to a judicial order. During this reporting period, the Department did not assess or collect any penalties under this statute.

### **Trend/Benefits to Environment**

The regulated community has expanded and contracted cyclically over the last 15 years due to a combination of economic and sociopolitical factors. High prices for gold and other metals in the 80's and early 90's sparked an exploration boom in Montana and most other western states, leading to the development of several new mines in Montana. After holding relatively steady for several years, gold prices declined from 1996 to 1999, and exploration for gold and other metals dropped off sharply. Implementation of a successful Citizen's Initiative (I-137) against the use of cyanide for leaching of low-grade ores, and a perceived climate of litigation further discouraged exploration. More exploration licenses were placed inactive in Montana than new ones issued each year from 1994 to 2006. Consolidation of major mining companies and emphasis on foreign exploration also led to the termination of many exploration activities across the country during this same period.

Starting in 2004, gold prices began a recovery, joined by other metals in 2006. Although prices have been affected by the world-wide recession, most have begun to rebound, and in late 2011, gold is at all-time record levels. From 2009 to 2011, nine exploration licenses have been placed inactive, but 19 new ones have been issued. Since the technology applicable to large low-grade gold ore bodies has been banned, there has been a basic shift in the nature of mineral exploration in the state. Most large mining companies see little incentive to renew exploration in the state. There is one pending application for a permit for a new underground copper-silver mine (Rock Creek), and an old permit for another is undergoing a lengthy analysis and update (Montanore), but no significant increase in the size of the regulated community should be expected anytime soon. Smaller companies, however, have seen a niche created by high gold prices, and are actively pursuing the development of additional underground high-grade reserves at historic mines (Drumlummon and Butte Highlands Joint Venture). High copper prices have led to renewed exploration of a highly prospective underground copper-cobalt-silver deposit (Black Butte). These kinds of projects often involve private land, and are likely to result in a number of new or reopened mines with smaller footprints and minor impacts to the environment.

Another area of increased activity over the last several years does not involve metals: a prolonged boom in home construction led to an increased demand for landscape rock and building stone from small-scale excavations, and new legislation in 2005 gave the Department authority to issue operating permits for multiple small, relatively low-impact quarry sites. Although housing construction has also been affected by the recession, many stone producers remain active. High rainfall and water levels in 2011 stimulated interest in sources of bulk rock for riprap for flood control in many parts of the state.

### **D. Hazardous Waste Site Cleanup Bureau Comprehensive Environmental Cleanup and Responsibility Act (CECRA), 75-10-701, MCA**

#### **Description of Statute and Program**

The Site Response Section (SRS) of DEQ's Remediation Division utilizes the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and the Environmental Quality Protection Fund (EQPF) to investigate and clean up hazardous

substances at sites not addressed by the federal Superfund program. Historical waste disposal activities at these sites caused contamination of air, surface water, ground water, sediments, and/or soils with hazardous or deleterious substances.

### **Description of Regulated Community**

Under CECRA, sites are ranked based on potential risks to human health and the environment. Because staff and financial resources are not sufficient to address all 208 listed sites in Montana, CECRA activities focus primarily on maximum and high priority sites. Current resources only allow the SRS to address 36 sites and ensure compliance. Consent decrees or administrative orders are in place for 18 CECRA sites. There are currently 59 maximum and high priority sites on the CECRA Priority List; however, 24 of those sites are not being actively addressed. Low and medium priority sites and sites not on the CECRA Priority List are often addressed through the Voluntary Cleanup and Redevelopment Act (VCRA).

Currently there are 208 listed CECRA sites; however, this list may not be comprehensive since new sites may be discovered at any time. The portion of the population in compliance cannot be calculated for this law.

### **Compliance Assistance and Outreach**

Montana law provides several opportunities for potentially liable parties (PLPs) to clean up contaminated sites under CECRA without enforcement activities. VCRA allows for voluntary clean up of sites or portions of sites so the property can be redeveloped without the use of notices and orders. VCRA is appropriate where cleanups can be accomplished in less than five years. The Controlled Allocation and Liability Act (CALA) provides for liability allocation where PLPs can complete cleanups and seek reimbursement of cleanup costs from the Orphan Share Fund for costs allocated to bankrupt or defunct entities. Other provisions of CECRA allow noticed PLPs to conduct proper and expeditious voluntary cleanup at their sites before SRS issues orders.

SRS also conducts outreach to inform individuals and communities about VCRA opportunities, orphan share funding, and possible federal grants to clean up contaminated sites. DEQ receives grant funding from EPA to conduct this outreach. SRS also assists communities to secure state and federal grant monies to investigate and clean up contaminated sites.

### **Other Compliance Activities**

None.

### **Complaints and Noncompliances**

Contaminated sites are discovered through a variety of means, including: citizen complaints, construction/utility worker discoveries, environmental assessments, investigations at other contaminated sites, voluntary submittals, and other avenues.

When DEQ receives complaints regarding remedial or other activities at current or potential CECRA sites, the Enforcement Division refers these complaints to the Department's Remediation Division for appropriate follow-up action and/or investigation.

During the reporting period, the Enforcement Division received one CECRA complaint concerning seepage of material from a dam.

### **Program Response to Complaints and Noncompliances**

Typically, SRS first works with the PLP to obtain their cooperation in investigating and cleaning up the site. PLPs, working cooperatively with SRS, conduct most site cleanups. If the PLP is uncooperative, SRS may initiate an enforcement action to obtain cleanup.

### **Formal enforcement**

During the reporting period, two Montana Supreme Court appeals and one federal court case were resolved in DEQ's favor. DEQ also had ongoing judicial enforcement issues at one facility and is defending a judicial challenge to an administrative decision at the same facility. DEQ issued unilateral administrative orders (UAOs) or amendments to existing UAOs at five facilities. DEQ issued administrative orders on consent (AOCs) or amendments to existing AOCs at three facilities. DEQ also entered into judicial bankruptcy settlements at three facilities.

### **Trends/Benefits to Environment**

Contamination at CECRA sites has caused or may cause public health impacts, such as contaminated drinking water and ecological impacts (such as loss of fisheries).

Requiring the regulated community to remediate contaminated sites protects public health and the environment.

## **Underground Storage Tank Act, 75-11-501, MCA, Leaking Underground Storage Tanks**

### **Description of Statute and Programs**

The Hazardous Waste Site Cleanup Bureau in DEQ's Remediation Division contains two programs that address Leaking Underground Storage Tanks (LUSTs): the LUST Brownfields Section (LBS) and the Petroleum Technical Section (PTS). Technical staff in both sections implement or require tank owners and operators to conduct corrective action required by the Montana Underground Storage Tank Act (UST Act). The staff oversees, requires, and sometimes performs the investigation and cleanup of sites contaminated by releases of regulated substances from underground storage tanks (USTs) and petroleum storage tanks (PSTs).

### **Size and Description of Regulated Community**

The regulated community includes any person who owns or operates an underground or petroleum storage tank system, and who has been identified as having a suspected or confirmed release of a petroleum product or hazardous substance. The universe of owners and operators consists of federal, state and local governments, schools, hospitals, railroads, service stations, utilities, convenience stores, farms, and other industrial and commercial enterprises. A total of 4,491 releases have been confirmed since the inception of the program through June 30, 2011. A total of 53 releases were confirmed in FY2010 and FY2011.

### **Compliance Assistance and Outreach**

By the time a release has been identified, some level of pollution/contamination to soil and/or ground water has often occurred. The program focuses its efforts at ensuring compliance by identifying the environmental harm and compelling corrective action to mitigate the risks to public health, safety, and the environment.

If the tank owner or operator has a valid operating permit when the release was discovered and remains in compliance with the UST Act, the Petroleum Tank Release Compensation Board (PTRCB) is authorized to reimburse a portion of the eligible leak investigation, remediation, and third-party damage costs from the Petroleum Tank Release Compensation Fund (PTRCF). The first \$35,000 in costs is split with the tank owner. In general, the PTS Section has not had to take strong enforcement measures to achieve compliance with the corrective action requirements, due to the availability of the PTRCF and the rules for access to the fund. State law requires UST and PST sites to remain in compliance with cleanup requirements in order to remain eligible for reimbursement of corrective action costs from the PTRCF.

Compliance assistance efforts include site visits and meetings with tank owners, operators, and their consultants, which may include visits and meetings with individuals from the PTS staff, the PTRCB staff, local health officials, and fire officials. The PTS Section's project managers keep the responsible parties informed as to their continuing obligations as they work through the investigation and cleanup processes. The PTS and LBS sections also provide cleanup technology articles to DEQ's "MUST News", a publication distributed to UST and PST owners and operators, and other parties interested in UST Act compliance. The PTS Section also participates in the Petroleum Tank Release Compensation Board's public meetings, and meets regularly with environmental consultants to discuss cleanup and fund reimbursement issues.

### **Other Compliance Activities**

The LBS utilizes the LUST Trust Fund in lieu of, or in addition to, the PTRCF to fund investigations and cleanup activities using DEQ staff or its contractors. In the event that an UST owner/operator cannot afford cleanup or refuses to conduct the cleanup, or unknown sources of petroleum exist, the LBS may initiate unilateral state investigation and remediation action utilizing LUST Trust funds. These actions are funded 90% by a federal grant, which is matched by 10% in state monies. Costs incurred by DEQ for these actions are recoverable from financially viable responsible parties. The Department utilizes these provisions to encourage responsible parties to conduct their own investigations and cleanups. Enforcement against insolvent or bankrupted responsible parties is typically not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs.

### **Complaints and Noncompliances**

The Enforcement Division received 12 complaints during the reporting period related to leaking underground storage tanks. Complaint sites that involved a release were referred to PTS or LBS for cleanup oversight.

## **Program Response to Noncompliances**

Noncompliance includes owners and operators ignoring or refusing to implement regulatory and statutory requirements to investigate and clean up petroleum releases in a timely manner.

The PTS Section uses a number of informal enforcement tools to encourage owners and operators to comply with corrective action requirements. These informal enforcement tools include warning letters, personal meetings, informal violation letters, and the option of using the LUST Trust designation in cases of recalcitrance and/or inability to conduct the required work.

In most instances, the PTS Section first utilizes an escalating enforcement strategy designed to use the least resource-intensive enforcement activities. Initial efforts focus on informal enforcement actions, such as warning letters, violation letters, requests for additional information or corrective action plan submittal, staff field visits or follow-up telephone calls in order to achieve voluntary compliance. Cases are referred to the Enforcement Division for more resource-intensive actions, such as formal administrative orders, judicial actions, etc., only when informal enforcement action fails to achieve the desired response.

The PTS Section issues letters notifying tank owners and operators of incomplete work or noncompliance prior to initiating formal enforcement actions. When a deadline from a DEQ request letter is missed, the Program will send a warning letter with a new deadline. Continued noncompliance typically results in issuance of a violation letter. Throughout these written exchanges, PTS project managers conduct informal conversations and assistance visits to try to ascertain why an owner or operator is not complying, and to facilitate compliance.

The vast majority of owners and operators of leaking underground storage tanks comply with the requirements to investigate and clean up releases. DEQ has only issued warning or violation letters to those responsible for approximately 8% of the known releases. This overall compliance is credited to the availability of PTRCF funding, ability for the state to take unilateral corrective actions through the LUST Trust funding, and the collaborative approach taken by Program case managers. During the reporting period, the Program has issued 23 warning letters and 12 violation letters.

The type of enforcement response selected depends on the severity of the violation and the potential threat it poses to human health, safety, and the environment. Also considered is the current operational status of the source of the release (operational vs. non-operational tank facility), and the owner's cooperation and financial ability to conduct the required release investigation and corrective action.

## **Formal Enforcement**

Three formal enforcement actions were initiated during the reporting period to compel compliance with the investigation or cleanup requirements of the UST Act.

### **Trends/Benefits to Environment**

This type of contamination has caused or may cause public health impacts, such as contaminated drinking water, vapor intrusion into homes and businesses, explosion hazards, and ecological impacts (such as loss of fisheries). Requiring the regulated community to remediate contaminated sites protects human health and the environment and provides an added level of safety.

## **E. Industrial and Energy Minerals Bureau Opencut Mining Act, 82-4-401, MCA**

### **Description of Statute and Program**

The Opencut Mining Act requires 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 Mining Program (Program), which is part of the DEQ's Industrial and Energy Minerals Bureau, oversees the administration of the statute.

### **Description of Regulated Community**

The regulated community varies greatly. Permit holders vary from small one- or two-person entities that mine a few hundred or thousand cubic yards of material annually and have one permit, to multinational companies that have several hundred employees, mine millions of cubic yards of material annually, and have several permits. Some permit holders only supply a small local market, while other companies ship mined product out of state. Several cities have permits with the Program, as do all 56 counties and some state agencies (mainly the Montana Department of Transportation). A few federal agencies also have permits with the Program.

At the end of fiscal year 2011, the Program had a total of roughly 1,900 permitted operations; 105 pending permit applications, amendments, and assignments; and 120 pending bond release applications. These numbers fluctuate continually in response to new applications for permits and bond releases being submitted and decisions being made on pending permits and bond releases.

### **Complaints and Noncompliances**

The Enforcement Division received 39 complaints associated with sand, gravel, and topsoil mining operations. The complaints represented potential violations of state environmental regulations and the majority of complaints were in relation to hours of operation, dust, and water quality.

### **Program Response to Complaints and Noncompliances**

Minor violations are generally resolved with a phone call or site visit to bring the operator back into permit compliance. Warning or violation letters may also be used to obtain compliance. The Air Resources Management Bureau or Enforcement Division addresses those potential violations where dust is the major concern. Some complaints, most often those involving mining without a permit or outside a permit area, are generally addressed through a formal enforcement action.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 57 open-cut enforcement cases, 40 of which were ongoing from the prior reporting period and 17 were new cases. Administrative orders were issued for 46 of the cases while the remaining 11 cases were prosecuted as judicial actions. Two of the 57 cases were in case development, 22 cases had been closed, seven cases were being litigated before the Board of Environmental Review or in District Court, 16 cases were either under an administrative order or subject to a judicial judgment, one case was vacated, and nine cases were withdrawn because of evidentiary problems.

During the reporting period, the Enforcement Division settled 16 enforcement actions with penalties totaling \$93,198. DEQ collected penalties in the amount of \$58,633. Some of the collected penalties were owed from the prior reporting period and came due during this reporting period. Likewise, some monetary penalties that were assessed during this reporting period may not be due until some future date or are being paid in installments.

## **Trends/Benefits to Environment**

A legislative audit in the first half of 2008 and the passage of HB 678 in the 2009 Legislative Session resulted in some new directions for the Program, including the development of new permit processing procedures and timelines, the opportunity for public meetings on permit applications, and the hiring of new staff.

When HB 678 became law in May of 2009, the Program had a backlog of approximately 300 pending permit applications. By the end of FY2011, however, the Program had processed 258 backlog applications and 267 new applications. The remaining backlog applications typically relate to sites where the operator is not actively working to obtain a permit or an amendment, and the Program is waiting for the operator's response to a deficiency letter.

With the additional staffing and implementation of new review processes based upon recommendations in the legislative audit, Program staff are meeting deadlines and have been able to conduct additional bond release and compliance inspections. In June of 2010, the Program formed a stakeholders group, which meets quarterly.

The Program has seen a large influx of permit applications for open-cut operations in eastern Montana due to the oil boom during this reporting period. However, in certain other areas of the state, some applications continue to be considerably more complex to process to completion. This has been especially true in the high growth/high population portions of some counties, such as Flathead, Gallatin, Missoula, and Lewis and Clark. In these counties, mineral operations have encroached onto rural residential areas and new subdivisions are encroaching upon existing gravel operations. These situations have resulted in questions, concerns, and conflicts regarding impacts to ground water and domestic water supplies, air quality, truck traffic, public safety, and property values, among others.

## **Strip and Underground Mine Reclamation Act, 82-4-201**

### **Description of Statute and Program**

The Coal and Uranium Program (Program) is responsible for permitting, inspecting and otherwise managing regulatory compliance of coal and uranium prospecting, mining, and reclamation operations in the state.

### **Description of Regulated Community**

There are six major coal development companies actively mining in Montana. Five active mines are located in southeastern Montana and one is located in northeastern Montana. One inactive large mine is in the process of final reclamation operations. Another small operation is totally reclaimed and phase-4 bond releases have been completed. Of the eastern Montana operations, one company holds five permits (Western Energy), while other companies hold one or two permits. Most of the active coal mines are strip mines. There is one underground mine.

Currently, prospecting/exploration activities in Montana are limited to coal exploration by three companies in potential new mining areas, and companies exploring coal resources at existing operating mines. The activities of existing companies generally involve defining the coal quality and quantity as mining advances in currently permitted areas or in potential expansion areas of existing mines.

### **Compliance Assistance and Education**

Prospecting inspections are conducted to evaluate site situations prior to initiation of activity, and as necessary during and after prospecting activities to ensure compliance with regulations and permit conditions.

Each active mine site must be inspected monthly, including one complete inspection every quarter. For each inactive mine site, one complete inspection per quarter is required. Additional inspections are conducted as necessary to ensure compliance with regulations and permit conditions.

Program staff interact with representatives of the regulated industry, government agencies, interested members of the public, and special interest groups on a frequent basis. Using telephone, fax, regular mail, e-mail, informal meetings and other forums, compliance issues and problems relating to prospecting and mining are evaluated and resolved. Activities and efforts to promote compliance assistance and education also include participation in and sponsorship of conferences, meetings, and training. These interactions and efforts appear to facilitate the conduct of coal prospecting and mining business with limited formal enforcement action or litigation required.

Cost effectiveness is the greatest incentive for compliance with coal and uranium rules. Costs associated with discovery, evaluation, mitigation, and final resolution of noncompliance issues are high, both for the regulated industry and the regulatory agencies. Multiple violations of the same or similar regulatory requirement can establish a pattern of violations that may lead to cessation of part or all of a prospecting or mining operation. In addition, there is a readily accessible nationwide system allowing all state and federal regulatory agencies to track and evaluate compliance

problems related directly or indirectly to a given coal mine permittee or applicant. If a given permittee does not meet regulatory obligations under one permit, the issuance of other permits may be obstructed.

### **Complaints and Noncompliances**

The Enforcement Division received one complaint associated with activities at a coal mine or “strip mine.” The complaint was referred to the Program.

### **Program Response to Complaints and Noncompliances**

The Program calls the issuance of a notice of a violation of a statutory or permit requirement a Notice of Noncompliance (NON). While NONs generally relate to the failure to conduct operations in the field as approved, some are issued for administrative failures. In general, if a compliance problem can be corrected in the field during an inspection or within a reasonable time period, an operator may be issued a maintenance item rather than a NON. The maintenance item requires work to be performed within a specified time frame or prior to the occurrence of a specific event. Issuance of NONs may result in a requirement to make minor or major adjustments to permits and/or operations, may involve significant monetary penalties, or if the violations are minor, a waiver of penalties. The Program must also issue a “Cessation Order” whenever a regulated activity creates a real or imminent threat to public health or safety, or causes significant and imminent environmental harm. NONs are discovered as a result of Program field inspections, review of reports and data, citizen complaints, or notification by the permittee.

Violations may require the permittee to perform on-the-ground work, such as filling in rills and gullies, upgrading sediment control, or repairing unauthorized disturbance of native ground. Others may require a permitting action, typically a minor revision, to implement a revised or new mining or reclamation procedure. Violations which involve monitoring practices may need to be resolved by minor revisions to a monitoring plan, or may be such that data were not collected and are forever lost. Some violations specifically involve reclamation practices, such as regrading of the surface, soil replacement, or seeding. Resolution typically entails adjusting reclamation practices to provide compliance with the rules and permit. Violations involving a water effluent problem may require water treatment and sediment control structures to be in place and functioning or revising treatment practices or structures. Although uncommon, exorbitant failures to carry out permit commitments can result in permit revocation and bond forfeiture.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 10 enforcement cases: four were ongoing from the previous reporting period and six were new cases. All of the cases were administrative. At the end of the reporting period, six of the 10 cases were closed, one case was in case development, and three cases were under order.

During the reporting period, the Enforcement Division settled seven enforcement cases for penalties totaling \$162,711. Penalties in the amount of \$162,711 were collected.

### **Trends/Benefits to Environment**

DEQ regulations must be as stringent as federal regulations that essentially require that a penalty must be assessed for all violations. Over time, as more mined lands are reclaimed, the benefits of post-mining land use will increase.

The Program has had a relatively stable regulated mine community of seven large operators (six currently active) and several small operators (most of whom are no longer in operation) for the past 20 years. Partial inspections may occur based on special needs, bond release, or as part of a discipline-specific inspection. The number and frequency of such inspections vary year to year, but the average over the report period is likely to continue. The number of new bond release applications and associated inspections has remained at a relatively high level during the report period. This is expected to continue in the next report period.

## **F. Public Water Supply and Subdivisions Bureau Public Water Supply Laws, 75-6-101, MCA**

### **Description of Statute and Program**

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

### **Description of Regulated Community**

The Program regulates approximately 2,106 public water supply systems, which includes 698 community systems. A community water system is a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A transient water system means a public water supply system that is not a community water system and regularly serves at least 25 different people for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are 1,144 transient systems. A non-transient non-community water system is a public water supply system that is not a community water system but regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are 264 non-transient non-community systems.

### **Compliance Assistance and Education**

The Program monitors public water supply compliance with the requirements; provides technical assistance to water system operators and managers; helps resolve water system contamination problems; reviews plans for water and wastewater improvements to ensure conformance with minimum water system design and construction standards; and provides general assistance to the public and other state and federal agencies.

Program staff participate in a very active statewide operator training program that also involves other approved training providers. The Program emphasizes operator training, technical assistance, and best available treatment techniques and monitoring tools. The monitoring and reporting section routinely provides monitoring schedule calendars for water systems and time critical reminders, which has proven very beneficial for the

systems and for the program in terms of compliance. These activities promote public health protection through preventive measures. The field services section performs routine sanitary survey inspections of public water systems to identify possible system deficiencies that may affect compliance. This section also provides technical assistance to water suppliers to address specific compliance issues. Technical assistance is provided via the telephone, e-mail, on-site visits or at DEQ offices, direct mailings, and at water schools and conferences.

Plan review is performed prior to construction of system improvements to ensure compliance with minimum design standards. Conformance with minimum design standards helps to ensure a long-term life of system components, and minimizes the possibility of noncompliance problems related to system construction. The Plan Review Section reviews approximately 400 plan submittals per year for new construction.

### **Complaints and Noncompliance**

DEQ received 58 complaints concerning public water supplies during the reporting period. The majority of the complaints were in relation to drinking water quality. There were several complaints concerning water pressure. All complaints were referred to the Program.

### **Program Response to Complaints and Noncompliance**

The Program receives complaints directly, as referrals by the Enforcement Division or through the Governor's office. Once received, the complaint is logged in by the compliance officer, assigned to the appropriate staff, and followed up by contacting and providing assistance to the complainant. After the initial follow up, an activity report is written by Program staff which includes any action(s) taken by the Program. Complaints are closed on resolution. Some complaints may result in a violation and the initiation of an enforcement action to require the system to achieve compliance through various means.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 328 public water supply enforcement cases: 225 cases were ongoing from the prior reporting period and 103 cases were new. Administrative enforcement actions were initiated for 230 of the cases, 29 judicial actions were filed, and 69 cases were referred to the EPA. At the end of the reporting period, one of the 328 cases was in case development, 183 cases had been closed, 83 were still active under an administrative order or a judicial judgment, 13 cases were in litigation before District Court or the Board of Environmental Review, 18 requests for enforcement actions were withdrawn because of evidentiary problems, three enforcement actions were vacated, and 26 cases were being managed by EPA. In addition, the development of one case was suspended pending review of the facts of the case.

During this reporting period, the Enforcement Division resolved the violations cited in 81 cases for settlement penalties in the amount of \$271,131. During the two-year reporting period, the Department collected penalties totaling \$46,356. Some of the penalties that were assessed during that period are either due at a future date, are

being paid in installments, are subject to appeal or judicial review, or are not collectable because the violator is judgment-proof.

### **Trends/Benefits to Environment**

During the reporting period, the Program has been able to hire and fill vacant positions to fully staff the Program. A new data control position had been filled to assist with managing data for the State Drinking Water Information System (SDWIS) database and other data needs, e.g. queries, trending, inventory updating, etc. The Program has decreased violations and the number of priority systems under the new Enforcement Tracking Tool system. The significant reduction is due to staff addressing violations more promptly, better accountability and tracking of the Program's database, and increased public outreach and education.

EPA Region 8 did early implementation of the Stage 2 Disinfection Byproduct Rule (DBPR) and Long Term 2 (LT2) Surface Water Treatment Rule. The State of Montana implemented the Groundwater Rule (GWR) in December 2009 and is implementing the DBPR) and the LT2rules.

The Program continues to send out sampling reminder post cards at the end of the nine-year compliance cycle and again at the end of the first year in the new compliance period. Monitoring schedules were sent out to all systems in January 2010 and 2011. A contractor is currently working on creating new electronic monitoring schedules that will be available on-line for systems to access. Access to historical sample data continues to be available on DEQ's website to allow the public to check on a system's water quality and compliance with the requirements. This also gives public water suppliers the ability to track their monitoring data, violation history, and water sampling requirements online. DEQ has been working on making Drinking Water Watch (DWW) available to the public in 2012. SDWIS was updated to the web based version in 2010 and DEQ is currently creating a data bridge between the Enforcement Division's database and the Program's SDWIS database to increase timeliness and decrease errors in violation and enforcement action monitoring and federal reporting.

The large number of enforcement actions taken under the Public Water Supply Laws reflects the size of the regulated community, as well as the complicated nature of the regulations adopted by EPA for public water. Most of the enforcement actions initiated were for the failure to monitor for coliform bacteria and/or nitrates, Surface Water Treatment Rule violations requiring tighter filter effluent turbidity requirements, maximum contaminant level (MCL) violations for DBPs, and failure to provide public notification of the violations. The failure to provide public notice places consumer's public health at increased risk. Without public notification, consumers cannot make informed decisions concerning their health. More enforcement actions were taken against small water systems that serve cafés, drinking establishments, and trailer courts than large municipal water suppliers. The small systems have the most vulnerable populations at risk when addressing water quality issues due to the transient use of the establishments and trailer courts.

DEQ is attempting to encourage compliance by using administrative orders on consent to resolve enforcement cases involving monitoring violations. Negotiated consent

orders contain stipulated penalties for future violations that provide an incentive for compliance.

## **Sanitation in Subdivisions Act, 76-4-101, MCA**

### **Brief Description of Statute and Program**

The Subdivision Review Section (Section) is responsible for the technical review and processing of 450 to 1,600 subdivision applications (approximately 1,500 to 10,000 new lots less than 20 acres in size) each year for adequacy of water supply, wastewater treatment and disposal, solid waste disposal, and storm water control systems.

### **Description of Regulated Community**

The regulated community includes all subdivisions approved by DEQ that hold a certificate of subdivision approval (COSA). Current electronic records indicate that, since FY1990, 27,713 subdivisions containing 116,915 lots have been reviewed and approved in Montana. This number does not include the Municipal Facilities Exemption lots connected to municipal systems. The number of individual lots included within a subdivision application can range from one to several hundred. The Section is currently seeing trends away from subdivisions that include both public water and public sewer.

The annual number of subdivisions reviewed and approved over the past three years has dramatically decreased from 1,013 applications for 3,660 lots in FY2009, to 647 applications and 2,269 lots in FY2010, to 484 applications for 1,503 lots in FY2011. The Section also made water quality nondegradation determinations for approximately 3,772 individual and community wastewater treatment systems in FY2010 through FY2011 to ensure compliance with the Water Quality Act. The Section began conducting detailed water availability reviews in January of 2007, and has since approved 350 evaluations.

### **Compliance Assistance and Education**

The Section provides technical assistance and training on the requirements of the laws and regulations to county health departments, county commissioners, and to developers and their consultants. Most technical assistance is provided by phone or in the office, and staff interact with applicants on a daily basis.

Over the past years, the Section has continued to increase efforts to provide more formal education and training about rule interpretations and technical analyses to county sanitarians and consultants. Section staff has provided a minimum of five off-site training sessions per year starting in 2001 and continuing today. Staff will occasionally conduct field investigations of proposed subdivisions; however, personal contact by phone and in-office meetings is the most effective means to provide compliance assistance.

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

continues to see improved applications based on the previously developed online subdivision application preparation tool.

### **Complaints and Noncompliance**

The most common noncompliance issue involving the Sanitation in Subdivisions Act is when lots within a subdivision do not meet the conditions that were placed on them at the time of approval. This type of noncompliance occurs when facilities are constructed that are either inadequate or different from what was originally approved. The most serious type of noncompliance occurs when a non-approved wastewater treatment/disposal system is constructed. In this situation the original nondegradation analysis used to approve the system may no longer be valid, water quality protection standards may be exceeded and public health may be threatened.

Discovery of noncompliance with the Sanitation in Subdivisions Act generally occurs long after the original certificate of subdivision approval is issued. Potential noncompliance situations have been discovered, and at times prevented, by DEQ or local government officials while conducting inspections during construction activities. More commonly, noncompliance situations are identified through complaints by neighbors and concerned citizens, and by county health officials who observe noncompliant facilities during septic system installations.

There were 29 formal complaints of potential violations of the Sanitation in Subdivisions Act and associated rules during the reporting period. Most of the complaints were filed by citizens concerned about properties not being developed according to the COSA. Their primary concerns were unapproved dwellings, location and adequacy of wells and wastewater treatment systems, storm water drainage, and water quality and quantity. Some complaints are filed by the Department in response to notifications by county health departments. Not all complaints were determined to be actual violations of the Sanitation in Subdivisions Act.

The Enforcement Division also received 44 complaints regarding sewage, most of which were referred to the local city public works department or the county Registered Sanitarian for proper resolution.

### **Program Response to Complaints and Noncompliance**

In January of 2009, the Section added a half-time position to deal with problem files, complaints, and violations. In 2010, this position was cut from the program due to lack of funding. Funding for the Section is provided by fees for services. When the slowdown in the national economy caught up with Montana, the number of applications and lots dramatically decreased. The decrease was reflected in a decrease of staff which resulted in fewer violations and enforcement cases being managed by the Section.

The majority of complaints, once validated and after a violation letter is sent by the Enforcement Division, are referred to the Section. The responsible party generally resolves the violation by submitting a revised subdivision proposal to the Section or conducting the necessary corrective actions to bring the subdivision back into compliance with the original approval. If a case is deemed too far out of compliance to

be corrected and the original developer still owns the subdivision, the Section may revoke the original approval for the subdivision. In FY2010 and FY2011 there was one formal revocation issued by the Section due to a water main being cut off by the water district serving the undeveloped subdivision.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 11 enforcement cases. Ten of the cases are ongoing from the previous reporting period; one case was requested during the current reporting period. Ten cases were taken as administrative enforcement actions and the remaining one was filed in District Court. At the end of the reporting period, two cases had been closed, two cases were under an administrative order, one case was being litigated in District Court, one case was in development, and four had been withdrawn or vacated. During this reporting period, DEQ did not assess or collect any penalties under the Sanitation in Subdivisions Act.

### **Trends/Benefits to Environment**

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

## **Water Treatment Plant Operators Laws, 37-42-101, MCA**

### **Description of Statute and Program**

The Water and Wastewater Operator Certification Program (Program) implements and enforces the Water Treatment Plant Operators Laws. The Program also implements training, testing, and continuing education services for water and wastewater operators and provides general assistance to the public and other state and federal agencies.

### **Description of Regulated Community**

Although exact numbers vary continually, there are approximately 698 community public water supply systems and 264 non-transient non-community public water supply systems that must retain the services of a certified operator. There are presently 303 public sewage systems that must retain the services of certified operators. There are approximately 1,600 certified operators in Montana.

### **Compliance Assistance and Education**

During FY2010 and 2011, the Program held four Water and Wastewater Operator Advisory Council meetings, and no Continuing Education Credit Review Committee meeting. Training new operators on certification requirements has been ongoing and the Program continually explores new technologies like CDs and Internet-based courses to make training more accessible to operators. The Program provides new operator training in conjunction with examination sessions, which are held at various locations throughout the state. The Program contracted to develop an exam prep training toolbox kit for trainers to train operators to include CDs purchased from the American Waterworks Association.

## **Complaints and Noncompliance**

Complaints received regarding operators of public water supplies are grouped with the public water supply complaints and are referred to the Public Water Supply and Subdivisions Bureau.

## **Formal Enforcement**

During the reporting period, DEQ addressed four violations of the Water Treatment Plant Operators Laws in one administrative enforcement action that was initiated for violations of the Public Water Supply Laws. In addition, the referral of violations of the water operator certification regulations to EPA's Criminal Investigation Division resulted in the successful criminal prosecution of a certified water operator in federal court. No penalties were assessed or collected by DEQ under this law.

## **Trends/Benefits to Environment**

This Program ensures that the operators of water and wastewater treatments systems are qualified and trained in order to protect human health and to assist in a technical capacity.

## **G. Waste and Underground Tank Management Bureau Asbestos Control Act, 75-2-501, MCA**

### **Description of Statute and Program**

The Waste and Underground Tank Management Bureau's Asbestos Control Program (Program) regulates the abatement of asbestos through the issuance of asbestos project permits, annual facility permits, accreditation of distinct asbestos-related disciplines, compliance inspections, as well as approval and audit of asbestos training course providers. The Program regulates asbestos projects in buildings involving the abatement of three or more linear or square feet of asbestos-containing material. An asbestos project is any encapsulation, enclosure, removal, repair, renovation, demolition, placement, transportation, and/or disposal of friable asbestos-containing material. Asbestos projects require permits, the use of accredited personnel, and proper work practices.

EPA has delegated authority to DEQ to administer the National Emission Standards for Hazardous Air Pollutants for Asbestos (NESHAP), 40 CFR Part 61, subpart M. NESHAP governs building demolition and renovation activities, asbestos inspections, notification of building demolition/renovation activities, controlling asbestos emissions, disposing of asbestos waste, and other asbestos-related activities.

The Program's mission is to protect human health from asbestos exposure by providing asbestos education and compliance assistance. The Program ensures objective, consistent, efficient, and thorough application of laws, rules, and guidance for the asbestos abatement and building demolition/renovation industries in Montana through education, communication, enforcement, and timely response.

### **Description of 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 including inspecting for asbestos, designing asbestos projects, and generating asbestos management plans.

The regulated community under the asbestos NESHAP includes building owners and contractors who demolish or renovate buildings, dispose of asbestos, and create other sources of asbestos emissions. The asbestos NESHAP is adopted by reference in the asbestos rules.

### **Compliance Assistance and Education**

The Program continues to be engaged in numerous compliance assistance activities, including responding to requests for information, providing on-site asbestos regulatory compliance assistance, and educating local building code officials and sanitarians on asbestos regulations. This allows the local authorities that are in a position to raise awareness to provide this information to the regulated community and the public in their communities. The Program recently updated its administrative rules and is preparing to travel to various cities around the state to meet with asbestos contractors, local officials, and the public to provide updated information and guidance. The Department's website is continually updated to offer compliance assistance information at <http://deq.mt.gov/solidwaste/default.mcp.x>. The Program offers regular assistance to the Solid Waste Advisory Committee regarding the safe disposal of asbestos and works with the Asbestos Contractors and Consultants Association of Montana to improve work practices and promote licensing efficiencies.

### **Complaints and Noncompliances**

The Department received 60 complaints concerning asbestos during the reporting period. Most of the complaints involved the failure to conduct an asbestos inspection prior to building renovation or demolition. The other complaints related to improper asbestos abatement techniques, removal of non-friable asbestos such as cement asbestos siding or roofing, and methods for proper asbestos transport and disposal.

### **Program Response to Complaints and Noncompliances**

Asbestos complaints are validated, documented, and resolved through the use of compliance assistance, warning letters, violation letters, or formal enforcement. By using warning letters for minor first offenses, the Department can assist responsible parties in complying with the rules. The warning letter is then considered in any future enforcement action relative to a history or pattern of violations. Major violations or repeat offenses usually result in formal enforcement with a civil or administrative penalty.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed eight enforcement cases to address violations of the Asbestos Control Act. Six of the cases were ongoing from the prior reporting period and two were new cases. Four of the enforcement actions taken were in an administrative venue and the remaining four cases were filed in District Court. Four of the cases were closed at the end of the reporting period, two cases were being litigated in District Court and one case was under an administrative compliance order. In the remaining case, a demand letter had been sent to the violator

to ascertain if they would be willing to enter into a consent order rather than litigate the case.

DEQ settled two cases for administrative penalties totaling \$28,750. A supplemental environmental project (SEP) worth \$15,000 was completed to satisfy one of the penalties. At the end of the reporting period, the Department and a responsible party in another case were negotiating a SEP to satisfy a portion of the penalty.

### **Trends/Benefits to Environment**

The Program conducted a major rulemaking project designed to clearly identify the roles and responsibilities of the program, EPA, the Occupational Safety and Health Administration, the Department of Labor and Industry and the private asbestos contractors working in the field of asbestos abatement. The new rules streamline the permitting process, clarify the accreditation requirements for asbestos workers, better define the requirements for inspections, and adopt various NESHAP requirements necessary to conform to federal regulations. Program staff hope that these rule changes, as well as other changes to the business model used by the Program, will address the high rate of noncompliance with the asbestos NESHAP regulations governing building demolition and renovation activities. Continued work by some cities tying an asbestos inspection and demolition requirements to the issuance of building permits has eased complaints of noncompliance as well. The Program will continue moving forward with broadening the awareness of the asbestos regulations throughout Montana as part of the effort to attain a higher level of compliance with the asbestos requirements by emphasizing the asbestos inspection and building demolition or renovation notification requirements. The Program also plans to continue its outreach to local governments, landfill operators, asbestos contractors, and the public to ensure the new rules and requirements are fully understood.

## **Hazardous Waste Act, 75-10-401**

### **Description of Statute and Program**

The Hazardous Waste Program (Program) within the Hazardous Waste Section of the Waste and Underground Tank Management Bureau (WUTMB) operates the state's hazardous waste regulatory program. Hazardous wastes regulated by DEQ are identical to wastes regulated by the federal EPA program. EPA delegated authority to the Program under the Resource Conservation and Recovery Act-Subtitle C (RCRA-C).

### **Description of Regulated Community**

As of July 1, 2011, there were nine permitted facilities in Montana and numerous hazardous waste handlers, including 16 hazardous waste handlers, 52 used oil transporters, and 114 small and 72 large generators who were required to register with the Program.

### **Compliance Assistance and Education**

The Hazardous Waste Act is designed for the prevention of waste management problems. The Program offers many types of compliance assistance activities, including responses to written and telephone requests for information, waste minimization review during compliance evaluation inspections, contractor contact sheets, and waste stream-specific handouts to answer frequently asked questions.

Program personnel provide compliance assistance during reviews of annual waste generation reports to ensure data quality and the correct assessment of fees. Pre-permit modification application assistance is given to facilities seeking changes to permits. Working in concert with DEQ's Small Business and Community Assistance Program, the Program distributed guidance publications and provided training on a variety of hazardous waste and used oil topics.

The Program also distributed a comprehensive compliance assistance CD to provide a single source of all hazardous waste and used oil compliance assistance information and education to the regulated community, and revised the content of the CD and provided an Internet-based version in 2010. The Program continues to implement a compliance monitoring strategy that defines the number of inspections that staff members conduct for each category of handler that is consistent with the Performance Partnership Agreement (PPA).

Complaints are first evaluated by DEQ's Enforcement Division. Those complaints that clearly involve hazardous waste are referred to the Program. Complaints that may involve hazardous waste or used oil and are at sites already in the Program's database are also referred to the Program. Other complaints are investigated by the Enforcement Division for validation.

### **Complaints and Regulatory Noncompliance**

DEQ received 36 complaints concerning hazardous waste during the reporting period. The majority of the hazardous waste complaints were filed against businesses for poor waste management and disposal practices. The Department received 47 complaints concerning used oil during the reporting period. The most common complaint was against businesses and private individuals for not removing and properly disposing used oil that had been spilled, released, or purposely dumped onto the ground. The next most common complaint was the concern of private individuals applying do-it-yourselfer (DIY) generated used oil on either their own personal property or on public property for dust abatement. Used oil cannot be placed on public property for any purpose, but the Department's administrative rules have not disallowed the practice of applying DIY used oil on private property as long as the used oil is applied in such a manner as to not threaten state waters.

### **Program Response to Complaints and Regulatory Noncompliance**

Noncompliance may be observed during complaint-related inspections or during regularly scheduled compliance evaluation inspections. The Program's response to noncompliance may be: an informal verbal warning, a written informal warning or violation letter. All recorded violations are entered into the federal database (RCRAInfo). An informal verbal warning would be issued in the field for an easily corrected violation, e.g. an unmarked drum of used oil, where the violation is corrected in the presence of the inspector. A written informal 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 warning letter requires the submission of proof of compliance. A violation letter, which is 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, such as a demonstrated pattern of

repeated minor violations. A violation letter allows the responsible party to submit mitigating evidence prior to a referral for formal enforcement.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 16 enforcement cases: 12 of the cases were ongoing from the prior reporting period and four were new cases. Ten of the 16 cases were taken as administrative actions and six were judicial actions. At the end of the reporting period, demand letters had been sent in three of the cases, six cases had been closed, five cases were still active under an administrative order or a judicial judgment, one case was being litigated in District Court and case development of one case had been suspended because of evidentiary issues. During the reporting period, one enforcement case was settled for a \$3,000 penalty. The Department collected the \$3,000 penalty.

### **Trends/Benefits to Environment**

For the reporting period, the hazardous waste regulated community was similar to previous years. The Program's track record, as measured by EPA's enforcement oversight process, of producing timely and accurate inspection reports of high quality continued. The number of generators has been consistent with previous reporting periods, however the total number seems to increase as the Program finds more sites that are one-time generators due to spills and clean outs. However, there has been a gradual decline in the number of full-time generators due to more efficient methods being implemented onsite, resulting in a decrease in reportable waste generation.

EPA is soliciting comments on draft regulations governing the management of coal combustion waste. While it's possible the waste may be required to be managed as a hazardous waste under RCRA-C, it appears EPA will require coal combustion waste to be managed as a solid waste under RCRA-D. The number of permitted facilities is relatively steady because there is no market for new commercial facilities in Montana and because the requirement for facility-wide corrective action at permitted facilities acts as a disincentive.

The most frequently observed violations during the reporting period continue a long-established trend: deviations from pre-transport hazardous waste management and used oil labeling requirements, violations associated with waste storage containers, and general labeling and recordkeeping violations. DEQ believes that hazardous waste compliance and enforcement activities result in cleaner soil and water for Montanans and less direct exposure for individuals, thus being consistent with the direction of the Montana Hazardous Waste Act. Informal and formal enforcement actions deter violators, eliminate competitive disadvantages, and send a message to the remainder of the regulated community that the Department will exercise its authority to ensure compliance.

## **Infectious Waste Management Act, 75-10-1001, MCA**

### **Description of Statute and Program**

The Waste and Underground Tank Management Bureau (WUTMB), Solid Waste Section, Solid Waste Regulatory and Licensing Program (Program) regulates the proper

disposal of wastes in Montana including infectious wastes. The purpose of the Infectious Waste Management Act is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable. Private citizens, medical facilities and veterinary clinics, as well as ranching or farming operations, have the potential to generate infectious wastes.

### **Description of Regulated Community**

There is currently one infectious waste treatment facility licensed by the Program in Montana.

### **Compliance Assistance and Education**

Two site inspections were conducted in each year of the reporting period at the lone infectious waste management facility in Montana.

### **Complaints and Noncompliances**

No complaints were reported in the reporting period.

### **Formal Enforcement**

No formal enforcement actions were taken under this statute during this reporting period.

### **Trends/Benefits to Environment**

The benefit to the environment is the continued perfect compliance record at the licensed solid waste management facility for the treatment of infectious wastes.

## **Methamphetamine Cleanup Act, 75-10-1301, MCA**

### **Description of Statute and Program**

The Waste and Underground Tank Management Bureau (WUTMB) administers the Methamphetamine Cleanup Program (Program) created by the 2005 Legislature. The law mandates communication between governmental agencies and with landlords, tenants, and prospective purchasers of former methamphetamine (meth) labs. State and local law enforcement agents are required to report actions against meth labs to the Program. The law also created a cleanup standard for meth and requires those who assess and clean up meth labs to be certified. The Program is required to post meth lab properties on the Internet at <http://deq.mt.gov/meth/default.mcpx> and work with the property owner to voluntarily decontaminate the property to meet the cleanup standard. Once that is accomplished, the property will be removed from the website and the property owner does not have to disclose the past contamination. If a property has not been remediated by a certified contractor to the cleanup standard, then the property owner must notify the Program in writing that the property had been used as a clandestine meth lab before the property can be leased or sold.

### **Description of Regulated Community**

Although cleanup of meth labs is voluntary under the Act, property owners must use DEQ-certified contractors and meet cleanup standards in order to remove their property from the Internet list and receive the immunity provision in the statute. The regulated

community under the Act consists of anyone seeking to become a Certified Meth Lab Cleanup Contractor. The Program also oversees the certified contractor's performance by determining whether the contractor's work has effectively met the cleanup standard. In addition, the Program regulates the training providers that are responsible for the courses to certify cleanup contractors. The Department has certified 24 meth lab cleanup contractors and three trainers.

### **Compliance Assistance and Education**

During the previous reporting period, the Program developed a public outreach effort to help Montanans understand the importance of participating in the cleanup program and of following the established cleanup standards designed to protect public health and safety. The Department maintains EPA's national Voluntary Guidelines for Methamphetamine Laboratory Cleanup which provides technical guidance for state and local authorities.

### **Complaints and Regulatory Noncompliance**

There were no complaints or noncompliances during the reporting period.

### **Program Response to Complaints and Regulatory Noncompliance**

There were no complaints or noncompliances during the reporting period.

### **Formal Enforcement**

No formal enforcement actions were taken under this statute during the reporting period.

### **Trends/Benefits to Environment**

There are 211 properties listed on DEQ's meth website. A Certificate of Fitness has been issued to seven property owners and their addresses removed from the website during the reporting period. The number of labs peaked in 2002 and has been steadily dropping since. Although the number of lab busts is declining, a backlog of contaminated sites remains due to the inability to obtain the information necessary to pursue proper cleanup. Also, residual methamphetamine in a structure from consumption of the drug is as prevalent as it is from manufacturing. Meth houses may pose as much of a threat to human health as meth labs. Restoration of inhabitable properties impacted by meth is critical to protect present and future occupants of these structures.

## **Motor Vehicle Recycling and Disposal Act, 75-10-501, MCA**

### **Description of Statute and Program**

The Motor Vehicle Wrecking and Recycling Program (Program) within the Solid Waste Section of the Waste and Underground Tank Management Bureau (WUTMB) administers this statute. The Act requires DEQ to license and regulate motor vehicle recycling facilities (MVRFs) and to administer a program for the control, collection, recycling, and disposal of junk vehicles and component parts. The Program provides annual grants to counties to administer the program on a local level. The Program also oversees the operation of the county programs and approves their annual budgets and expenditures.

### **Description of Regulated Community**

Any resident and governmental or commercial entity possessing junk vehicles in Montana defines the regulated community. During the reporting period there were 416 new and renewal licenses issued by the Program. Of that total, 312 were private recycling facilities. The number of commercial licenses declined slightly throughout the reporting period.

Each county has to acquire, develop, and maintain property for motor vehicle graveyards. Ten of 56 counties have merged with other counties or districts. There are 52 licensed county motor vehicle graveyards. In each year of the reporting period, 50 inspections were completed and less than six violations were found each year.

### **Compliance Assistance and Education**

Motor vehicle recycling facilities and graveyards are inspected for compliance each year. The inspections include a detailed assessment of the adequacy of the facility's shielding to screen the junk vehicles and component parts from public view and a review of the facility's records. During the reporting period, Program staff conducted 560 inspections at regulated facilities, approximately 280 inspections per year. Each county program is provided with a comprehensive Motor Vehicle Recycling and Disposal Program Reference and Guidance Manual. Annual training is also provided to all county programs. The training is usually held in Billings and in Helena. The Program participates in producing a bi-annual Solid Waste Section newsletter with copies going to all the licensed MVRF and county junk vehicle graveyard owners and operators. The Program also provides interactive forms on WUTMB's webpage, <http://deq.mt.gov/JunkVehicles/default.mcp.x>.

### **Complaints and Regulatory Noncompliance**

The Enforcement Division received 64 complaints concerning junk vehicles during the reporting period. Complaints regarding four or fewer junk vehicles are referred to the county junk vehicle programs. Complaints regarding permitted motor vehicle wrecking facilities are addressed by the Program. All other junk vehicle complaints are addressed by the Enforcement Division. Frequently, junk vehicle complaints include used oil and solid waste components.

### **Program Response to Complaints and Regulatory Noncompliance**

It is important to note that all violations are aesthetic, licensing, or recordkeeping issues. When contamination issues (water or ground) present themselves, e.g., fluid removal, staff alert other appropriate programs within DEQ or other agencies as appropriate. Some investigations lead to formal enforcement activities with ongoing actions.

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, an enforcement action may be required.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed 14 enforcement cases, all ongoing from the prior reporting period. Three cases were administrative and 11 cases were judicial.

At the end of the reporting period, two of the cases were closed, 11 cases were still active under either an administrative order or a judicial judgment, and one case was in case development. During the reporting period, District Court awarded a \$500 civil judicial penalty in one case. The Department collected the \$500 penalty.

## **Trends/Benefits to Environment**

One trend that has been observed is that the number of complaints about junk vehicles has increased in the western part of the state. This can be attributed to increasing populations and expansion of housing into more rural areas. As noted in previous reports, the Program has continued to observe that many of the owners of longtime, established motor vehicle recycling facilities are retiring or leaving the business. The newer operators tend to be more professional, focused on recycling, and aware of environmental issues. The training provided to new licensees has contributed to this improvement. In general, improved performance at county graveyards and MVRFs has resulted in the continued reduction in the potential for ground and surface water contamination from leaking fluids at these facilities and improvement in the aesthetic impacts to the surrounding environment resulting from the proper shielding of junk vehicles from public view.

Administrative order authority allows the Department to order corrective actions and assess penalties efficiently. However, in instances where the alleged violator is recalcitrant and DEQ believes an administrative compliance and penalty order will not achieve compliance, a District Court action is initiated. Such actions are time-consuming and resource intensive for both the Department and courts. However, in many instances, the authority of the District Court was necessary to compel the violator to comply.

## **Septage Disposal and Licensure Laws, 75-10-1201, MCA**

### **Description of Statute and Program**

The Waste and Underground Tank Management Bureau (WUTMB), Solid Waste Section, Solid Waste Regulatory and Licensing Program (Program) regulates the proper disposal of wastes in Montana including septic tank pumpings, pumpers and disposal sites.

### **Description of Regulated Community**

There are 160 licensed septage pumpers and 169 septage land application and disposal sites.

### **Compliance Assistance and Education**

The Program has published a pumper guide and brochures that are mailed and posted on the Program's website, <http://deq.mt.gov/SolidWaste/pumpers.mcp> to new pumpers, currently licensed pumpers, county health departments, and county

sanitarians. Annual training is provided to licensed pumper and county sanitarians. Program staff responded to hundreds of calls and e-mails from the public inquiring about proper septage disposal and from the regulated community seeking compliance assistance. Staff inspects at least 25 percent of the approved land application sites each year. Additionally, one staff member serves on the Septic Pumper Advisory Committee (SPAC), which consists of septic pumper business people representing seven regions from across the state.

### **Complaints and Regulatory Noncompliance**

DEQ received 8 complaints concerning septic pumpers during the reporting period. The complaints were related mostly to septage application sites and unlicensed septic pumpers. Complaints relating to licensed septic pumpers were addressed by the Septic Pumper Program.

### **Program Response to Complaints and Noncompliances**

The Program closes complaints by providing the needed compliance assistance to the septic pumpers. This is done by conducting a site inspection and providing education on regulatory requirements and pumper responsibilities. Complaints can also result in the Program issuing new or amended licenses.

### **Formal Enforcement Activities**

During the reporting period, the Enforcement Division managed six enforcement actions under this statute: four cases were administrative and two were judicial. Four of the enforcement actions were carried over from the previous reporting period and enforcement requests were received for the other two cases. Three of the six cases were closed, one case was in litigation before the Board of Environmental Review and the other two were subject to judicial judgments.

The Department settled two of the six cases during the reporting period for \$10,800. The Department collected \$4,525 of the \$10,500 in penalties that came due during the reporting period.

### **Trends/Benefits to Environment**

The size of the regulated community continues to increase each biennium which results in an increase in requests and the need for compliance assistance. Program staff continually work with the regulated community to identify and correct problems before an enforcement action is requested.

## **Solid Waste Management Act, 75-10-201, MCA**

### **Description of Statute and Program**

The purpose of the Solid Waste Management Act is to ensure the proper management of solid waste management systems, to prevent the improper and unregulated disposal of solid wastes, and to ensure the protection of public health and safety and conserve natural resources. The Solid Waste Regulatory and Licensing Program (Program) regulates the proper disposal of wastes in Montana. These wastes include municipal solid waste, commercial and industrial non-hazardous wastes, infectious medical wastes, used tires, construction, and demolition debris.

### **Description of Regulated Community**

There are 137 licenses issued by the Solid Waste Program (Program). There are 86 municipal solid waste (MSW) landfills in Montana, including construction and demolition waste landfills, inert material landfills and clean wood waste burn sites, and resource recovery facilities. Montana licenses four large commercial composters, nine small yard waste composters, nine dead animal composting operations, 11 waste transfer stations, seven full-time and five one-time landfarms for petroleum contaminated soils and sump solids, and 18 recycling facilities. The Program also issues household hazardous waste and e-waste (electronic waste) collection event licenses.

### **Compliance Assistance and Education**

The major outreach efforts conducted by the Program are the site visits to proposed facilities and inspections of license holders. The Licensing Program staff visit every proposed solid waste facility and actively encourage prospective applicants to attend pre-submittal scoping meetings to facilitate the licensing process. The major formal educational outreach is a series of regular training sessions conducted for landfill operators organized by the Solid Waste Program and the Montana Association of Counties. Program staff participate in or provide instruction at all of the training sessions. Staff spend considerable time answering questions over the telephone or by e-mail for various kinds of technical assistance. The Program also staffs the Solid Waste Advisory Committee, within which solid waste managers have the opportunity to exchange information and work directly with Program staff to set policy and guidance priorities for the year.

### **Complaints and Regulatory Noncompliance**

DEQ received 137 complaints concerning solid waste during the reporting period. The complaints mainly involved: private landowners or businesses with illegal dumpsites; asphalt and/or construction and demolition wastes; tires; and dead animal disposal. Frequently, solid waste complaints involve junk vehicles. Complaints regarding unlicensed facilities are addressed by the Enforcement Division.

### **Program Response to Complaints and Noncompliances**

Most landfills resolve problems as soon as they are noted in an inspection report. The Program emphasizes education and assistance over enforcement. In the history of the Program, only two landfills have had their licenses revoked for numerous solid waste violations.

### **Formal Enforcement Actions**

During the reporting period, the Enforcement Division managed 11 enforcement cases that addressed violations of the Solid Waste Management Act. The 11 cases were ongoing from the previous reporting period. Six of the cases were administrative enforcement actions and the other five cases were taken as judicial actions. At the end of the reporting period, two of the 11 cases were in case development, three cases were closed, four cases were either under an administrative order or a judicial judgment, one was being litigated in District Court, and one request for an enforcement action had been withdrawn. During this reporting period, no penalties were assessed or collected under the Act.

### **Trends/Benefits to Environment**

The benefit to the environment that has resulted from Program activities at licensed solid waste management systems is the continued low number of major violations. The Program continues to see an increase in the licensing of recycling facilities. The licenses issued to recycling facilities are free of charge; however, the facilities have to provide tonnage information as well as information on the types of the commodities collected and recycled. The Department has also seen a gradual increase in the number of household hazardous waste and e-waste collection events in several communities around the state. This trend is helping to keep potentially harmful constituents found in household hazardous wastes and e-wastes out of landfills. The number of small compost facilities has also increased in the last reporting period. An emerging trend in solid waste management is the need for a comprehensive approach to the disposal of exploration and production waste from the burgeoning oil and gas development in Eastern Montana. The Program is developing guidance to assist landfill operators to appropriately manage this waste stream.

### **Underground Storage Tank Act, 75-11-501, MCA, Leak Prevention**

#### **Description of Statute and Program**

The Underground Storage Tank Section of the Waste and Underground Tank Management Bureau (WUTMB) operates the state's Leak Prevention Program (Program) for underground storage tanks. The Program's goal is the prevention and early detection of leaks from underground storage tanks (USTs) to prevent or minimize soil and ground water contamination.

The program has four components: ensuring proper operation and maintenance of tanks through its operating permit program; ensuring proper installation and modification of tanks through its installation permitting program; providing compliance assistance to owners and operators; and ensuring that installers, removers, and inspectors are properly trained and licensed.

#### **Description of Regulated Community**

As of June 30, 2011, DEQ regulated 901 owners of 1,353 UST facilities housing 3,807 tank systems.

#### **Compliance Assistance and Education**

In FY2010 and 2011, the Program initiated and responded to several thousand compliance assistance events to ensure the regulated community was fully aware of the regulatory environment governing tanks, facilities, installations, removals, etc. Additionally, staff sent inspection reminders to all active UST facilities six months before their operating permits expired and warning letters 75 days before their permits expired. For those facilities still nonresponsive, Program staff called the owners/operators 45 days before their permits expired. The day before their permits expired, staff contacted the owners to tell them it will be unlawful to operate after their Operating Permit expires and then made calls to the facilities' distributors to advise them that it is unlawful to deposit fuel in the UST systems. Recent administrative rule changes eliminated the use of a temporary 3-year operating tag in favor of a permanent, non-expiring tag used by

the Program for recordkeeping purposes. The operating permit remains unchanged and it, in conjunction with a “Do Not Fill” list, ensures compliance with state law and the 2005 federal Energy Policy Act.

Program staff conduct continuing education classes for licensed installers, removers, and compliance inspectors annually. A three-day training course is optionally offered to train new compliance inspectors.

The award winning TankHelper II, <https://app.mt.gov/tank2/>, a free Internet-based software program that translates underground petroleum storage tank rules into easy-to-understand instructions, continues to provide online training options and generates a training certificate. This software also creates a customized, printable management plan to guide facility operators in keeping their individual storage tank systems environmentally safe and in regulatory compliance. Underground storage tank registration fees are invoiced and collected through the Department of Revenue’s One-Stop Business Licensing Program.

### **Complaints and Noncompliance**

Violations are discovered primarily through the compliance inspection process, but may also be identified during upgrade activities, through complaints, and as a result of petroleum release investigations. The Program expects that compliance inspections will continue to identify a number of violations. Many owners and operators will continue to be able to correct violations before their current operating permit expires. During the reporting period, 823 compliance inspections resulted in 1,514 violations, a reduction from the previous reporting period. The Enforcement Division received 12 UST complaints during the reporting period, generally regarding leaks, dispenser failures, and tank or line damage during excavation.

### **Program Response to Complaints and Regulatory Noncompliance**

Compliance inspectors are expected to identify violations and needed corrective actions during a compliance inspection, and debrief the owner or manager of their findings at the end of the inspection. Violations are categorized in policy by significance, i.e. major, moderate, or minor. DEQ reviewed all inspection reports and sent letters to the UST owners detailing the violations and their significance. Compliance letters sent to owners also set a timeframe for correcting each identified violation.

Major violations that are not corrected by the time an operating permit expires 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 are elevated to moderate significance.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 47 enforcement cases: 29 of the cases were ongoing from the prior reporting period and 18 were new cases. In 33 of the 47 cases, the enforcement actions were administrative. The other 14 cases were judicial enforcement actions. Sixteen of the 47 cases were closed, 24 cases were under an administrative order or a judicial judgment, six cases

were in litigation before the Board of Environmental Review or District Court and one case was withdrawn because of evidentiary shortcomings.

The Enforcement Division settled 21 enforcement cases during the reporting period with penalties in the amount of \$34,799. During the reporting period, the Department collected administrative and civil penalties totaling \$24,286. That amount includes some penalties that were assessed during the previous reporting period but which did not become due until this reporting period. Likewise, some of the \$34,799 in settlement penalties that was assessed during this reporting period were not due by the end of the reporting period and will be paid during the next reporting period.

### **Trends/Benefits to Environment**

If the operator training initiative is effective, operators will understand the value of leak prevention and early leak detection. They will understand how to operate and maintain their equipment and will understand not only how to comply with the regulations but also how those regulations protect the water, their soil, and their investment. Alternative fuel compatibility and fuel quality remain issues and the Program intends to continue to provide outreach on alternative fuel changeover practices, but does not contemplate regulatory amendments at this time.

## **Underground Storage Tank Installer, Licensing and Permitting Act, 75-11-201, MCA**

### **Description of Statute and Program**

The Underground Storage Tank Section (USTS) of the Waste and Underground Tank Management Bureau (WUTMB) operates the state's Leak Prevention Program (Program) for underground storage tanks. The Program's goal is the prevention and early detection of leaks from underground storage tanks (USTs) to prevent or minimize soil and ground water contamination. It achieves the above-stated goal by ensuring proper installation and modification of USTs through its installation permitting program, continuing education training opportunities, and licensing inspectors, installers, and removers of UST systems.

### **Description of Regulated Community**

The regulated community includes UST owners and operators, installers, removers, and inspectors. As of June 30, 2011, the Program licensed 54 installers, 16 removers and 24 inspectors.

### **Compliance Assistance and Education**

The Program conducts training courses, and tests and licenses compliance inspectors. The Program also conducts UST installer/remover refresher courses and inspector refresher courses throughout the biennium. Program staff conduct regular oversight inspections (audits) on licensed compliance inspectors in order to provide accountability and oversight and to identify training needs among this Program's regulated community. The Program conducted 54 oversight inspections (audits) on licensed compliance inspectors. These inspections provided accountability and oversight and identified training needs.

## **Complaints and Noncompliance**

DEQ may initiate an enforcement action in the event of unprofessional conduct by licensed installers or inspectors. There were no complaints filed during the reporting period.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed one enforcement case involving underground storage tank installer licensing and permitting violations. The case was an administrative action carried over from the previous reporting period and was closed at the end of the reporting period. No penalties were assessed or collected during the reporting period.

## **Trends/Benefits to Environment**

The Program continues to streamline its paperwork requirements and permitting process and provides regular updates to tank installers, removers, owners, and operators through the Program's website, mailers, and annual licensee refresher training courses.

## **H. Water Protection Bureau Water Quality Act, 75-5-101, MCA**

### **Description of Statute and Program**

The Montana Water Quality Act (WQA) prohibits the construction, operation, and use of any disposal system or outlet structure that discharges to state waters without a current permit from DEQ. The WQA establishes the Montana Pollutant Discharge Elimination System (MPDES) for discharges of wastewater and storm water to state surface waters and the Montana Ground Water Pollution Control System (MGWPCS), governing the discharge of wastes to state ground waters. DEQ has been delegated the authority under the federal Clean Water Act to issue permits pursuant to the National Pollutant Discharge Elimination System (NPDES). Because of the distinct differences in the regulated community and subject regulations, wastewater permits are separated into five different categories:

- 1) MPDES – Municipal Wastewater Treatment Systems,
- 2) MPDES – Industrial Wastewater Treatment Systems,
- 3) MPDES – Storm Water,
- 4) MPDES – Concentrated Animal Feeding Operations (CAFOs), and
- 5) GWPCS – Ground Water Pollution Control Systems.

The WQA also states that is unlawful to cause pollution or violate any provision of the Act unless explicitly authorized by the Department pursuant to Section 308 (short-term water authorization – water quality standards) or Section 318 (short-term water quality standards for turbidity). The Water Protection Bureau (WPB) also provides 401 Certifications pursuant to Section 401 of the federal Clean Water Act for federal activities or permits that result in a discharge to state waters.

## **Description of Regulated Community**

Because of the differences in the regulated communities, this section is broken down into program areas.

**MPDES Facilities** – This category includes both individual permits issued to major and minor public and industrial facilities and facilities authorized to discharge under a General Permit. It is estimated that a high percentage of the regulated community obtains permit coverage for wastewater discharges. The regulated community is well informed about the consequences of discharging wastewater without a permit. Problem areas include the following:

- Wastewater facilities, including both public and private wastewater lagoons, which are outdated and cannot meet permit effluent limits or were designed as non-discharging systems but are now discharging due to the lack of proper maintenance or growth in population served.
- Oil and gas production wells were inventoried by EPA in 1998 and a number of facilities were identified that were discharging, primarily through ephemeral drainages, to state waters. Follow-up continues to be needed.
- Short-term discharges, such as hydrostatic pressure tests of pipelines, tanks and related facilities, construction dewatering and cooling water discharges, do not obtain permit coverage. Because dischargers are required to pay fees, many smaller operators do not apply for the necessary permits.
- Unidentified CAFOs that have not applied for permit coverage but are discharging to state waters. These operations have been inventoried and work continues with agriculture interest groups to provide livestock producers with assistance to come into compliance.
- Non-filers, in general, for all types of permits. DEQ is working through the annual Performance Partnership Agreement with EPA. WPB identifies focus areas each year to find those that do not file for permit coverage.

**Storm Water** – DEQ regulates storm water discharges through the issuance of four General Permits. Phase I of the federal Clean Water Act storm water regulations address large municipal storm sewer systems and industrial facilities, including construction activities greater than five acres. Phase II of the federal storm water program went into effect in Montana in 2003. The regulations require municipalities and urban areas over 10,000 in population and small construction projects to obtain permit coverage under the MPDES program.

**CAFO** – In April 2003, CAFO regulations expanded the number of operations covered by the rule and include requirements to address the land application of manure from CAFOs. Authorized NPDES states were required to modify their programs by February 2005 and develop state technical standards. As a result of litigation, portions of the CAFO rule were required to be revised. DEQ adopted the federal regulations by reference in 2006 to ensure consistency between the programs, but some portions of the rule remain unclear. The State Specific Technical Standards were developed and adopted as DEQ-9 in February 2006. The Department utilized DEQ-9 during the response to the litigation and development of the finalized federal rule.

The 2008 final CAFO regulations revise portions of the 2003 CAFO regulations to address the Second Circuit Court's vacature and remand orders in its decision in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486. The state incorporated portions of the revised federal rule in the CAFO General Permit which became effective in November 2008. The state rule revisions are required and will be completed during the next reporting period to ensure consistency with federal regulations.

**GWPCS** – The Montana GWPCS was established in 1982 and includes both ground water quality standards and a permit program. The GWPCS Permit Program regulates facilities that discharge domestic and industrial wastewater to state ground water. The percentage of the regulated community subject to the GWPCS Program is difficult to assess but is estimated to be less than 10%. There are currently 18 categories of activities which are exempt from the permit requirement. Eleven of these exemptions were established by the Legislature and the remaining seven were adopted by the Board of Environmental Review in rule. The purpose of these exemptions is to minimize duplicative permitting among other state programs that regulate certain categories of activities; however, it does create confusion in the regulated community about the need to obtain discharge permits.

Currently, there are more than 150 subsurface dischargers. The regulated community consists predominately of domestic waste dischargers due to subdivision growth and land development over the last decade. Domestic sewage facilities discharging more than 5,000 gallons per day (gpd) and all non-exempt industrial discharges are required to obtain a permit. Industrial dischargers comprise approximately 15% of the total number of dischargers holding Montana GWPCS permits. Industrial discharges include such activities as mining, timber products processing, power generation, meat packing, and car washes.

**318/401** – WPB regulates short-term changes in water quality caused by construction and related activities. WPB also coordinates with conservation districts that issue permits under numerous Montana statutes. Because of the high degree of interagency coordination, DEQ estimates that a high percentage of the community is in compliance with the regulations. Approximately 250 authorizations are issued each year.

**308** – A 308 Authorization is required for activities such as emergency remedial activities in state waters and for the application of pesticide used to control nuisance aquatic organisms or to eliminate nonnative or undesirable species. The number of authorizations has increased over the years as the awareness of this program increases.

The permitting mechanism and compliance requirements for applying pesticides changed in November 2011. A person who wants to apply pesticides to state surface waters will be required to obtain a MPDES permit as a result of the January 2009 US Sixth Circuit Court of Appeals decision. WPB has issued and developed an MPDES Pesticide General Permit (PGP) and notice of intent process to comply and streamline the permitting process. As long as the PGP is in effect, it will supersede Montana's previous 308 authorization program for pesticides. For the next several years, WPB intends to develop the program and provide education and outreach to the regulated

community. Fact sheets and helpful information will be posted on WPB's webpage. In addition, WPB will conduct outreach and present information at relevant seminars and conferences.

### **Compliance Assistance and Education**

WPB provides compliance assistance and outreach in a variety of ways to both the regulated community and the public. It assists the regulated community during facility inspections, the annual report review and response process, the permitting process, through responses to verbal and written requests for information, and in other forums. WPB uses training opportunities to explain regulatory requirements and discuss issues of potential concern.

WPB provides information to the public by responding to verbal and written requests and comments, through postings on their web page, and by conducting public meetings and training.. Many times WPB staff can alleviate public concerns by describing the applicable rules, explaining the reviews that are conducted, and explaining the permitting processes that apply. During the reporting period, WPB provided technical assistance, responded to requests for information, provided clarification regarding the regulations, and addressed program authority inquiries. In an effort to improve service, all permit applications, technical guidance, environmental assessments and draft permits, and regulations are posted on the Department's website. WPB has revised their web pages to provide detailed information regarding monitoring reports and compliance inspections.

In addition to the outreach efforts mentioned previously, staff give presentations to various groups on a variety of water quality topics. Inquiries are common from already permitted dischargers concerning the details of their permit conditions and seeking advice on how to meet those conditions. Whether making presentations to concerned local residents, special interest groups, or affected industry representatives, WPB continues to use its staff as a resource for public and industry outreach.

### **Complaints and Noncompliances**

The primary issues identified in noncompliance events are as follows:

- Discharging without a permit.
- Failure to pay annual permit fees within 90 days of receiving an invoice.
- Exceeding effluent limits specified in the permit or failing a whole effluent toxicity test.
- Failure to conduct monitoring.
- Failure to operate and maintain treatment systems or best management systems in proper condition, especially for storm water discharges.
- Failure to comply with recordkeeping and reporting requirements in the permit.
- Failure to comply with sewage sludge and pretreatment requirements.

DEQ received 631 complaints related to potential water quality concerns. The Department received 10 complaints about discharges to surface water from potential CAFOs or feedlots. Complaints regarding facilities that have MPDES discharge permits were referred to WPB for resolution. Feedlots not large enough to be CAFOs are considered Animal Feeding Operations (AFO). The eight AFO complaints managed were commonly due to animals confined in a small corral with open access to a creek.

Other types of MPDES permits most often complained about include storm water discharges from construction sites and subdivisions, and construction dewatering activities. Thirty-seven MPDES complaints were received. Construction within the high watermark of a perennial stream requires a DEQ 318 Authorization to temporarily exceed DEQ-7 turbidity standards. There was one associated 318 complaint during the report period. The Department did not receive any complaints related to discharges permitted under the Ground Water Discharge Pollution Control System (GWPCS) during the reporting period, but did receive six municipal wastewater complaints that typically dealt with smelly lagoons.

Unauthorized discharges can be associated with transportation-related fuel spills and releases from stationary fuel storage tanks and pipelines. Releases from tanks are regulated under the Underground Storage Tank Act. There were 88 pipeline releases called in during the reporting period. The Enforcement Division received 334 spill reports during the reporting period. Fifty-six of these impacted ground or surface water.

When surface water impacts are documented, the Enforcement Division ensures that: (1) state waters are promptly cleaned up to reduce long-term impacts; and (2) cleanup efforts are verified through laboratory analysis. The Department works closely with both state and federal agencies that have jurisdiction over the oil and gas industry and tribal lands to ensure spill and release remedial actions are conducted according to the protocols established by the regulating authority. DEQ receives spill and release reports via: (1) the 24-hour DEQ Duty Officer (431-0014); (2) the Enforcement Division (444-0379); and (3) the Remediation Division's Release Reporting Hotline (1-800-457-0568 or 841-5000).

The Department received 153 water-related complaints generated by citizens alleging that someone or something placed material in a location that may threaten water quality. All documented violations receive written notification with appropriate recommendations and reasonable timelines to complete the corrective action.

### **Program Response to Complaints and Noncompliances**

WPB initiates a response whenever it discovers a violation of the permit has occurred. This response is typically in the form of a violation letter, which identifies the activity that resulted in a violation and describes what action is required by the permittee to come into compliance. If a Water Quality Act violation is documented, WPB sends a violation letter and provides assistance to return the site to compliance.

Compliance with permit conditions is assessed primarily through self-monitoring reports and compliance inspections performed by WPB staff. Discharge monitoring reports are submitted to WPB on a monthly, quarterly, or semiannual basis depending on the type of permit, nature of the discharge, and the reporting requirements specific to the permit. Public complaints of permitted facilities are not a significant factor in determining compliance.

## **Formal Enforcement**

The Department developed an expedited approach to address MPDES permit effluent and reporting violations for over 50 permit holders, many of which are small communities with outdated wastewater treatment systems. Under the approach, the systems are offered to return to compliance under an administrative consent order. As a result of this approach, the number of Water Quality Act formal enforcement actions increased during the reporting period.

During the reporting period, the Enforcement Division managed 50 enforcement cases. Thirty-four of the cases were carried over from the previous reporting period and 16 were new cases. Forty-two of the 50 enforcement cases were administrative enforcement actions, eight cases were judicial actions, and one case was referred to EPA for enforcement. At the conclusion of this reporting period, one of the 50 water quality enforcement cases was in case development, 20 cases were closed, 21 cases were still active under an administrative order or a judicial judgment, four cases were in litigation before the Board of Environmental Review or District Court, one violator had been sent a demand letter to determine if two of the cases could be settled with a consent order, and one request for an enforcement action was denied because of evidentiary issues.

Thirteen enforcement actions were settled during the reporting period for penalties totaling \$90,459. During the reporting period, the Department collected \$60,393 in administrative and civil penalties that came due for enforcement actions that were initiated during the previous and the current reporting period.