



Report to the Montana Environmental Quality Council

Environmental Enforcement and Compliance

FY 2004 – FY 2005

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Introduction

Enforcement Process

Compliance and enforcement activities take place on a variety of levels within the Department of Environmental Quality. Compliance assistance is provided through organized programs such as the Planning, Prevention and Assistance Division's Small Business Assistance Program and the Pollution Prevention Programs. Inspection activities and routine correspondence provide the Permitting and Compliance Division regulatory programs with the opportunity to provide compliance assistance for permitted facilities.

Noncompliances or violations are discovered in three ways: inspections, review of self-monitoring reports and citizen complaints or spill reports. Regulatory program staffs discover noncompliances through inspection work at permitted facilities and through the review of self-monitoring reports submitted by the permitted entities. A warning letter is usually sent in response to a minor violation and a violation letter is sent for significant violations. The purpose of these letters is to notify the permittee that the Department 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 and manage the response to citizen complaints and spill reports submitted to the Department. The Enforcement Division manages about 1,000 complaints and spills each year. Approximately 22% are associated with permitted facilities or individuals and are referred to the appropriate Department regulatory program for resolution. Eighty-eight percent of the reports received are determined to be valid. The Enforcement Division issues warning or violation letters as appropriate and provides compliance assistance to help responsible parties return to compliance. Only 1% of violations discovered during a complaint investigation result in formal enforcement.

Most formal enforcement actions are requested by the regulatory programs to address a significant violation at a permitted facility. A formal enforcement action, which may include required corrective action and/or a penalty assessment, is typically sought for violations classified as significant, whether or not the violation can be corrected. Penalty actions are also initiated against recalcitrant violators who ignore the recommendations in a violation letter and who have repeated minor violations. To initiate formal enforcement, the regulatory program submits an enforcement request form. After the director approves the request, the Enforcement Division staff work with legal staff to calculate penalties, draft orders, negotiate settlements and monitor compliance with Department orders. The Enforcement Division manages approximately 325 formal enforcement cases each year, most of which include a penalty.

Clean Air Act of Montana, 75-2-101, MCA

Description of Statute and Program

The Department is responsible for administering the Clean Air Act and the corresponding administrative rules. Under the authority of these regulations, the Department protects and maintains air quality in Montana. The Department's efforts result in the protection of human health and safety, and to the greatest extent possible, the prevention of injury to plant and animal life.

Description of Regulated Community

The regulated 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. Currently, the Department has approximately 650 facilities with active air quality permits. The regulated community is split almost evenly between stationary sources and portable sources. On average, the air quality program processes approximately 200 permitting actions each year, approximately 50 of these for new facilities.

Compliance Assistance and Outreach

The Department 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 emissions inventory process, report review and response process, the permitting process, through responses to verbal and written requests for information, and in other forums. The Department uses such opportunities to explain regulatory requirements, remind sources of upcoming deadlines, and discuss issues of potential concern.

The Department provides information to the public through verbal information requests/comments, through responses to written information requests/comments, and via other forums. Many times the Department can alleviate public concerns by describing the applicable rules, explaining the reviews that are conducted, and by explaining the permitting processes that apply.

In addition to the outreach efforts mentioned previously, Department personnel routinely make presentations to various groups on a variety of air quality topics (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 Department continues to use its staff as a resource for public and industry outreach.

The Department also focuses efforts on sources that are not traditionally subject to regulation. The Department developed and distributed several compliance assistance publications. Industries/topics addressed included dry cleaners, sweat furnaces, vehicle repair shops, construction companies, busing providers, and Environmental Management Systems (EMS). To augment the information supplied in these compliance assistance publications, the Department sponsored or conducted various

training events. Industries targeted for training included dry cleaners, auto repair shops, busing companies, construction companies, and diverse businesses interested in EMS development and implementation. Additionally, during the reporting period, the Department developed and distributed two compliance assistance public service announcements (PSA). One PSA discussed fugitive dust and proper means for suppression; the other discussed regulatory requirements for asbestos compliance in commercial reconstruction or demolition.

Other Compliance Activities

The Department has continued conducting facility inspections and full compliance evaluations (FCE) in accordance with the Performance Partnership Agreement (PPA) and the Compliance Monitoring Strategy (CMS) with EPA. Inspections are site visits by Department staff for the purpose of witnessing the operations of a facility on a particular day. FCEs are in-depth assessments of a facility's compliance success for a given time period. FCEs include a detailed assessment of various industry reports, site visit notes, complaints, etc. for a particular facility over a specified time period. Department staff use FCEs as an opportunity to fully evaluate the compliance aspects of the subject facility.

Complaints and Noncompliances

The Department received 145 complaints concerning air quality emissions during the reporting period. Of the 145 total complaints, 58 involved the Billings refineries. Many of these complaints were self-reported emissions of NO₂, H₂S, or SO₂ due to malfunctions or equipment failures. The majority of these self-reports, 43, were from the Exxon Mobil refinery. Most of the remaining complaints involved emissions from other industrial sources, crushers or concrete batch plants, paint spraying operations and asphalt batch plants. The number of complaints remained fairly constant during the reporting period.

The Department received 109 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 subdivision construction and large building construction projects.

The Department received 88 open burning complaints during the reporting period. Of these complaints, over one-half were for disposing of prohibited materials and items by open burning. The number of complaints of private individuals conducting prohibited burns was slightly higher than commercial enterprises.

The Department documented five odor complaints during the reporting period. Two of the odor complaints involved odors from unknown sources, one complaint was in regards to a sewage lagoon, and the remaining were about odors from burning. The Department documented one indoor air quality complaint during the reporting period. The DEQ does not typically regulate indoor air quality standards or regulations and most calls are referred to the Department of Labor and Industry.

Program Response to Complaints and Noncompliances

Complaints and noncompliances concerning the air quality program can typically be separated into three separate 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, the Department sends notices of reasonable precautions requirements to the responsible party to assist the responsible party in understanding the applicable rule. Such outreach generally prevents future complaints against the responsible party.

Open burning is another activity that frequently generates complaints. While open burning complaints are received most of the year, the majority of the complaints are received during the early spring and late fall. When the Department receives open burning complaints that indicate some type of non-compliance, 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 non-compliance from the responsible party.

Industrial sources also generate complaints and issues of non-compliance. The Department investigates complaints against industrial sources to determine whether or not the source is complying with the air quality rules. Areas of non-compliance are also discovered through inspections, report review, and emission source testing. If the Department finds that areas of non-compliance exist, the Department issues either warning letters or violation letters, depending on the magnitude of the violation (high priority violation or not), the nature of the violation, the source's compliance history, etc.

Warning letters are issued for those instances of non-compliance where the Department has determined that the violations are not significant (for example, first time violations of a relatively minor permit condition or rule). Typically the Department uses enforcement discretion to close such issues without formal enforcement being requested. Warning letters may be issued for a variety of issues, including violations generated by dust, open burning, industrial source activities, etc.

Violation letters are issued for those areas of non-compliance that the Department determines are significant (for example, emissions violations, substantial recordkeeping/reporting violations, etc.). When the Department issues a violation letter, the intent is to pursue a formal enforcement action unless the responsible party submits additional information that was not considered at the time of the violation letter. Typically violation letters are issued to industrial facilities, but significant non-compliance issues caused by dust and open burning can also lead to violation letters.

Formal Enforcement

During the reporting period, the Department managed a total of 29 enforcement cases; nine were ongoing from the prior year and 20 were new cases. In 20 of the 29 cases, enforcement was administrative and nine were judicial. One of the 29 cases is currently in development; 16 have been closed; 10 are still active under an administrative order or a judicial judgment; and two cases are in litigation before the BER or a District Court.

The Department settled 14 enforcement cases during the reporting period for penalties in the amount of \$537,195. The average settlement penalty was \$38,371 and to date, the Department has collected \$326,653. The unpaid penalties are either due at a future date or are being paid in installments.

Trends/Benefits to Environment

The size of the regulated community has increased from between 500 and 600 active permits for the last reporting period to about 650 active permits for this reporting period.

The Department witnessed 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.

No trends were identified regarding violations since the last reporting period. The number of violation letters continues to vary from year to year and from industry to industry.

Montana Major Facility Siting Act, 75-20-101, MCA

Description of Statute and Program

The Major Facility Siting Program includes certification that energy facilities such as large transmission lines and pipelines are needed; and that their location, construction, and operation minimize impacts. The program also has responsibility as the lead state agency for hydroelectric dams greater than 50 mega watts (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. Twenty-nine facilities are covered under MFSA. All but two are believed to be operating in compliance with certificates.

Compliance Assistance and Education

As necessary, program staff review and update PPL Montana's license to operate hydroelectric facilities on the Missouri and Madison Rivers and coordinate state agency approval of emergency operating variances as necessary.

The program reviews results of monitoring reports and PPL Montana's (PPLM) proposed recovery measures for leaks and spills from the "closed loop" ash disposal system for PPLM's Colstrip Units 3 and 4, and 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 ponds, and reviewed plans for groundwater interception systems to recover leakage. Additional investigations are underway 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. The agency has also participated in negotiations with the company concerning longer-term cleanups, possible bonding for reclamation, and plans for eventual plant closure.

Complaints and Noncompliances

Occurrences of non-compliance are found through on-site inspections, review of required monitoring reports, response to spills reported on the spill hotline, or through citizen reports. There are three facilities currently not in compliance.

Colstrip Units 3& 4: The certificate requires that the facilities be operated as a closed loop system so that there is no leakage from the wet process ash disposal system. Groundwater monitoring or spills reported to the program indicate where facilities are not operated as a closed loop system. Groundwater is being adversely affected by the release of process water with, among other things, elevated total dissolved solids and specific electrical conductivity, boron, selenium, and sulfate. The certificate requires a system of monitoring wells.

During the reporting period, the Department received nine complaints and/or spill notifications about PPL Montana's Colstrip Power Plant. Prohibited releases from the system, which may violate water quality standards, are usually discovered through PPL self-reports or complaints from nearby residents.

Laurel to Bridger Transmission Lines: A relatively small area near the southern end of the line has not attained the required 90% ground cover of desirable perennial species. Monitoring funds for this project have run out.

Program Response to Noncompliances

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 is also working with the Western Area Power Administration, Bonneville Power Administration, and two other applicants to coordinate MFSA and MEPA compliance with other state 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 mitigating measures specified in a certificate are not adequately addressing the problem, 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 timely solution. There has been a significant increase in interest in new and/or modified transmission systems and wind power over the last two years, and this trend is expected to continue into the near future.

Montana Metal Mine Reclamation Act, 82-4-301, MCA

Description of Statute and Program

The Hard Rock Program of the Environmental Management Bureau administers the Montana Metal Mine Reclamation Act, the Montana Environmental Policy Act, 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 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

Currently the Operating Permit section administers 63 permits covering 61 mines. These include six active metal mines. 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 103 current exploration licenses and 550 Small Miner Exclusions.

In mid-2006, the program administers 716 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 the diverse resource areas that may be affected.

Compliance assistance continues after a permit is issued. Program staff perform from one to four 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 mining engineer become familiar with projects and assist permittees in recognizing potential violations before a noncompliance occurs.

The program hosts a Mine Design, Operations & Closure Conference every year in a joint effort with the Forest Service, Bureau of Land Management, Montana Tech, consultants, industry sponsors, Haskell Indian Nations University, and the Salish-Kootenai College.

Complaints and Noncompliances

During the reporting period, the Department received six complaints alleging potential violations at hard-rock mining and mineral exploration areas. The potential violations may be classified as follows: three regarding accidental releases of mine processing solutions or vehicle fluids; two involving water quality; and one about permit compliance.

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 visits that bring the operator back into compliance. Letters, such as Warning or Violation Letters, may also be used to obtain compliance. Some complaints, especially those involving large releases of mine processing fluids, may generate a formal enforcement action.

Notices of Violation are copied to the Enforcement Division to assist in coordination between the two divisions. These open up communication with mining companies in order to assist in their compliance.

Formal enforcement

During the reporting period, the Enforcement Division managed a total of five enforcement cases; four were ongoing from the prior year and one was a new case. Two of the cases were administrative and three were judicial. Two of the five cases have been closed; two are still active and are either under an administrative order or a district court order and one was withdrawn. None of the cases were settled during the reporting period. The Department collected \$425 in penalties that were assessed during the previous reporting period.

Trends/Benefits to Environment

The regulated community has shrunk significantly for several 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 \$400/oz in 1996 to \$260/oz in 2001; exploration for gold and other metals dropped off sharply, not just in Montana, but everywhere in the US except Nevada. More exploration licenses have been placed inactive in Montana than new ones issued in every year since 1994. Consolidation of major mining companies and emphasis on foreign exploration has led to closure of many exploration programs across the country during this same period.

In 1998, Montana voters passed Initiative I-137, banning the use of cyanide to process gold or silver ore mined from an open pit. That decision was reinforced in 2004 by the defeat of Initiative I-147, which would have legalized heap-leach mining once again. In early 2006, prices for several metals, including zinc, copper, gold, silver, and platinum have rebounded to levels not seen in 25 years, if ever, but only a handful of companies have reacted with new exploration projects. Since the technology applicable to the low-grade gold ore bodies most likely to be found by further exploration in Montana has been banned, 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, but no significant increase in the size of the regulated community should be expected anytime soon. The one area of increased activity over the last several years does not involve metals: a prolonged boom in home construction has led to increased demand for landscape rock and building stone from small-scale excavations, and new

legislation in 2005 gave the agency authority to issue operating permits for multiple small, relatively low-impact quarry sites.

It should be noted that the statutory maximum penalty for violation of the Metal Mine Reclamation Act is \$1,000 for each violation. If the violation creates an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 per day. Daily penalties may be assessed only if the violation continues after the violator is served with a notice of violation and order.

Comprehensive Environmental Cleanup and Responsibility Act (CECRA), 75-10-701, MCA

Description of Statute and Program

The Site Response Section of the Remediation Division utilizes the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and the Environmental Quality Protection Fund (EQPF) to investigate and cleanup hazardous substances at sites not addressed by federal Superfund. Historical waste disposal activities at these sites caused contamination of air, surface water, groundwater, 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 the 210 listed sites in Montana, CECRA activities focus primarily on maximum and high priority sites. The program has consent decrees or administrative orders at 12 CECRA sites, but current resources only allow SRS to address 11 sites and ensure compliance. Shortfalls in the Resource Indemnification Trust income have resulted in shortfalls in the amount of funding the EQPF receives, preventing the program from being fully staffed. There are currently 56 maximum and high priority sites on the CECRA Priority List; however, 24 of those sites are not being actively addressed by the program or another agency. 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 210 listed CECRA sites; however, this list may not be comprehensive since new sites may be discovered at anytime. The portion of the population in compliance cannot be calculated for this law.

Compliance Assistance and Education

Montana law provides several opportunities for potentially liable parties (PLP'S) 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 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 the program issues orders.

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

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 the Department 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.

Program Response to Complaints and Noncompliances

Typically, the program first works with the PLPs to obtain their cooperation in investigating and cleaning up the site. PLPs, working cooperatively with the program, conduct most site cleanups. If the PLPs are uncooperative, the program may initiate enforcement actions to obtain cleanup.

Formal enforcement

In FY2004, there were no formal enforcement actions. In FY2005, the Department amended one administrative unilateral order, resolved three cost recoveries, partially settled one cost recovery, and initiated one cost recovery action for three facilities.

Trends/Benefits to Environment

This contamination has caused or may cause public health impacts, such as contaminated drinking water and ecological impacts (such as loss of fisheries.)

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

Description of Statute and Program

The Petroleum Release Section contains the Leaking Underground Storage Tank (LUST) Trust Fund Program and the Petroleum Tank Release Cleanup Fund (PTRCF) Program. Technical staff implements the corrective action required of the Montana Underground Storage Tank Act. They oversee, require, and sometimes perform the investigation and cleanup of sites contaminated by releases of regulated substances from underground storage tanks.

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 4,242 releases have been confirmed

since the inception of the program in 1988 through June 30, 2005. A total of 139 releases were confirmed since in FY2004 and FY2005.

Compliance Assistance and Education

By the time a release has been identified, some level of pollution/contamination to soil and/or groundwater has already 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 is/was in compliance with the UST program laws and rules when the release was discovered, the Petroleum Tank Release Compensation Board (PTRCB) is authorized to reimburse a portion of the eligible leak investigation, remediation and third-party damage costs. The first \$35,000 in costs is split with the tank owner. In general, the program has not needed 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 sites to remain in compliance with cleanup requirements in order to remain eligible for funding from the PTRCF.

Compliance assistance efforts include site visits and meetings with responsible parties and their consultants, which may include visits and meetings with individuals from the PTRCB staff, local health officials and fire officials. The program's project managers keep the responsible parties informed as to their continuing obligations as they work through the investigation and cleanup processes. The program also provides cleanup technology articles to the division's MUST News, a publication distributed to UST owners and operators, and other parties interested in UST compliance. The program also participates in the Petroleum Tank Release Compensation Board's recurring meetings with environmental consultants to discuss cleanup and reimbursement procedures and policy.

Complaints and Noncompliances

Noncompliance with this program 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 Department has issued a total of 50 notices of violation for corrective action provisions of the Underground Storage Tank Act between 1989 and 2005. Enforcement has not been necessary at the majority of the 4,192 releases in Montana. Notices of violation issued by the program were necessary at only 1.0% 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.

Program Response to Non-compliances

The program 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.

In most instances, the program 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, informal notices of violation, 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 Notices of Violation and Order, judicial actions, etc. only when a lower level of enforcement action fails to achieve the desired response.

The program may issue up to three letters notifying responsible parties of incomplete work or non-compliance prior to initiating formal enforcement actions. When a deadline from a Department request letter is missed, the program will send a second request letter with a new deadline. If that deadline is missed, the program will send a third request letter with a final deadline. Continued non-compliance typically results in issuance of a notice of violation. Throughout these written exchanges, program project managers conduct informal conversations and assistance visits to try to ascertain why an owner or operator is not complying, and to facilitate compliance. During FY2004 and FY2005, the program has issued 33 second-request letters, 10 third-request letters, and nine NOVs.

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

LUST Trust Program

The program utilizes the LUST Trust Program in lieu of or in addition to formal enforcement activities to conduct investigations and cleanup activities using Department staff or its contractors.

In the event that an UST owner/operator cannot afford cleanup or refuses to conduct cleanup the program may take 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 the Department for these actions are recoverable from solvent responsible parties. The agency utilizes these provisions to encourage responsible parties to conduct their own investigations and cleanups. Legal enforcement against insolvent or bankrupted responsible parties is not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs.

Opencut Mining Act, 82-4-401

Description of Statute and Program

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

Description of Regulated Community

The regulated community varies greatly. The permit holders vary from small one or two person entities that mine several thousand cubic yards of material annually and have one permit to multinational companies that have several hundred employees, mine several million 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 Department of Transportation). A few federal agencies also have permits with the program.

Near the end of the third quarter of FY2005, the program had a total of 1,833 active permitted operations, over 200 pending permit applications, amendments, and assignments, and approximately 200 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.

Compliance Assistance and Education

The program assists the regulated community and the general public by providing information and technical expertise on opencut mining related questions. Subject to staff and time limitations, the program provides one-on-one personal assistance to members of the regulated community, such as guidance in filling out the various permit-related forms and drafting permit maps. One specific example of note is that the program has created a Power Point presentation involving the "do's and don'ts" of mining operations and reclamation, which has been presented to the opencut mining industry, college classes, and a watershed management group.

The program has the authority to inspect lands subjected to opencut mining to determine whether the provisions of the Opencut Mining Act have been complied with. The inspections occur in a priority manner with inspections of new applications and complaints getting the highest priority, followed by bond and liability releases and regular inspections.

Program staff offers suggestions, ideas, and solutions to mine permit applicants and operators when possible, and takes enforcement action when necessary. Enforcement actions are used less frequently and usually when an operator or potential operator is uncooperative, where environmental harm occurs, and/or a situation shows operator negligence.

Complaints and Noncompliances

The Department received 33 complaints associated with sand, gravel, and topsoil mining operations. The complaints represented 47 potential violations of state environmental regulations and may be categorized as follows: 12 regarding lack of a permit or mining outside permit area; 9 about air quality (dust); 9 involving water quality; 7 about disposal of waste materials; 5 about operations, such as noise and operating hours; 4 regarding reclamation practices, such as weed control; and, 1 involving an accidental vehicle fluid release. All complaints are referred to the Permitting & Compliance Division's Opencut Mining Program for resolution.

Program Response to Noncompliances

Minor violations are generally resolved by a phone call or visit that brings the operator back into permit compliance. Letters, such as warning or violation Letters, may also be used to obtain compliance. The Air Quality Program 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 resolved through formal enforcement action.

Formal Enforcement

During the reporting period, the Enforcement Division managed a total of 26 opencut enforcement cases; 11 were ongoing from the prior year and 15 were new cases. Twenty-two cases were administrative and four were judicial. One of the 26 cases is currently in development; 15 have been closed; 8 are still active and are either under an administrative order or a judicial judgment; and 2 cases were withdrawn. The Department settled seven cases during the reporting period for a total of \$7,520. The average settlement penalty was \$1,036. During the current reporting period, the Department collected penalties in the amount of \$12,520. Some of the collected penalties were owed from the prior reporting period and came due during this reporting period.

The violations for which enforcement actions were initiated include: mining outside of the permitted area; mining without a reclamation permit; failure to reclaim, failure to provide adequate bond and failure to salvage topsoil.

Trends/Benefits to Environment

While the number of permit applications received has remained fairly consistent, in certain areas of the state, they have gotten considerably more complex to process to completion. This is especially true in the high growth counties of Yellowstone, Gallatin, Flathead, Ravalli, and Missoula. In these counties mineral operations are encroaching 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 groundwater and domestic water supplies, air quality, truck traffic and public safety, and property values, among others. Over the reporting period, the

program has also witnessed more applications that require additional information and studies, especially concerning issues on water quantity and quality.

These applications require considerably more staff time to review and analyze than operations that are proposed in sparsely populated areas or those that do not actually encroach on groundwater. Addressing the concerns of local citizens, holding public hearings, investigating complaints, analyzing the applications for compliance and contacting the applicant about needed revisions are have stretched staff resources of the Opencut Mining Program

As a result, the number of pending permits have remained at a higher level over the reporting period and the majority of permitted sites have gone without needed compliance inspections. The high workload has reduced the critical early assistance the program has historically provided to new operators and who are unfamiliar with the process. It has also resulted in sites that operate without permits because of the lack of resources to locate them or to follow-up on them once they have been identified. Some of these unpermitted sites are mined and end up as weed-infested sites where local citizens dump refuse.

Pending permits and a lack of timely follow-up is counterproductive to the mission of the program, because some operators may see this as a legitimate opportunity to mine without a permit, causing creating a competitive disadvantage for permitted companies and damage to the environment.

Montana Strip and Underground Mine Reclamation Act, 82-4-201

Description of Statute and Program

The Coal and Uranium 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 five major coal development companies actively mining in Montana. With the exception of one comparatively small operation, all of the active mines are located in southeastern Montana. Of these, one company holds six 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 and have been conducted by two companies in potentially new mining areas as well as companies having existing operating mines in the state. The activities of existing companies generally involve defining the coal quality and quantity as mining advances in current permitted areas or areas of potential expansions of existing mines.

Compliance Assistance and Education

Prospecting inspections are conducted to evaluate site situations prior to initiation of activity, and during and after prospecting activities as necessary 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 interacts 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, interpersonal 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 seminars, conferences, symposia, and training. These interactions and efforts appear to facilitate the conduct of coal prospecting and mining business with moderate formal enforcement action or litigation required.

The greatest incentive for compliance with coal and uranium rules and regulations is the cost effectiveness of doing so. Costs associated with discovery, evaluation, mitigation and final resolution of non-compliance issues are high, for both 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. Additionally, 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 or corporate entity does not meet regulatory obligations under one permit, other permits may be obstructed.

Complaints and Noncompliances

The Department received 10 complaint reports associated with activities (except activities affecting air quality) at coal mines or "strip mines". Seven complaints were actually spills caused by accidental releases from vehicles, fuel storage or transport facilities, and a substation. Two of the complaints were regarding water quality and quantity in citizen's wells in the general vicinity of the mines. The remaining complaint alleged violations of the mining permits. All complaints and spills were referred to the Coal and Uranium Program.

Program Response to Complaints and Noncompliances

The program refers to the issuance of a notice of a "violation" of a statutory or permit requirement as a Notice of Noncompliance (NON). While NON's generally relate to 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 an NON. The maintenance item requires work to be performed within a specified time frame or prior to occurrence of a specific event. Issuance of NONs may result in a requirement to make minor or major adjustment 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. NON's are discovered as a result of program field inspections, review of reports and data, citizen complaints or by 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 way of doing something. 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 adjustment of reclamation practices that provide compliance with the rules and permit. Violations involving a water effluent problem may require water treatment and sediment control structures being 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 18 enforcement cases; 6 were ongoing for the prior year and 12 were new cases. All of the cases were administrative. Seventeen of the 18 cases have been closed and 1 case was vacated. The Department collected penalties in the amount of \$4,860.

During the reporting period, the Department issued a Show Cause Order to Westmoreland Resource, Inc. for "pattern of violation" violations. The parties settled the enforcement action with an Administrative Order on Consent in which Westmoreland agreed to conduct a third-party review of the company's permit compliance practices.

Trends/Benefits to Environment

Since 2001, 5 to 10 violations per year have been issued. The primary violations at coal mines that resulted in an enforcement action during this reporting period were caused by the failure to follow approved mine operational requirements, the failure to properly reclaim disturbed lands and sampling or monitoring violations. Department regulations must be as stringent as federal regulations that essentially require that a penalty must be assessed for all violations.

The Coal and Uranium Program has had a relatively stable regulated mine community of five large operators 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 may vary year to year, but the average over the report period is likely to continue for the foreseeable future. The number of new bond release applications and associated inspections increased during the report period. A further increase in the number and complexity of these applications is expected to occur in the next report period. Minor revisions are required when a permit page or map needs to be changed; revised language has been drafted into some permits that allows for flexibility in reclamation practices.

Montana Public Water Supply Laws, 75-6-101, MCA

Description of Statute and Program

The Public Water Supply Section (PWSS) implements and enforces the Montana Public Water Supplies' Distribution and Treatment Law and has primary enforcement authority for implementation and enforcement of 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 2,061 public water supply systems, which includes 679 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 that does not regularly serve at least 25 of the same persons for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are 1,163 transient systems. A *non-transient water system* is a public water supply system that is not a community water system and that regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are 219 non-transient systems.

Compliance Assistance and Education

The program 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 participates in a very active statewide operator-training program that also involves other technical assistance providers. The program emphasizes operator training, technical assistance, and proper water treatment and monitoring. The program routinely provides monitoring schedule calendars for water systems, 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 program performs routine sanitary survey inspections of public water systems to identify possible system deficiencies that may affect compliance. The program also provides technical assistance to water suppliers to address specific compliance issues. Technical assistance is provided in the office, via the telephone, or directly on site, depending upon the circumstances.

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 non-compliance problems related to system construction.

Complaints and Noncompliances

The Department received 35 complaints concerning public water supplies during the reporting period. Of the 35 total complaints, all but 2 involved public water supplies regulated by the Department. The majority of the complaints were about the quality of drinking water.

Program Response to Noncompliances

The program closed 10 of the complaints when compliance was documented; 6 complaints were closed because no violation was noted; 2 complaints resulted in enforcement requests and 7 are still active.

Formal Enforcement

During the reporting period, the Enforcement Division managed a total of 158 enforcement cases; 57 of the cases were ongoing from the prior year and 101 were new cases. One hundred twenty-seven of the 158 cases were administrative, 18 were judicial and 13 were referred to EPA for enforcement actions. Twelve of the 158 cases are currently in development; 55 have been closed; 47 are still active under an administrative order or a judicial judgment; 4 cases are in litigation before a district court or the Board of Environmental Review, 27 cases were withdrawn or vacated, and 13 were referred.

During this reporting period, the Department resolved 32 of the 158 enforcement actions. The 32 enforcement actions resulted in violators being liable for penalties in the amount of \$214,220; \$191,200 in judicial penalties and \$23,020 in administrative penalties. During the reporting period, the Department collected \$21,264. The unpaid penalties 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 currently judgment-proof.

Trends/Benefits to Environment

During FY2004 and FY2005 the program experienced some staff shortages, which consumed program resources to recruit and fill. In conjunction with the recruiting effort the program was undergoing a "Business Process Management" (BPM) review to evaluate the program's processes and procedures. Even with the staff shortages and process reviews, the number of validated violations has increased. This increase is primarily due to better tracking and management of the program database, which identifies monitoring and reporting violations.

During FY2004 the program completed over 500 monitoring schedule calendars for the regulated systems. In FY2005 the program completed over 900 monitoring schedule calendars electronically through the program's database.

The 2005 legislature approved 2.5 new program positions. These positions were utilized to increase plan review engineering staff, add a database development position and increase administrative support. The additional staff has provided a reduction in

plan review times, has improved data entry, and will assist in increasing the effectiveness of the database.

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 were initiated for the failure to monitor for coliform bacteria and nitrate, and the failure to provide public notification of the violations. The failure to provide public notice places users of the water supply at risk because they cannot make informed decisions concerning their consumption of water provided by the supplier. Most of the enforcement actions were taken against small water systems that serve cafes, bars and trailer courts rather than large municipal water supplies.

Twenty-six violation letters were issued for construction or operation of public water or wastewater systems without prior plan review and approval. Most of these systems are working with the Department to return to compliance.

The Department 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 is responsible for the technical review and processing of 1,200 to 1,600 subdivision applications (approximately 6,000 to 8,000 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 the Department that hold a certificate of subdivision approval. Current electronic records indicate that, since 1987, over 25,252 subdivisions have been reviewed and 23,602 of them have been approved in Montana. The number of individual lots included within a subdivision application can range from one to several hundred. We are currently seeing trends towards larger numbers of smaller lots in subdivisions that include both public water and public sewer.

The annual number of subdivisions reviewed and approved over the past three years has steadily increased from 1,354 applications for 4,692 lots in FY2003 to 1,585 applications for 6,814 lots in FY2005. The section also made water quality nondegradation determinations for approximately 11,000 individual and community wastewater treatment systems in FY2003 through FY2005 to ensure compliance with the Water Quality Act.

Compliance Assistance and Education

The program 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 interacts with applicants on a daily basis.

Over the past two years, the program has continued to increase efforts to provide more formal education and training about rule interpretations and technical analyses to county sanitarians and consultants. Program staff has provided five off-site training sessions per year starting in 2001 and continuing today. Staff also 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 Department employees, local health officials, developers, and consulting engineers. An ongoing goal of the focus group is streamline the application process and provide greater consistency, thereby promoting greater compliance.

Complaints and Noncompliance

The most common noncompliance issue involving the Sanitation in Subdivisions Act arises 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 non-compliance 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 the Department or by 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 non-compliant facilities during septic system installations.

From FY2004 through FY2005, there were 90 complaints of potential violations of the Sanitation in Subdivisions Act and associated rules during the reporting period. Fifty two of these complaints were regarding one subdivision where sanitary restrictions had not been lifted and construction of residences has been occurring since the 1960's. Most of the other complaints were filed by citizens concerned about well water quality and quantity as well as the adequacy and location of their neighbor's wastewater treatment system. 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.

Program Response to Complaints and Noncompliance

The majority of complaints, once validated, are referred to the Subdivision Review Section. The responsible party generally resolves them by submitting a revised subdivision proposal to the Department or conducting necessary corrective actions to bring the subdivision back into compliance with the original approval.

Formal enforcement

During the reporting period, the Enforcement Division managed a total of eight enforcement cases. Six of the cases were ongoing from the previous reporting period and two cases were initiated during the current reporting period. Six of the eight cases are administrative and two are judicial. Three cases have been closed; three are still active under an administrative order or a judicial judgment; one case is being litigated in district court; and one case was withdrawn.

The Department settled one case during the reporting period with a penalty of \$5,000.

Trends/Benefits to Environment

There does not appear to be any clear trend regarding the number of enforcement actions that occur each year. With greater emphasis placed on education over the past several years, the section believes that many potential noncompliance situations with newer subdivisions are being prevented. However, due to the large number of subdivisions approved and constructed since the Act came into existence, and given the steady growth that various regions of Montana are experiencing, the section anticipates that there will continue to be a small number of complaints that will lead to enforcement actions each year.

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

Description of Statute and Program

The Operator Certification Program implements and enforces the Water Treatment Plant Operators Law. 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 679 community public water supply systems and 219 non-transient public water supply systems that must retain the services of a certified operator. There are presently 302 public sewage systems that must retain the services of certified operators. There are approximately 1,482 certified operators in Montana.

Compliance Assistance and Education

During FY's 2004 - 2005, the Water and Wastewater Operator Certification Program has held four Water and Wastewater Operator Advisory Council meetings, and two Continuing Education Credit Review Committee meetings. Training new operators on certification requirements has been ongoing and the program continually explores new technology such as CD-ROMs and Internet based courses to make training more accessible to operators. The program has supported new operator training in conjunction with examination sessions, which are being held at small system training, Department water schools, offices, and at Montana Rural Water Systems.

Complaints and Noncompliance

The Department received no complaints about operators of public water systems during the reporting period.

Formal enforcement

Violations caused by the failure to have a certified operator are addressed with a formal enforcement action under the Public Water Supply laws. There were 12 enforcement actions taken for violations to the Operator Certification laws and rules.

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 with technical capacity.

Asbestos Control Act, 75-2-501, MCA

Description of Statute and Program

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

In addition, the EPA has delegated authority to the program to administer the National Emission Standards for Hazardous Air Pollutants for Asbestos (NESHAP). NESHAP governs building demolition and renovation activities, inspecting for asbestos, notifying building demolition/renovation activities, controlling asbestos emissions, disposing of asbestos waste, and other asbestos-related activities.

Description of Regulated Community

The regulated community under the Asbestos Control Act consists of building owners, contractors, consultants, and individuals who conduct asbestos abatement projects, provide asbestos training, and conduct other asbestos-related activities including inspecting for asbestos, designing asbestos abatement 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.

The program issued an annual average of 296 asbestos project permits, 12 asbestos facility permits, 409 asbestos accreditations, approved 6 asbestos training courses, and conducted an average of 137 compliance inspections during the reporting period.

Compliance Assistance and Education

The program has made a significant effort to educate local authorities such as local building code officials and sanitarians on asbestos regulations. This allows the local authorities that are in a position to raise awareness to offer this information to the regulated community and the public in their locales. The program, along with the DEQ Small Business Assistance Program, conducted town meetings along the Hi-Line and conferences in Missoula and Billings during FY2004 and FY2005 aimed at educating general contractors, abatement contractors, homeowners, building owners, consultants, architects, and other interested parties. Staff also spoke at numerous meetings; published informational publications entitled "Think Asbestos"; reissued EPA's "Current

Best Practices for Vermiculite Attic Insulation”; produced a 30-second public service announcement; and, updated the asbestos information on the Department website to offer more compliance assistance information.

Complaints and Noncompliances

The Department received 108 complaints concerning asbestos during the reporting period. Of the 108 asbestos complaints, 12 are still under active investigation, 25 were investigated and no evidence of violations were found, 2 were closed due to a lack of information necessary to investigate, 20 were managed and closed by the Enforcement Division, 45 were managed and closed by the Asbestos Program, 2 were referred outside of the Department, and 2 became enforcement requests.

Most of the complaints involved the failure to conduct an asbestos inspection prior to building renovation or demolition. The other complaints mainly related to improper asbestos abatement techniques and general asbestos handling such as questions about home insulation, removal of non-friable asbestos such as siding or roofing, and methods for proper asbestos 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 and a civil or administrative penalty.

Formal enforcement

During the reporting period, the Department managed a total 11 enforcement cases; seven were ongoing from the prior year and four were new cases. Seven of the 11 cases were administrative cases and four were judicial cases. One of the 11 cases is currently in development; five have been closed; five are still active and are under an administrative order. The Department settled three cases during the reporting period for a total of \$88,684 settlement penalties. The average penalty under the Asbestos Control Act was \$29,561. In addition, the Department accepted one SEP valued at \$11,000 to offset \$7,065 of the settlement penalties.

Formal asbestos enforcement actions were taken for engaging in an asbestos-type occupation without accreditation and conducting an asbestos abatement project without a permit. These violations are significant. When building renovation/demolition is conducted without a permit and accredited personnel and proper work practices are not followed, the potential exists for the release of asbestos that may exposes the workers and the public to asbestos.

Trends/Benefits to Environment

The number of project permits and asbestos accreditations issued for the reporting period has increased, as have the number of compliance inspections conducted by the program. The abatement industry's compliance rate, as determined by inspections of permitted projects, is greater than 90%. This is a slight decrease from the previous reporting time span. Just recently a number of asbestos abatement contractors have been cited for failing to adhere to proper work practices. The abatement industry should be highly compliant because members attend annual asbestos refresher training courses in order to maintain accreditation. In addition, complying with asbestos requirements is in their best interest since only trained and accredited asbestos personnel are allowed to conduct asbestos abatement work, inspections, and write project designs and management plans.

The Department is still concerned about a high rate of noncompliance with the asbestos NESHAP regulations, which govern building demolition and renovation activities. The number of building renovation/demolitions occurring in Montana is high compared to the low number of demolition/renovation notifications received by the program. The program studied building demolition records it gathered in 2000 and 2001 and compared them to similar records maintained by local building code offices of several major Montana cities. The program studied the same demolition notification issue in 2002, 2003, and 2004 and found that compliance with demolition notification requirements increased slightly overall. Those cities that recognized the issue acted proactively by training building code inspectors in asbestos regulations. Some cities, like Livingston and Great Falls, enacted an asbestos inspection and demolition requirements in which the issuance of building permits is tied to inspecting for asbestos. Survey data illustrates that cities that acted proactively reduced the rate of building demolition non-compliance. Cities like Missoula which did not grasp the issue, continue to be plagued with a high rate of building demolition notification non-compliance. The Department 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/renovation notification requirements.

The program has seen a significant increase in the number of inquiries about asbestos regulations. The increase is largely attributed to asbestos compliance assistance and enforcement the Department conducts. The inquiries include both verbal and written requests for information regarding the regulations but also information on asbestos exposure and the techniques that should be utilized to safely remove asbestos. Asking local authorities to make asbestos literature available to contractors applying for building permits has been very helpful. Educating landfills about asbestos waste issues has improved regulatory compliance. Another reason could be the tragic health impacts resulting from the exposure to asbestos in Libby, Montana. Interestingly, the program finds many general contractors in Libby fail to comply with asbestos regulations. Many contractors are very aware of vermiculite, but few recognize the fact that many other building materials contain asbestos and need to be inspected prior to demolition and/or renovation activities. During the reporting period, a number of Libby building owners

and contractors have been cited for failing to inspect for asbestos and notify the demolition activities prior to conducting demolition activities. In response, the program has worked with EPA and the Department's Remediation Division in providing asbestos training to contractors who conduct building demolition and renovation activities in Libby.

The program operates with only two technical staff engaged in the fieldwork and compliance assistance activities involved in administering the program. Because of the limited resources, the staff rely on the education they provide to local authorities, the abatement industry, interested parties, and others to heighten the regulated community's awareness of the asbestos regulations. The Department's trend in dealing with the public and regulated community regarding the asbestos regulations will continue to rely heavily on public education and to act upon the non-compliance situations that expose large numbers of people or involve particularly sensitive populations (i.e. schools) to asbestos.

Montana Hazardous Waste Act, 75-10-401, MCA

Description of Statute and Program

The Hazardous Waste Program controls a universe of waste that is identical to the federal program administered by the EPA. The Hazardous Waste Program was realigned into the Waste and Underground Tank Management Bureau in late 2003.

Description of Regulated Community

As of July 1, 2003, there were 10 permitted facilities in Montana and numerous hazardous waste handlers, including 27 transporters and 117 generators who were required to register with the program.

Compliance Assistance and Education

The program continues to be engaged in several activities to provide compliance assistance. Ongoing efforts include response to written and telephone requests for information, waste minimization review during compliance evaluation inspections, the distribution of a small business handbook, contractor contact sheets, and waste stream-specific handouts to answer frequently asked questions. Program personnel also continued to provide general and sector-specific presentations on hazardous waste management when requested. The DEQ's Small Business Assistance program also distributed guidance publications and provided training on a variety of hazardous waste and used oil topics.

In FY2004 the program distributed a comprehensive compliance assistance CD ROM to provide a single source of all hazardous waste and used oil compliance assistance information and education to the regulated community. The CD contains all of the information previously provided as separate items, such as the small business handbook, contractor information sheets and waste specific handouts, as well as applicable forms, virtual shops, up-to-date information on pollution prevention and the

latest copy of the Administrative Rules of Montana. The program is evaluating the utility of developing web-based training based on the content of the CD.

The program typically plans and conducts a series of inspections of the regulated community using a compliance monitoring strategy that defines the number of inspections that staff should conduct at each category of handler. The program continued to develop compliance monitoring strategies during the period of interest. The program conducted no sector specific compliance evaluation initiatives during FY2004 and FY2005, but did conduct a statewide survey of hazardous wastes stored in junior and senior high schools as compliance assistance. The program used newly available brownfields funding to develop the survey and used the results of the survey to design and present school lab safety training designed to eliminate or minimize hazardous waste generation. The DEQ's Planning Division also used the survey results to support its application for school lab clean out funding available through EPA's Safe School Initiative.

Complaints and Noncompliances

The Department received 37 complaints concerning hazardous waste during the reporting period. The number of complaints received per fiscal year remains consistent. There were complaints alleging 6 spills/releases, 18 dumpsites, 4 drums with unknown contents, 9 regarding business practices and 1 explosive ordinance taken during the reporting period. The majority of the hazardous waste complaints have been filed against businesses for poor waste management practices.

The Department received 62 complaints concerning used oil during the reporting period. The number of complaints received per fiscal year has remained relatively steady. The most common complaint has been against businesses and private individuals for not removing and properly disposing of used oil that has been spilled, released, or purposely dumped onto the ground. The next most common complaint has been concern for 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 Noncompliances

Of the 37 hazardous waste complaints, 1 is currently under active investigation, 11 were investigated and no hazardous waste violations were found, 2 were closed due to a lack of information necessary to investigate, 11 were managed by the Enforcement Division, 10 were managed by the Hazardous Waste Program, 2 were referred outside of the Department, and none became enforcement requests.

Of the used oil complaints, 4 are currently under active investigation, 10 were investigated and no used oil violations were found, 2 were closed due to a lack of information available to investigate, 35 were managed and closed by the Enforcement

Division, 7 were managed by the Waste and Underground Tank Management Bureau, and 4 were referred outside of the Department.

During the reporting period, the Department conducted 821 inspections, issued 98 warning letters for minor violations and issued 24 violation letters for more serious violations.

Formal enforcement

During the reporting period, the Enforcement Division managed a total of 13 enforcement cases; 12 of the cases were ongoing from the prior year and one was a new case. Seven of the 13 cases were administrative and six were judicial. One of the 13 cases is currently in development; five have been closed; six are still active under an administrative order or a judicial judgment and one case was withdrawn.

The Department settled five enforcement cases during the reporting period for penalties in the amount of \$250,424. The average settlement penalty was \$50,085 and to date, the Department collected \$70,500. The unpaid penalties are either due at a future date, are being paid in installments, or a portion of the settlement penalty was offset by a Supplemental Environmental Project (SEP). In addition, the Department accepted a SEP valued at \$15,125 to offset \$12,097 of the settlement penalties.

During this reporting period, enforcement actions under the Hazardous Waste Act were taken primarily for the unlawful disposal of hazardous waste and the operation of a hazardous waste management facility without a permit.

Trends/Benefits to Environment

For the reporting period, the hazardous waste regulated community was similar to the previous years. The long-established general trend of a gradual reduction in the number of generators continued.

Since the inception of the program, the costs associated with waste disposal have resulted in pollution prevention efforts on the part of regulated entities and a decrease in the number of generators. This is complimented by compliance assistance efforts by program personnel. The number of transporters and permitted facilities have decreased slightly or remained relatively constant. 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 Department continues to see a decreasing trend in the number of inspections over the reporting period. The decline in the number of inspections is attributed to staff time dedicated to increased compliance assistance and the planning and decrease in staff. A declining federal grant has resulted in the reassignment of four FTE to other program elements in the Bureau or Division since FY2001. For the short term, the program responded to the losses by reorganizing areas of geographic responsibilities and

moving to a short form inspection report. The program is also evaluating fee increases in response to the declining grant over the long term.

Again, similar to the previous reporting period, 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. Despite the program's attempts at compliance assistance through inspection and educational outreach, these types of violations still occur. As such, violations are the result of an individual's decision to deviate from regulatory requirements, and not due to the novelty or complexity of the requirements. However, there was no increase in serious noncompliance that threatened human health or the environment.

The Department believes that hazardous waste compliance and enforcement activities result in cleaner soil and water for Montanans 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. The program's primary challenge over the next biennium will be to maintain a high quality program in the face of a declining federal grant.

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

Description of Statute and Program

The Infectious Waste Management Act is to ensure the proper management of infectious solid wastes and facilities that manage such wastes types. This is to ensure the protection of public health and safety and conserve natural resources. The Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana including infectious wastes. Private citizens, medical facilities and veterinary clinics as well as ranching or farming operations generate infectious wastes.

Description of Regulated Community

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

Compliance Assistance and Education

An annual site inspection is conducted at the lone infectious waste management facility.

Montana Megalandfill Siting Act, 75-10-901, MCA

There has been no activity under this program during the FY2004 – FY2005 reporting period.

Methamphetamine Cleanup Act, 75-10-1301, MCA

Description of Statute and Program

The Waste & Underground Tank Management Bureau (WUTMB) administers the Methamphetamine Cleanup Program passed into law during the 2005 Legislature with an effective date of October 1, 2005. The new law (House Bill [HB] 60) mandates communication between governmental agencies as well as landlords, tenants and prospective purchasers of former methamphetamine (meth) labs. State and local law enforcement agents are now required to report actions against meth labs to the Department. The law also creates a cleanup standard for meth and requires those who assess and cleanup meth labs to be certified. The Department is required to post meth lab properties on its web site, www.deq.mt.gov/Meth/index.asp, and work with the property owner to decontaminate and 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 standards established by the Department, then the property owner must notify in writing that the property has been used as 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 Department certified contractors and meet cleanup standards in order to remove their property from the web list and enjoy 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 Department also oversees the certified contractors' performance by determining whether the contractor's work has effectively met the clean up standard. In addition, the Department regulates the training providers that are responsible for the courses to certify cleanup contractors.

Compliance Assistance and Education

A great deal of outreach has been, and will continue to be performed to help stakeholders and general public understand this new Act. The inaugural contractor certification course was held in September 2005 and two more are being scheduled for early 2006. Two public notices regarding proposed rules have been mailed to interested persons. Program staff have attended and presented at xx meetings for various organizations. Hundreds of phone calls and Internet comments have been responded to and a web site was created www.deq.mt.gov/Meth/index.asp.

Complaints and Noncompliances

The Department received 35 clandestine drug lab complaints during the reporting period. Of these complaints, 17 are currently active, 17 are closed and 1 was closed due to a lack of information necessary to investigate. The complaints received during this reporting period were prior to the implementation of the Methamphetamine Cleanup Program and mostly relate to allegations of dumping chemicals and other methamphetamine cooking materials into the outside environment.

Program Response to Complaints and Noncompliances

None to date.

Formal enforcement

None to date.

Trends/Benefits to Environment

The Montana Department of Justice reported 261 methamphetamine lab busts to the Department for the time frame between January 1, 1997 and July 1, 2005. The number of labs peaked in 2002 and has been steadily dropping since. Although lab busts per year are declining, the Department is finding that the information needed to effectuate cleanup on the backlog is difficult to obtain. Also, the Department is discovering that there are many clandestine drug labs throughout the state that were never reported to or investigated by law enforcement. Restoration of inhabitable properties impacted by meth is critical to protect present and future occupants of these structures. Creation of a cleanup standard, and the environmental program to administer proper cleanup, benefits landlords, tenants, human health and the environment. Legislation to fine tune the Act may be necessary in 2007.

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

Description of Statute and Program

This Act requires the Department 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 state program provides annual financial 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

The total size of the regulated community is any Montana citizen possessing a junk vehicle, plus any governmental or commercial entity active in or possessing junk vehicles. During the FY2004 – FY2005 period there were 430 new and renewal licenses issued by the Junk Vehicle Program. Of that total, 326 were private recycling facilities. The number of commercial licenses has been declining slightly throughout the reporting period.

Each county has to acquire, develop, and maintain property for free 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 48 inspections were completed and less than 10 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 FY2004 – FY 2005 reporting period Department staff conducted 504 inspections at regulated facilities, approximately 251 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 offered in Billings and in Helena.

The program participates with the other solid waste programs in producing a bi-annual newsletter with copies going to all the licensed MVRF and county junk vehicle graveyards owners and operators. The program also provides interactive forms on the Waste and Underground Tank Management Bureau web page.

Complaints and Noncompliances

The Department received 55 complaints concerning junk vehicles during the reporting period. Eleven of the complaints are still under active investigation, 3 were investigated and no evidence of violations were found, 15 were managed and closed by the Enforcement Division, 11 were managed and closed by the Junk Vehicle Program, and none became enforcement requests. Complaints regarding four or fewer junk vehicles are referred to the appropriate county junk vehicle program. Fifteen complaints were referred to county junk vehicle programs. Frequently, junk vehicle complaints include used oil and solid waste components. In the course of doing inspections over 25% of the regulated facilities are found to have violations.

Program Response to Complaints and Noncompliances

It is important to note that all violations are aesthetic, licensing, or record keeping issues. When contamination issues (water or ground) present themselves i.e., fluid removal, staff alert other appropriate programs within the Department or other agencies as appropriate. Some investigations lead to formal enforcement activities, with actions on-going.

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

Formal enforcement

During the reporting period, the Enforcement Division managed 12 enforcement cases; 10 were ongoing from the prior year and 2 were new cases. Two cases were administrative and 10 were judicial. Two of the 12 cases are currently in development, 8 have been closed, 8 are still active and under either an administrative order or a judicial judgment, 1 is in litigation and 1 was withdrawn. The Department did not collect any penalties during FY2004 or FY2005.

During this reporting period, the enforcement actions were primarily taken for the failure to obtain a motor vehicle recycling facility license and the failure to properly shield junk vehicles from public view.

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.

During the reporting period the program has also observed 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 MVRF 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.

It should be noted that the Motor Vehicle Recycling and Disposal Laws authorize a \$250 civil penalty for each day of violation and, as of April 28, 2005, add administrative penalty authority in the amount of \$50 per day. In some instances, the Department is required to initiate a judicial action when it believes an administrative penalty will not achieve compliance. Such actions are time-consuming and resource intensive for both the Department and courts. Administrative penalty authority should allow the Department to assess penalties more efficiently. However, in past cases, the authority of the district court was necessary to compel the violator to comply.

Septage Disposal Laws, 75-10-1201, MCA

Brief description of statute and program

The Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana including septic tank pumpings, pumpers and disposal sites.

Description of Regulated Community

There are 167 septic tank pumper land application sites.

Compliance Assistance and Education

The program has conducted joint training for septic pumpers with the EPA, has published articles in a newsletter mailed to all licensed pumpers and is conducting training for local sanitarians. Program staff has also received 610 compliance telephone calls or emails during the reporting period. The program has also formed a voluntary

advisory committee consisting of seven septic pumpers from across the state and one program staff. Septic tank pumpers are subject to limited inspections due to lack of personnel; however, local sanitarians conducted the majority of site inspections across the state during the period. The number of Department inspections is expected to increase during the next biennium due to the passage of HB 77 in the 2005 Legislature. HB 77 granted a Department fee increase to licensed septic pumpers, and the anticipated revenue will be used to conduct more inspections and provide training to the pumpers.

Complaints and Noncompliances

The Department received 27 complaints concerning septic pumpers during the reporting period. Of the 27 complaints, 2 are still under active investigation, 1 was investigated and no evidence of violations were found, 6 were managed and closed by the Enforcement Division, 18 were managed and closed by the program, and none became enforcement requests. The complaints involved: private landowners or businesses with illegal dumpsites; asphalt and or construction and demolition wastes; tires; and dead animal disposal.

Program Response to Complaints and Noncompliances

The program closes complaints after providing the needed compliance assistance to the septic pumpers. Complaints can also result in new licenses being issued by the program.

Formal Enforcement Activities

During this reporting period, the Department managed a total of three cases under this statute. Two cases were administrative; the other case was judicial. One of the cases was ongoing from the previous reporting period and two other cases were new. Two of the three cases have been closed, and one is being litigated. The closed cases involved the improper treatment of septage at disposal and recordkeeping violations. The judicial case is for the failure to license.

Trends/Benefits to Environment

Since the statute was enacted there has been a significant decrease (64%) in the number of complaints received by the Department. There is also a significant increase in the number of pumpers keeping operating records and submitting copies of those records to the Department in a timely manner.

Montana Solid Waste Management Act, 75-10-201, MCA

Description of Statute and Program

The Solid Waste Management Act is to ensure the proper management of solid waste management systems and to prevent the improper and unregulated disposal of solid wastes. This is to ensure the protection of public health and safety and conserve natural resources. The Solid Waste Regulatory and Licensing Programs regulate 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 currently 278 licenses issued by the Solid Waste Program in Montana, as compared to 274 in the last reporting period. Solid waste management systems in Montana include 30 municipal solid waste (MSW) landfills, 1 MSW incinerator (now closed), 2 construction and demolition waste landfills, 51 inert material landfills and clean wood waste burn sites, 2 resource recovery facilities, 3 waste composting operations, 9 waste transfer stations, 6 landfarms for petroleum contaminated soils and sump solids.

Compliance Assistance and Education

The major outreach efforts conducted by the Solid Waste Program are the site visits to proposed facilities and inspections of license holders. The Licensing Program staff visits every proposed solid waste facility and actively encourages 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 Montana State University Extension Service through a contract from the Solid Waste Program with the Montana Association of Counties. The program staff participates in or provides instruction at all of the training sessions. The program also published four newsletters for a total of 2,900 copies. The staff spends considerable time answering questions over the telephone or by e-mail. The program averages about 25 calls per day for various kinds of technical assistance. Eight staff people handle these calls. This equates to approximately 19,500 calls in the FY2004 – FY2005 period.

Complaints and Noncompliances

In FY2004 and FY2005, the Solid Waste Program conducted 259 solid waste facility inspections. Of these, about 5 major and 20 minor violations were noted during the inspections. Seven landfills continue to be in corrective measures for groundwater contamination and another four landfills are required to do additional sampling because of low levels of groundwater contamination. Four landfills require methane gas control measures.

The Department received 162 complaints concerning solid waste during the reporting period. Of the 162 solid waste complaints, 23 are still under active investigation, 12 were investigated and no evidence of violations were found, 3 were closed due to a lack of information necessary to investigate, 94 were managed and closed by the Enforcement Division, 11 were managed and closed by the Solid Waste Program, 15 were referred outside of the Department, and 4 became enforcement requests. The complaints 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.

Program Response to Complaints and Noncompliances

Most landfills resolve problems as soon as they are noted in an inspection report. The Solid Waste Program emphasizes education and assistance over enforcement. Only two landfills have had their licenses revoked for numerous solid waste violations since 1991.

Formal Enforcement Actions

During the reporting period, the Enforcement Division managed a total of 12 enforcement cases; 11 of the cases were ongoing from the prior year and 1 was new. Six of the 12 cases were administrative and six were judicial. None of the 12 cases are currently in development; two have been closed; seven are active under an administrative order or a judicial judgment, two are being litigated in district court, and one case was withdrawn. The Department resolved two cases during the reporting period for penalties in the amount of \$8,045.

During this reporting period, most of the cases involved the unlawful operation of a solid waste management facility without a license. One enforcement action resolved the failure of a private landfill operator in the Lewistown area to provide adequate closure and post-closure financial assurance.

Trends/Benefits to Environment

The benefit to the environment that has resulted from program activities at licensed solid waste management systems is the significant reduction in the number of major violations. In addition, no new facilities have been added to the corrective action list for ground water contamination during the reporting period.

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

Description of Statute and Program

The Underground Storage Tank Section (USTS) of Waste and Underground Tank Management Bureau (WUTMB) operates the state's leak prevention program for underground storage tanks. The program's goal is the prevention and early detection of leaks from underground storage tanks (UST) to prevent or minimize soil and groundwater contamination.

The leak prevention 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; compliance assistance to owners and operators; and ensuring installers, removers and inspectors are properly trained and licensed.

Description of Regulated Community

The regulated community for the program includes owners and operators of underground storage tank systems, installers, removers and inspectors.

As of June 30, 2005, the Department regulated 843 owners of 1,499 UST facilities which house 4,145 tank systems. The Department licenses 58 installers, 21 removers and 33 inspectors.

Changes and Accomplishments

House Bill 78 passed the 2005 Legislature, freeing the Section from the mandate to conduct formal enforcement on all violations regardless of significance. Much effort went into designing processes for conditions before and after passage of the bill. Appropriate processes are now in place.

Compliance Assistance and Education

During 9 months of FY2004 the Section engaged in 4,918 compliance assistance communication events. In FY2005 the section engaged in 6,055 compliance assistance communication events. Over the year and nine months 67.6% of these events were phone calls; 19.9% were letters; 8.8% were e-mails. The remaining 3.7% were site visits and walk-ins.

Inspection program: The staff sends inspection reminders to all active UST facilities six months before their Operating Permit (OP) expires. They send warning letters 80 days before their OP expires. Section staff begins calling them 45 days before their OP expires. The day before their OP expires, they contact the owner to tell them it will be unlawful to operate after their OP expires and then they call the facility's distributor to tell them it will be unlawful to place fuel in the tanks.

Staff conducts continuing education for installers, removers and inspectors annually. In FY2005, they also conducted the two-day Inspector Training.

The staff developed a web-based operator training application called Tank Helper that became active in January 2006. Tank Helper is a free internet-based software program that translates underground petroleum storage tank rules into easy-to-understand instructions. The service interviews tank owners and operators online by asking them a series of questions about their facility and equipment. It follows the answers with information specific to their own tank systems. www.Tankhelper.mt.gov.

Complaints and Noncompliances

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 investigation.

Compliance inspections conducted during FY2004 – FY2005 resulted in the following:

- 996 inspections identified 507 violations at 286 facilities,
- 15% of the violations (76 violations) were of major significance (significant noncompliance).
- 56 facilities had major violations at the time of their inspection (5.6% of inspected facilities).

- 230 facilities had no major violations but had moderate, minor or non-OP-related violations (23.1% of inspected facilities).
- 710 facilities had no violations (71.3% of inspected facilities).

The program expects that compliance inspections will continue to identify significant numbers of violations, but anticipates that most owners and operators will be able to correct them before their current operating permits expire.

Program Response to Complaints and Noncompliances

Compliance inspectors are expected to debrief the owner or manager at the end of a compliance inspection, identifying violations and corrective action. The Department reviewed all inspection reports and sent letters to the UST owners explaining the violations and requiring correction within a specified period of time.

Violations are categorized in policy as “major”, “moderate” or “minor”. Major violations that are not corrected by the time an OP expires are referred for formal enforcement. Moderate violations are given a corrective action window based on the “earliest practicable time” that they can be corrected. If uncorrected after that corrective action window they are referred for formal enforcement. Minor violations must be corrected by the next inspection cycle three years hence. If they are not, they will be elevated to moderate significance.

Formal enforcement

During the reporting period, the Enforcement Division managed a total of 95 enforcement cases; 63 of the cases were ongoing from the prior year and 32 were new cases. Eighty of the 95 cases were administrative, 15 were judicial actions. Seventy-five of the cases have been closed; eight are still active under an administrative order; five cases are in litigation in district courts or before the Board of Environmental Review, and seven cases were withdrawn or vacated.

The Department resolved 62 enforcement cases during the reporting period for penalties in the amount of \$124,511. In addition, the Department collected stipulated penalties in the amount of \$3,000 for violators' failures to comply with requirements set forth in Administrative Orders on Consent.

Trends/Benefits to Environment

Historically, the Section (with local government inspectors) prioritized and conducted the compliance inspections resulting in an inspection cycle of about five years. Some facilities were being missed altogether. Montana now has a three-year inspection cycle with process controls to ensure all active facilities are evaluated.

The quality of inspections are better than those completed by local government inspectors in the past because inspectors are UST professionals. Yet there is some tendency for inspectors to put their clients' best interests ahead of the State's. The program conducts oversight inspections annually on all active inspectors and targets training to problem areas.

Better inspections on a more frequent cycle results in a higher standard of compliance, therefore greater environmental protection.

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

Description of Statute and Program

The Underground Storage Tank Section (USTS) of Waste and Underground Tank Management Bureau (WUTMB) operates the state's leak prevention program for underground storage tanks. The program's goal is the prevention and early detection of leaks from underground storage tanks (UST) to prevent or minimize soil and groundwater contamination.

It achieves this by ensuring proper installation and modification of underground storage tanks (UST) through its installation permitting program, and training and licensing both inspectors and installers of UST systems.

Description of Regulated Community

The regulated community for the program includes underground storage tank systems, installers, removers and inspectors. As of June 30, 2005, the Department licensed 58 installers, 21 removers and 33 inspectors. The program issued 451 permits to install, modify, or close UST systems during FY2004 – FY2005.

Compliance Assistance and Education

The program trained, tested and licensed three UST compliance inspectors during the fall of 2005. It licensed one new installer and remover in FY2004 and FY2005. It conducted six UST contractor refresher courses and three inspector refresher courses in this time period. Each of these sessions presented the opportunity for open dialogue between the program and its stakeholders.

During FY2004 – FY2005 the section streamlined its construction permitting process and revamped their permit application forms. Turnaround time for construction permit review was substantially reduced.

Complaints and Noncompliances

Enforcement actions can be taken in the event of unprofessional conduct by licensed installers or inspectors. No licenses were conditioned or revoked in this three-year period and while we foresee the potential for a few disciplinary actions, they would be few in number.

Formal enforcement

The Department did not initiate any new enforcement actions under this statute during the current reporting period. The Department continued to manage a civil case that was

carried over from the previous reporting period. The case involved a Helena tank installer who had misrepresented his activities at a number of underground storage tank facilities. The violator continued to make payments on the \$12,000 settlement penalty.

Trends/Benefits to Environment

We anticipate a decrease in the number of permits issued because the recently completed first-round of compliance inspections should have identified most of the non-compliant equipment for which permits were subsequently issued. The quality of installations and equipment installed continues to improve.

Montana 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 the Department. 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. The Department has been delegated 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 typically separated into five different categories: 1) MPDES (Public and Private Facilities); 2) MPDES - Storm water; 3) MPDES – Concentrated Animal Feeding Operations (CAFO); and, 4) Ground Water Pollution Control System (GWPCS) permits for administrative and accounting purposes.

The WQA also states that it 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 Permits Program 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 both major and minor public and industrial facilities and facilities authorized to discharge under a general permit. It is estimated that a high percent of the regulated community obtains permit coverage for wastewater discharges and 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 or private wastewater lagoons that were designed as non-discharging systems, but are now discharging due to lack of proper maintenance or other factors such as growth in population.
- Oil and gas production wells were inventoried by EPA in 1998 and a number of facilities were identified that were discharging to state waters, primarily ephemeral drainages, without a permit. Follow-up continues to be needed.
- Short-term discharge 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 concentrated animal feeding operations that have not applied for permit coverage, but are discharging to state waters. These operations are

currently being inventoried and will be offered assistance to come into compliance.

- Non-filers in general, all types of permits. Working through the annual performance partnership agreement with EPA, the programs identify focus areas each year to find those that do not file for permit coverage.

Storm water – Due to the high number of facilities and lack of numeric effluent limitations, the Department regulates storm water discharges through the issuance of four general permits. Phase I of the federal CWA storm water regulations addressed large municipal separate storm sewer systems and industrial facilities, including construction activities greater than five acres. With the exception of several industrial sectors, such as auto salvage yards, compliance with these regulations is relatively high. Phase II of the federal storm water program went into effect in Montana in 2003. After an appeal of the new general permit, it became effective in 2005 in Montana for municipalities over 10,000 in population. These new regulations require small municipalities and small construction projects to obtain permit coverage under the MPDES program. The increased number of storm water permit authorizations issued in FY2005 reflects the implementation of these new regulations. The Department initiated a major education program to inform the regulated community and continues to offer technical assistance.

Because storm water discharges, by definition, only result from precipitation or snow melt events and the Montana WQA only prohibits the discharge of pollutants without a permit, it is difficult to require compliance at sites which are not actively discharging.

CAFO - The number of CAFO permit authorizations issued in the three-year period has increased approximately 10 percent per year for a number of years since the program's inception. However, in recent years a significant change at the federal level and follow up at the state level has changed the approach in Montana. The previous CAFO regulations had been in effect in Montana since 1974. Efforts to update them to the federal rule requirements began in this reporting period and were hampered by some federal court challenges. Completion by February 2006 will provide regulatory stability. Legislation in 2005 also clarified requirements and allowed the program to move forward with general permitting. About 100 permits at the end of FY2005 are expected to rise after completion of an inventory.

GWPCS – The Montana GWPCS was established in 1982 and includes both a ground water quality standards and a permit program. The GWPCS permit program regulates facilities that discharge wastewater, or have the potential to contaminate state ground water through the concentration and surface storage of pollutants. The percentage of the regulated community subject to the GWPCS program is difficult to assess but is estimated to be less than 10 percent. This is due to several factors. First, 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 are 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.

Second, in 1998, the Board of Environmental Review modified the ground water regulations and deleted the exemption for facilities discharging under the federal Underground Injection Control (UIC) System. The UIC program requires discharging facilities to register with the UIC program and requires monitoring to determine compliance with federal drinking water standards at some facilities. It does not require facilities to comply with Montana ground water standards, nondegradation policy (75-5-303, MCA) or mixing zone regulations. However, because this exemption was in effect for a number of years, it has created additional confusion within the regulated community regarding compliance with the applicable regulation. At the present time, facilities that discharge industrial wastes to a drain field must obtain and comply with both the federal UIC requirements and Montana ground waters standards as administered through the GWPCS permit. The Department intends to analyze the dual ground water permitting situation prior to the next legislative session and if necessary propose legislation or regulations to clarify this situation.

Finally, the current ground water program grew in FY2005 to increase staff and the ability to meet the demands of permit applications due to subdivision growth with wastewater systems requiring permits. This situation is defined by the requirement that public facilities discharging more than 5,000 gallons per day obtain a permit.

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

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 regulated community includes owners of both public and private irrigation ditches, mosquito control districts and fish management agencies. With the exception of fisheries management projects, which have a high rate of compliance with Section 308, it is difficult to assess the compliance of the regulated community.

Compliance Assistance and Education

Effective in 2004, a bureau reorganization focused compliance and technical assistance in one section to gain efficiencies and to allow permit writers to more efficiently write permits. The Compliance and Technical Assistance Section has proven very effective in following through with inspections, compliance and enforcement, and assistance to the regulated community. The staff interacts daily with members of the regulated community and public by initiating and receiving telephone calls, writing letters, and

scheduling and attending meetings. Technical assistance, also offered by permit writers, commonly includes answering questions concerning permitting procedures and what conditions a permit might stipulate. Also common are inquiries from already permitted dischargers concerning details of their permit conditions, and advice on how to meet those conditions. All permit applications, technical guidance, environmental assessments and draft permits and regulations are posted on the Department's website.

In addition to the technical assistance described in the preceding section, the program also participates in a number of targeted educational efforts for specific sectors of the regulated community.

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.
- Exceedance of effluent limits as specified in the permit, or 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 record keeping and reporting requirements in the permit.
- Failure to comply with sewage sludge and pretreatment requirements.

The Department received 611 complaints related to potential water quality concerns. The Department received eight complaints about discharges to surface water from potential CAFOs or feedlots. Five of the complaints received had MPDES discharge permits and were referred to the Permitting and Compliance Division's Water Protection Bureau for resolution. Feedlots not large enough to be CAFOs are considered Animal Feeding Operations (AFO). The 15 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. Forty-eight MPDES complaints were received. Construction within the high water mark of a perennial stream requires Department authorization to temporarily exceed WQB-7 turbidity standards. This is known as "318" authorization and there were 25 associated complaints during the report period. The Department received two complaints related to discharges permitted under the Ground Water Discharge Pollution Control System during the reporting period. GWPCS complaints are typically about facilities that have sewage lagoons or similar structures and have a potential to discharge to groundwater.

Unauthorized discharges can be associated with transportation related fuel spills and releases from stationary fuel storage tanks and pipelines. Releases from tanks are examined under the Montana Underground Storage Act Section and will not be discussed here. There were 90 pipeline releases called in during this reporting period. The program received 421 spill reports during the reporting period. Fifty-seven of these

impacted ground or surface water. When surface water impacts are documented, the Enforcement Division ensures that state waters were promptly cleaned up to reduce long-term impacts, and clean up 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 & release remedial actions are conducted according to the protocols established by the regulating authority. The Department receives spill and release reports via the: 1) 24-hour Duty Officer (431-0014); 2) the Enforcement Division (444-0379); and, 3) the Remediation Division Petroleum Release Section Leak Officer (841-5000 or 1-800-457-0568).

The remaining 190 water-related investigations are generated by citizen allegations that someone or something has placed material in a location that may threaten water quality. Of the 190 WQA complaints, 100 were resolved voluntarily by the responsible party with compliance and technical assistance from the Department; 24 were referred to an outside agency; lack of pertinent information prevented the investigation of 17 complaints; 30 were closed because no violation could be documented; and 1 proceeded to an enforcement action. Eighteen are currently under active investigation by the Department. All documented violations receive written notification with appropriate recommendations and reasonable time lines to complete corrective action.

Program Response to Complaints and Noncompliances

The program initiates a response whenever it discovers a violation of the permit has occurred. This response is typically in the form of a violation letter, identifying the activity that resulted in a violation and what action is required of the permittee to come into compliance. If a Water Quality Act violation is documented, the Department sends a violation letter to provide assistance to return the site to compliance.

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

Activities that have reportable noncompliance or exceed technical review criteria in two consecutive quarters are considered significant violations and are typically referred to enforcement.

Formal Enforcement

During the reporting period, the Enforcement Division managed a total of 48 enforcement cases; 17 of the cases were ongoing from the prior year and 31 were new cases. Forty-four of the 48 cases were administrative, four were judicial actions. Three of the 48 cases are currently in development; 20 cases have been closed; 19 cases are still active under an administrative order or a judicial judgment; and six cases were withdrawn.

Resolution of 19 enforcement actions resulted in violators being liable for penalties in the amount of \$278,249. During the reporting period, the Department collected \$155,424. Then unpaid penalties are either due at a future date, are being paid in installments, have been suspended pending compliance with the administrative order, or can not be collected because the violator is judgment-proof.

Trends/Benefits to Environment

The total number of calls for technical assistance handled by the program has doubled every two years since report keeping was initiated. A possible explanation for the increase is the implementation of new regulations, the complexity of regulations and increased trend in environmental litigation, primarily citizen suits filed under the federal CWA nationwide, increasing awareness.

The number of storm water construction permits has doubled in 2005 over 2003 and 2004, CAFO permits remain stable but are expected to increase after an inventory is complete and assistance is offered to come into compliance. MPDES permits remain relatively stable. Coal bed methane activity has created much attention, but few permit applications. Groundwater permits continue to rise as subdivision development increases and community wastewater systems replace the tendency to use individual septic systems and drainfields.