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# Report to the Montana Environmental Quality Council

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Environmental Enforcement and Compliance

FY 2006 – FY 2007

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## Introduction Enforcement Process

Compliance and enforcement activities take place on a variety of levels within the Department of Environmental Quality (DEQ). 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. 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 DEQ believes a violation has occurred, to explain the circumstances of the alleged violation, to describe what is required to return to compliance, and to invite the person to discuss the allegations.

The Enforcement Division operates a complaint clearinghouse to track and manage the response to citizen complaints and spill reports submitted to the DEQ. The Enforcement Division manages about 1,000 complaints and spills each year. Approximately 17% of the complaints are associated with permitted facilities or sites subject to permit requirements and are therefore referred to the appropriate DEQ regulatory program for resolution. Eighty-eight percent 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 the most significant violations at a regulated facility. Enforcement Division staff work with legal staff to calculate penalties, draft orders, negotiate settlements and monitor compliance with DEQ orders. Over 90% of the department's enforcement actions are administrative in nature where an order is issued that may include required corrective action and/or a penalty assessment. Orders issued by the DEQ may be appealed before the Board of Environmental Review (BER). Complaints are filed in district court but are reserved for the most recalcitrant violators.

During the reporting period, the Enforcement Division managed 528 formal enforcement cases. Approximately 178 cases were carried over from the previous period and 340 were new cases initiated during this reporting period. Most of DEQ's enforcement actions included a penalty and over \$1,675,000 was collected in penalties during the reporting period.

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

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

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

Currently, the DEQ has approximately 660 facilities with active air quality permits, with another 40 sources with active permits at the county level, for a total of about 700 sources. The regulated permitted community is split almost evenly between stationary sources and portable sources.

In addition to the regulated permitted community, a regulated **registered** community exists. The regulated registered community for air quality generally consists of stationary oil and gas production sources that have the potential to emit greater than 25 tons per year of any one regulated pollutant. Approximately 550 sources are registered with the department.

The total number of sources regulated by the DEQ, or by a county in lieu of the DEQ, is approximately 1,250 sources. On average, the air quality program processed approximately 200 permitting actions each year, approximately 50 of these for new facilities. The registration program processed approximately 135 registrations per year, with approximately 35 of those being new registrations.

### **Compliance Assistance and Outreach**

The DEQ provides compliance assistance and outreach in a variety of ways to both the regulated community and the public. The department 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 DEQ staff uses such opportunities to explain regulatory requirements, to remind sources of upcoming deadlines, and to discuss issues of potential concern.

The DEQ also 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 and authority, explaining the reviews that are conducted, and by explaining the permitting processes that apply.

In addition to the outreach efforts mentioned previously, DEQ staff 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 is always looking for opportunities to use its staff as a resource for public and industry outreach.

The DEQ 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, construction companies, school busing providers, and Environmental Management Systems (EMS). To compliment the information supplied in these compliance assistance publications, the DEQ sponsored or conducted various training events or workshops. Industries/events targeted for training included school bus operations, construction companies, MSU-Billings Green Building workshop, UM Air Toxics Symposium, Oil and Gas production facilities, Yellowstone Business Partnership (concerning transportation practices), NCAT Biodiesel workshops (to lower vehicle emissions), and continued support to other diverse businesses interested in EMS development and implementation. In addition, the DEQ participated in Earth Day events and the Livingston Sustainability Fair to disseminate compliance assistance information and other industry information.

### **Other Compliance Activities**

The DEQ 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 entail site visits by department staff for the purpose of witnessing the operations of a facility on a particular day. FCEs are the in-depth assessments of a facility's compliance success for a given time period. FCEs include a detailed assessment of various industry submitted reports, department site visit notes, public complaints, etc. for a particular facility over a specified time period. The DEQ staff use FCEs as an opportunity to fully evaluate the compliance aspects of the subject facility and to report the findings back to industry and other interested parties.

### **Complaints and Noncompliances**

The DEQ received 144 complaints concerning air quality emissions during the reporting period. Of the 144 total complaints, 61 involved the Billings refineries. Many of these complaints were self-reported emissions of NO<sub>2</sub>, H<sub>2</sub>S, or SO<sub>2</sub> due to malfunctions or equipment failures. The majority of these self-reports (34) 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 173 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 79 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 department documented nine odor complaints during the reporting period. Three of the odor complaints involved odors from the Billings refinery, one complaint was from an unknown source,

two complaints were in regards to sewage lagoons, and the remaining were about odors from individuals and businesses. 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 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 them in understanding the applicable rule. Such outreach generally prevents future complaints against the responsible party.

Open burning frequently generates complaints. The majority of the complaints are received during the early spring and late fall. When the DEQ 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 DEQ 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 DEQ finds that areas of non-compliance exist, the department issues either warning letters or violation letters.

Warning letters are issued for those instances of non-compliance where the DEQ 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 can be used to document a history or pattern of violations and may be considered at a future time to determine how to respond to subsequent violations.

Violation letters are issued for those areas of non-compliance that the DEQ 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 issuance. 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. Violation letters can also be used to document a history or pattern of violations and may be considered at a future time to determine how to respond to subsequent violations.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 52 enforcement cases: 19 were ongoing from the prior reporting period and 23 were new cases. In 38 of the 52 cases, enforcement was administrative, 12 were judicial and two were referred to EPA. Thirty-six of the cases have been closed, 11 are still active under an administrative order or a judicial judgment, two cases are in litigation before the Board of Environmental Review or a District Court, one case has been issued a demand letter, and two cases have been referred to EPA.

The Enforcement Division settled 26 enforcement cases during the reporting period for penalties totaling \$845,039. The average settlement penalty was \$32,502. During the reporting period, the DEQ collected monetary administrative and civil penalties in the amount of \$905,474. This amount includes some penalties that were assessed during the previous reporting period but which did not become due until this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until some future date or are being paid in installments.

## **Trends/Benefits to Environment**

The size of the regulated community has increased from between 650 active permits for the last reporting period to about 700 active permits for this reporting period. In addition, the number of registered facilities was 0 last reporting period and is now about 550.

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.

A detailed compliance assessment of the field operations for oil and gas production has not yet occurred. The DEQ anticipates that the transition of staff efforts from registration eligibility determinations to compliance assessments will begin in the summer of 2008. In addition, the field effort will also focus on those sources that have not requested to be registered but that are subject to the regulations.

Compliance issues with newly permitted power plants were noticed during the reporting period. The DEQ has dealt with the compliance issues and will consider those areas of non-compliance with future power plants. Other than for newly permitted power plants, no trends were identified regarding violations since the last reporting period. The number of violation letters continued 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. Thirty 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 DEQ 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. There are two ongoing civil actions concerning leakage from the ash disposal and process water ponds.

Prohibited releases from the system, which may violate water quality standards, are usually discovered through PPLM self-reports or complaints from nearby residents.



No MFSA complaints were received in the Enforcement Division.

### **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 DEQ, 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 with an application for a 500 kV line expected in July. Likewise, an application for a large pipeline is being proposed and two large natural gas pipelines have recently been announced.

## **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 (MEPA), and administrative rules on hard rock mining. The functions of the program are: (1) regulation of hard rock mining and reclamation activities; (2) reclamation of bankrupt or recently abandoned mining sites with forfeited 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 67 permits covering 65 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 102 current exploration licenses and 576 Small Miner Exclusions.

In mid-2007, the program administered 745 permits, exploration licenses, and Small Miner Exclusions. Since staff do not visit the Small Miner and exploration sites every year, 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. DEQ program staff perform regularly scheduled inspections of permit areas 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 also 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 DEQ received 14 complaints alleging potential violations at hard-rock mining and mineral exploration areas. The potential violations may be classified as follows: eight regarding accidental releases of mine processing solutions or equipment fluids; four involving water quality; and one about stolen dynamite.

### **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 nine enforcement cases: four were ongoing from the prior reporting period and five were new cases. Seven of the cases were administrative and two were judicial. Five of the nine cases have been closed, one case was withdrawn, and three are under administrative order.

The Enforcement Division settled two of the four active enforcement cases during the reporting period for penalties totaling \$4,427. The department collected penalties totaling \$12,017. The amount of \$12,017 includes some penalties that were assessed during the previous reporting period but which did not become due until this 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 1996 to 2001 so exploration for gold and other metals dropped off sharply. 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 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 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.

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

**Description of Statute and Program**

The Site Response Section (SRS) of DEQ's Remediation Division utilizes the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and the Environmental Quality Protection Fund (EQPF) to investigate and 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 all the 209 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 33 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 57 maximum and high priority sites on the CECRA Priority List; however, 26 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 209 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 Outreach**

Montana law provides several opportunities for potentially liable parties (PLPs) to clean up contaminated sites under CECRA without enforcement activities. VCRA allows for voluntary clean up of sites or portions of sites so the property can be redeveloped without the use of notices and orders. VCRA is appropriate where cleanups can be accomplished in less than five years. The Controlled Allocation and Liability Act 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 EPA to conduct this outreach. The program also assists communities to secure state and federal grant monies to investigate and clean up contaminated sites.

**Other Compliance Activities**

None

## **Complaints and Noncompliances**

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

When the DEQ receives complaints regarding remedial or other activities at current or potential CECRA Sites, the Enforcement Division refers these complaints to the department's Remediation Division for appropriate follow-up action and/or investigation. During this reporting period no CECRA complaints were received in the Enforcement Division.

## **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**

During the reporting period, the DEQ entered into seven Consent Decrees and two settlement agreements. One cost recovery judicial action was resolved, and one facility received a summary judgment

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

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

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

The Hazardous Waste Site Cleanup Bureau in the DEQ Remediation Division contains two programs that address Leaking Underground Storage Tanks (LUSTs): the LUST Trust Fund Program and the Petroleum Tank Release Cleanup Fund (PTRCF) Program. Technical staff in both programs implement or require tank owners and operators to conduct corrective action required of the Montana Underground Storage Tank Act. The staff 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

4,410 releases have been confirmed since the inception of the program in 1988 through June 30, 2007. A total of 72 releases were confirmed in FY2006 and FY2007.

### **Compliance Assistance and Outreach**

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 or operator has a valid operating permit when the release was discovered and remains in compliance with the UST program laws and rules, 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 DEQ'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 regular meetings with environmental consultants to discuss cleanup and reimbursement procedures and policy.

### **Other Compliance Activities**

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

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

### **Complaints and Noncompliances**

The Enforcement Division received 30 complaints during the reporting period related to leaking underground storage tanks. Complaint sites that involved a release were referred to the Petroleum Technical Section for cleanup oversight.

## **Program Response to Non-compliances**

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 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, violation letters, requests for additional information or corrective action plan submittal, staff field visits or follow-up telephone calls in order to achieve voluntary compliance. Cases are referred to the Enforcement Division for more resource-intensive actions, such as formal Notice of Violation and Administrative Compliance Order, judicial actions, etc., only when a lower level of enforcement action fails to achieve the desired response.

The program may issue up to two letters notifying responsible parties of incomplete work or non-compliance prior to initiating formal enforcement actions. When a deadline from a DEQ request letter is missed, the program will send a warning letter with a new deadline. Continued 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.

The vast majority of owners and operators of leaking underground storage tanks comply with requirements to investigate and cleanup releases that they are responsible for. Approximately only 3% of the known releases have received warning letters or violation letters from the DEQ. This overall compliance is credited to the availability of PTRCF funding, ability for the state to take unilateral corrective actions through the LUST Trust funding, and the collaborative approach taken by program case managers. During FY2006 and FY2007, the program has issued 47 warning letters, and 24 violation letters.

The type of enforcement response selected depends on the severity 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.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 83 enforcement cases: 26 of the cases were ongoing from the prior reporting period and 57 were new cases. In 64 of the 83 cases, enforcement was administrative, 17 were judicial and two cases were referred to EPA. Sixty-two of the 83 cases have been closed, seven cases are under an administrative order or a judicial judgment, six cases are in litigation before the BER or a District Court, and eight cases were withdrawn because there were evidentiary shortcomings.

The Enforcement Division settled 48 enforcement cases during the reporting period with penalties in the amount of \$85,448. The average settlement penalty was \$1,780. During the reporting period, the department collected administrative and civil penalties totaling \$85,821. That amount includes some penalties that were assessed during the previous reporting period but which did not become due until this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until a future date or are being paid in installments.

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

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



## **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, top soil and scoria, by any party on any land (except tribal) in Montana. The Opencut Mining Program, which is part of the DEQ's Industrial and Energy Minerals Bureau, oversees the administration of the statute.

### **Description of Regulated Community**

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

At the end of calendar year 2006, the program had a total of 1,953 permitted operations, 223 pending permit applications, amendments, and assignments, and a large undetermined number of 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 in previous years 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 offer 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 DEQ received 27 complaints associated with sand, gravel, and topsoil mining operations. The complaints represented potential violations of state environmental regulations and the majority of

complaints were in relation to hours of operation, dust, and water quality. All complaints are referred to the Permitting & Compliance Division's Opencut Mining Program for resolution.

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

Minor violations are generally resolved by a phone call or visit that brings the operator back into permit compliance. Warning or violation letters may also be used to obtain compliance. The Air Resources Management Bureau 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 92 opencut enforcement cases, 13 of which were ongoing from the prior reporting period and 79 were new cases. Administrative orders were issued for 87 of the cases while the remaining five cases were prosecuted as judicial actions. One of the 83 cases remains in case development, 53 cases have been closed, one case is being litigated before the BER, 27 of the cases are either under an administrative order or subject to a judicial judgment, two cases were vacated, and eight cases were withdrawn.

During the reporting period, the Enforcement Division settled 35 enforcement actions for a total of \$54,175. The average settlement penalty was \$1,548. The DEQ collected opencut penalties in the amount of \$47,914. Some of the collected penalties were owed from the prior reporting period and came due during this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until some future date or are being paid in installments.

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

The number of permit applications received in 2006 increased by about 27% in comparison to each of the previous two calendar years. In 2007, the number came back down to a level comparable to 2004 and 2005. In any case, in certain areas of the state, applications are considerably more complex to process to completion. This is especially true in the high growth counties such as Flathead, Gallatin, Missoula, and Ravalli. 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 a continuation of applications that require additional information and studies, especially concerning issues on water quantity and quality and truck traffic and public safety.

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 or have little potential for impacting groundwater. Addressing the concerns of local citizens, holding public hearings, preparing complex and extensive environmental assessments, investigating complaints, analyzing the applications for compliance and contacting the applicant about needed revisions have stretched staff resources of the Opencut Mining Program.

As a result, the number of pending permits has remained at a high level over the reporting period and the majority of permitted sites have gone without needed compliance inspections. The high workload has eroded the critical early assistance the program has historically provided to operators 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.

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, 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. All of the active mines are located in southeastern Montana; one comparatively small operation is located elsewhere, but it is totally in reclamation. Of the southeastern Montana operations, one company holds five permits (Western Energy), while other companies hold one or two permits. Most of the active coal mines are strip mines. There is one underground mine.

Currently, prospecting/exploration activities in Montana are limited to coal and have been conducted by one company 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 currently 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 conferences, meetings, and training. These interactions and efforts appear to facilitate the conduct of coal prospecting and mining business with limited formal enforcement action or litigation required.

The greatest incentive for compliance with coal and uranium rules 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. In addition, there is a readily accessible nationwide system allowing all state and federal regulatory agencies to track and evaluate compliance problems related directly or indirectly to a given coal mine permittee or applicant. If a given permittee does not meet regulatory obligations under one permit, other permits may be obstructed.

### **Complaints and Noncompliances**

The DEQ received 12 complaint reports associated with activities at coal mines or “strip mines”. Ten complaints were actually spills caused by accidental releases from vehicles/equipment, and fuel storage or transport facilities. One of the complaints was about blasting and one about dust. 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 11 enforcement cases: four were ongoing from the previous reporting period and seven were new cases. All of the cases were administrative. Seven of the 11 cases have been closed, one case was vacated, and three are under order.

During the reporting period, the Enforcement Division settled seven cases for penalties totaling \$21,801. Penalties in the amount of \$17,060 were collected. Some of the collected penalties were owed from the prior reporting period and came due during this reporting period. Likewise, some monetary penalties that were assessed during this reporting period will not be due until some future date or are being paid in installments.

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

DEQ regulations must be as stringent as federal regulations that essentially require that a penalty must be assessed for all violations. Enforcement actions have been taken for a variety of violations ranging from minor issues related to reclamation to a major problem identified with power line spacing and raptor protection. Over time as more mined lands are reclaimed, the benefits of post-mining land use will increase.

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 high level in the number and complexity of these applications is expected to occur in the next report period. Minor revisions are required for changes in mining or reclamation plans that require a permit page(s) or map 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 DEQ 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 2,085 public water supply systems, which includes 670 community systems. A **community water system** is a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A **transient water system** means a public water supply system that is not a community water system and regularly serves at least 25 different people for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are 1,165 transient systems. A **non-transient water system** is a public water supply system that is not a community water system but regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are 250 non-transient systems.

### **Compliance Assistance and Education**

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

Program staff 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 and time critical reminders, which has proven very beneficial for the systems and for the program in terms of compliance. These activities promote public health protection through preventive measures. The 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 Noncompliance**

The DEQ received 22 complaints concerning public water supplies during the reporting period. Of the 22 total complaints, all but one involved public water supplies regulated by the department. The majority of the complaints were about the quality of drinking water, and there were several complaints about water pressure.

Twenty-three 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 DEQ to return to compliance.

### **Program Response to Noncompliance**

The program closed 17 of the complaints when compliance was documented; two complaints were closed because no violation was noted; two complaints resulted in enforcement requests, one was referred to the City of Helena and none are currently active.

### **Formal Enforcement**

During the reporting period, the Enforcement Division managed a total of 159 public water supply enforcement cases: 44 of the cases were ongoing from the prior year and 115 were new cases. Administrative enforcement actions were initiated for 113 of the cases, 17 judicial actions were taken, and 29 cases were referred to the EPA for enforcement actions. At the end of the report period, none of the 159 cases were in case development, 48 cases have been closed, 62 are still active under an administrative order or a judicial judgment, eight cases are in litigation before a district court or the Board of Environmental Review, seven enforcement requests for enforcement actions were withdrawn, and four enforcement cases were vacated. In addition, a demand letter has been sent to one violator to facilitate the initiation of a judicial action.

During this reporting period, the Enforcement Division resolved the violations cited in 162 cases for settlement penalties in the amount of \$421,835. During this reporting period, the department collected penalties totaling \$372,591. Some of the penalties that were assessed are either due at a future date, are being paid in installments, are subject to appeal or judicial review, or are not collectable because the violator is judgment-proof.

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

During FY2006 and FY2007 the program experienced some staff shortages due to turnover. The staff turnover continues to strain program resources to recruit, fill, and train. Even with staff shortages the program has seen a decrease in violations due to staff addressing violations more promptly, better accountability and tracking of the programs database, and increased public outreach and education to the public.

As a result of staffing shortages to fully implement all federal regulations, Region 8 EPA is working on early implementation of the Stage 2 DBPR (Disinfection Byproduct Rule), LT2 (Long Term 2) Surface Water Treatment Rule, and will possibly start the new GWR (Groundwater Rule) for the State of Montana. During FY2006 the program completed 2,011 monitoring schedule calendars for the regulated systems. In FY2007 the program completed 4,107 monitoring schedule calendars electronically through the program's database that were sent out bi-annually. There were 2,331 reminder letters and postcards sent out in FY2006 to systems, and a total of 2,525 sent in FY2007. In 2006, access to monitoring schedules and historical sample data became available to the public via the Montana DEQ website. This allowed public water supplies to track their monitoring data, violation history, and required water sampling. It also allows the public to check on a system's water quality and compliance with the requirements.

The large number of enforcement actions taken under the Public Water Supply Laws reflects the size of the regulated community, as well as the complicated nature of the regulations adopted by EPA for public water. Most of the enforcement actions initiated were for the failure to monitor for coliform bacteria, nitrates, Surface Water Treatment Rule violations requiring tighter filter effluent turbidity requirements, Stage 1 DBP (Disinfection Byproduct Rule) monitoring and reporting, MCL (Maximum Contaminant Level) violations for DBP's, and the failure to provide public notification of the violations. The failure to provide public notice places consumer's public health at increased risk. Without public notification, the consumer can not make informed decisions concerning their health. The largest amount of enforcement actions were taken against small water systems that serve cafes, bars and trailer courts rather than large municipal water supplies. These are the most vulnerable populations at risk when addressing water quality issues, due to the transient use of the establishments and trailer courts.

The DEQ is attempting to encourage compliance by using administrative orders on consent to resolve enforcement cases involving monitoring violations. Negotiated consent orders contain stipulated penalties for future violations that provide an incentive for compliance.

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

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

The Subdivision Review Section is responsible for the technical review and processing of 1,400 to 1,600 subdivision applications (approximately 9,000 to 10,000 new lots, less than 20 acres in size) each year for adequacy of water supply, wastewater treatment and disposal, solid waste disposal, and storm water control systems.

### **Description of Regulated Community**

The regulated community includes all subdivisions approved by the DEQ that hold a certificate of subdivision approval. Current electronic records indicate that, since FY1990, 24,383 subdivisions containing 102,782 lots have been reviewed and approved in Montana. This number does not include the Municipal Facilities Exemption lots connected to municipal systems. The number of individual lots included within a subdivision application can range from one to several hundred. 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 1,585 applications for 6,814 lots in FY2005, 1,603 applications for 10,171 lots in FY2006, and 1,443 applications for 9,917 lots in FY2007. The section also made water quality nondegradation determinations for approximately 20,000 individual and community wastewater treatment systems in FY2005 through FY2007 to ensure compliance with the Water Quality Act. The section began conducting detailed water availability reviews in January of 2007 and has approved 100 out of 140 evaluations since.

### **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 DEQ employees, local health officials, developers, and consulting engineers. An ongoing goal of the focus group is to streamline the application process and provide greater consistency, thereby promoting greater compliance. The section is currently developing an on-line subdivision application preparation tool in order to make the application process more streamlined and provide consistent and complete applications. The section is also currently contracted with MSU Extension in Bozeman to develop a soils training class for consultants and county sanitarians that will travel throughout Montana.

### **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 DEQ 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 FY2006 through FY2007, there were 48 complaints of potential violations of the Sanitation in Subdivisions Act and associated rules during the reporting period. 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 and a violation letter is sent by the Enforcement Division, 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 ten enforcement cases. Five of the cases are ongoing from the previous reporting period; the remaining five cases were requested during the current reporting period. Seven of the ten cases are administrative enforcement actions and the other three are judicial. Two cases have been closed, one is still active under an administrative order, another is being litigated in district court, and one case was withdrawn. In addition, demand letters have been sent in the remaining cases to facilitate development of the enforcement actions.

During this reporting period, the DEQ collected \$1,500 in penalties to resolve violations of the Sanitation in Subdivisions Law and regulations for which enforcement actions had been completed.

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

There does not appear to be any clear trend regarding the number of enforcement actions that occur each year. This is due to the very high work load of the section just keeping up with the day to day work of reviewing new applications. The section has hired a compliance engineer to interface with the Enforcement Division and the subdivisions that are not in compliance with their original approval. 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 be an increase in the 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 303 public sewage systems that must retain the services of certified operators. There are approximately 1,582 certified operators in Montana.

### **Compliance Assistance and Education**

During FY2006 - 2007, the Water and Wastewater Operator Certification Program held two Water and Wastewater Operator Advisory Council meetings, and one 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 provides new operator training in conjunction with examination sessions, which are being held at locations throughout the state.

### **Complaints and Noncompliance**

The DEQ received no complaints about operators of public water or public sewer systems during the reporting period.

### **Formal enforcement**

During this reporting period, the DEQ did not take any enforcement actions under this statute. Instead, the department cited violations of the water and wastewater operator certification requirement in seven formal enforcement actions initiated for violations of the Public Water Supply laws.

### **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 project permits, facility (annual) permits, accreditation of five distinct asbestos-related disciplines, as well as approval and audit of asbestos training course providers. The program regulates asbestos projects in buildings involving the abatement of three or more linear or square feet of regulated asbestos-containing material (RACM). Asbestos project means the encapsulation, enclosure, removal, repair, renovation, demolition, placement, transportation, and/or disposal of friable ACM or ACM that may become friable. Asbestos 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), 40 CFR Part 61, subpart M. The asbestos 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 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 379 asbestos project permits, 14 asbestos facility permits, 500 asbestos accreditations, approved no asbestos training courses, and conducted an average of 136 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 conducted town meetings/asbestos training seminars in Miles City, Bozeman, Missoula, Libby, and Livingston during FY2006 and FY2007 aimed at educating general contractors, asbestos project contractors, homeowners, building owners, consultants, architects, and other interested parties. Staff also spoke at numerous meetings; continued to distribute informational publications entitled "Think Asbestos"; reissued EPA's "Current Best Practices for Vermiculite Attic Insulation"; and updated the asbestos information on the DEQ website to offer more compliance assistance information.

## **Complaints and Noncompliances**

The DEQ received 121 complaints concerning asbestos during the reporting period. Of the 121 asbestos complaints, one is still under active investigation, 22 were investigated and no evidence of violations were found, two were closed due to a lack of information necessary to investigate, 55 were managed and closed by the Enforcement Division, 35 were managed and closed by the Asbestos Program, one was referred outside of the department, and five 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 cement asbestos 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 DEQ 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 Enforcement Division managed 13 enforcement cases to address violations of the Asbestos Control Act. Five of the cases were ongoing from the prior reporting period and eight were new cases. Four of the 13 cases were administrative actions, and the remaining nine were judicial cases. Eight of the cases have been closed, three are being litigated either before the BER or in District Court, and two of the cases are under administrative order.

The Enforcement Division settled nine enforcement cases during the reporting period for a total of \$216,041 in settlement penalties. The average settlement penalty accepted under the Asbestos Control Act during this reporting period was \$24,005. The DEQ collected \$45,075 in penalties that became due during this reporting period.

## **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 DEQ. The abatement industry's compliance rate, as determined by inspections of permitted projects, is greater than 80%. This is a slight decrease from the previous reporting time span. Just recently a number of asbestos project 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. The 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. The DEQ 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 DEQ 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, transfer stations, and waste transporters 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 still finds many general contractors in Libby fail to comply with asbestos regulations. Many contractors are very aware of vermiculite, but few seem to 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 DEQ'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.

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

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

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

### **Description of Regulated Community**

As of July 1, 2005, there were nine permitted facilities in Montana and numerous hazardous waste handlers, including 27 transporters and 130 generators who were required to register with the program.

### **Compliance Assistance and Education**

The program continues to be engaged in many compliance assistance activities. Ongoing efforts include response to written and telephone requests for information, waste minimization review during compliance evaluation inspections, contractor contact sheets, and waste stream-specific handouts to answer frequently asked questions. Program personnel provide compliance assistance during reviews of annual waste generation reports to insure data quality and the correct assessment of fees. Program personnel also continue to provide general and sector-specific presentations on hazardous waste management when requested. Staff gave presentations to concerned citizens on activities at facilities of interest. Pre-permit modification application assistance is given to facilities seeking changes to permits. Working in concert with DEQ's Small Business and Community Assistance Program, the program distributed guidance publications and provided training on a variety of hazardous waste and used oil topics.

The program distributes 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 content is currently being revised and will move to an Internet based version in the next reporting period.

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, consistent with the Performance Partnership Agreement. The program continued to implement this strategy during the reporting period.

### **Complaints and Noncompliances**

The DEQ received 34 complaints concerning hazardous waste during the reporting period. The majority of the hazardous waste complaints have been filed against businesses for poor waste management and disposal practices.

The department received 66 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 34 hazardous waste complaints, one is currently under active investigation, three were investigated and no hazardous waste violations were found, two were closed due to a lack of information necessary to investigate, 14 were managed and closed by the Enforcement Division, nine were managed and closed by the Hazardous Waste Program, three were referred outside of the department, and two became enforcement requests.

Of the 66 used oil complaints, two are currently under active investigation, 13 were investigated and no used oil violations were found, two were closed due to a lack of information available to investigate, 40 were managed and closed by the Enforcement Division, seven were managed by the Waste and Underground Tank Management Bureau, and two were referred outside of the DEQ.

### **Formal enforcement**

During the reporting period, the Enforcement Division managed a total of 12 enforcement cases: eight of the cases were ongoing from the prior reporting period and four were new cases. Five of the 12 cases were administrative actions and seven were judicial. Demand letters have been sent in the three of the cases: one case has been closed, six cases are still active under an administrative order or a judicial judgment, one case was vacated, and one case is being litigated in District Court.

During this reporting period, one enforcement case was settled for penalties in the amount of \$7,500. The penalty was suspended on the condition that the violator must fully comply with the terms of the administrative order that the Division issued.

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

For the reporting period, the hazardous waste regulated community was similar to the previous years. The program's track record, as measured by EPA's enforcement oversight process, of producing timely and accurate inspection reports of high quality continued. The general trend of a gradual reduction in the number of generators has leveled off.

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 trend in a declining number of inspections has leveled off. The decline in the number of inspections was attributed to staff time dedicated to increased compliance assistance and



reduction of staff. Declining federal grant revenue resulted in the reassignment of four FTE to other positions in the Bureau or Division. For the short term, the program responded to the losses by reorganizing areas of geographic responsibilities and moving to a short form inspection report but it still operates at a bare bones core level. The program will propose fee increases in administrative rule within the next reporting period to maintain a viable program to protect Montana citizens from improper management of hazardous wastes.

Again, similar to the previous reporting period, the most frequently observed violations during the reporting period continue the 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 DEQ 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.

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

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

The Waste and Underground Tank Management Bureau (WUTMB), Solid Waste Section, Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana including infectious wastes. The Infectious Waste Management Act is to ensure the proper management of infectious solid wastes and facilities that manage such wastes types for the protection of public health and safety and conserve natural resources. 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**

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

### **Complaints and Non-compliances**

No complaints were reported in the reporting period.

### **Formal Enforcement**

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

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

The benefit to the environment program activities at the lone licensed solid waste management systems for the treatment of infectious is the continued perfect compliance record at that facility.

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

There has been no activity under this program during the FY2006 – FY2007 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 that passed into law during the 2005 Legislature.. The law 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 DEQ. 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 the Internet at [www.deq.mt.gov/Meth/index.asp](http://www.deq.mt.gov/Meth/index.asp), and work with the property owner to voluntarily decontaminate the property to meet the cleanup standard. Once that is accomplished, the property will be removed from the website and the property owner does not have to disclose the past contamination. If a property has not been remediated by a certified contractor to the 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. A rule update occurred during the reporting period mandating that a contractor performing a CML decontamination project shall have final clearance sampling conducted by an independent contractor who is not employed by the cleanup contractor.

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

Although cleanup of meth labs is voluntary under the Act, property owners must use DEQ certified contractors and meet cleanup standards in order to remove their property from the Internet list and receive the immunity provision in the statute. The regulated community under the Act consists of anyone seeking to become a Certified Meth Lab Cleanup Contractor. The department also oversees the certified contractor's performance by determining whether the contractor's work has effectively met the clean up standard. In addition, the DEQ regulates the training providers that are responsible for the courses to certify cleanup contractors. During the reporting period, approximately 50% of the initially certified contractors have attended a meth lab cleanup refresher course and have been recertified for another two year period.

## **Compliance Assistance and Education**

A great deal of outreach continues to be performed to help stakeholders and the general public understand this law. To improve that understanding, the DEQ held a meth conference, addressing the human health issues attributed to meth and the cleanup of meth lab contaminated properties. The conference, funded by an EPA Brownfields grant, hosted nationally recognized presenters from Colorado, Montana and Oregon. Program staff have attended and presented at numerous meetings and conventions for various organizations. Hundreds of phone calls and Internet comments have been responded to.

## **Complaints and Noncompliances**

The Department received 17 clandestine drug lab complaints during the reporting period, and was given information about 226 historical clandestine drug labs from the Department of Justice. Upon establishment of the Methamphetamine Cleanup Program's database, the Enforcement Division closed and referred all of these complaints to the Methamphetamine Cleanup Program. The Methamphetamine Cleanup Program then took steps to determine if the labs were located within inhabitable properties, and if so, notified the property owner and placed the property address on the Internet. The Methamphetamine Cleanup Program independently tracks the location and status of all historical and recent lab locations.

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

There were no complaints during the reporting period.

## **Formal enforcement**

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

## **Trends/Benefits to Environment**

The Montana Department of Justice reported 261 methamphetamine lab busts to the DEQ for the time frame between January 1, 1997 and July 1, 2005. Currently, there are 187 properties listed on the DEQ meth website. A Certificate of Fitness has been issued to 75 property owners and their addresses removed from the website, during the reporting period. The number of labs peaked in 2002 and has been steadily dropping since. Although lab busts per year are declining, the department is finding that the information needed to effectuate cleanup on the backlog is difficult to obtain. The department is also discovering that there are many clandestine drug labs throughout the state that were never reported to or investigated by law enforcement. Also, residual methamphetamine in a structure is as prevalent from consumption as it is from manufacturing. Meth houses may pose as much of a threat to human health as meth labs. Restoration of inhabitable properties impacted by meth is critical to protect present and future occupants of these structures.

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

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

The Motor Vehicle Wrecking and Recycling Program within the Solid Waste Section of the Waste and Underground Tank Management Bureau (WUTMB) administers this statute. The Act

requires the DEQ to license and regulate motor vehicle recycling facilities (MVRFs) and to administer a program for the control, collection, recycling and disposal of junk vehicles and component parts. The 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 FY2006 – FY2007 period there were 422 new and renewal licenses issued by the Junk Vehicle Program. Of that total, 318 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 motor vehicle graveyards. Ten of 56 counties have merged with other counties or districts. There are 52 licensed county motor vehicle graveyards. In each year of the reporting period 50 inspections were completed and less than eight 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 FY2006 – FY 2007 reporting period DEQ staff conducted 522 inspections at regulated facilities, approximately 261 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 in producing a bi-annual Solid Waste Section 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 88 complaints concerning junk vehicles during the reporting period. Twenty of the complaints are still under active investigation, eight were investigated and no evidence of violations were found, 23 were managed and closed by the Enforcement Division, four were managed and closed by the Junk Vehicle Program, and two became enforcement requests. Complaints regarding four or fewer junk vehicles are referred to the appropriate county junk vehicle program. Thirty complaints were referred to county junk vehicle programs. Frequently, junk vehicle complaints include used oil and solid waste components.

### **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 DEQ or other agencies as appropriate. Some investigations lead to formal enforcement activities, with actions ongoing.

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 14 enforcement cases: 12 were ongoing from the prior reporting period and two were new cases. Two cases were administrative and 12 were judicial. One case has been closed, 12 are still active and are under either an administrative order or a judicial judgment, and one case was referred to a county attorney for prosecution. The DEQ did not collect any penalties during FY2006 or FY2007.

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.

As noted in the FY 2004-2005 report, during this reporting period the program has continued to observe that many of the owners of longtime, established motor vehicle recycling facilities are retiring or leaving the business. The newer operators tend to be more professional, focused on recycling and aware of environmental issues. The training provided to new licensees has contributed to this improvement.

In general, improved performance at county graveyards and 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 DEQ 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 Waste and Underground Tank Management Bureau (WUTMB), Solid Waste Section, 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 published a pumper guide and brochures that are mailed to new pumpers, currently licensed pumpers, county health departments and county sanitarians. Articles are published in a newsletter that is mailed to all licensed pumpers and local sanitarians. Annual training is provided to licensed pumper and county sanitarians. Program staff received 1,342 compliance telephone calls or e-mails during the reporting period. The program provides one program staff as part of the Septic Pumper Advisory Committee (SPAC) which consists of septic pumper business people representing seven regions from across the state. The program conducted inspections at 58 land application sites.

### **Complaints and Noncompliances**

The DEQ received 19 complaints concerning septic pumpers during the reporting period. Of the 19 complaints, two are still under active investigation, one was investigated and no evidence of violations were found, one was managed and closed by the Enforcement Division, 13 were managed and closed by the program, and two became enforcement requests. The complaints were related mostly to septage application sites.

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

The program closes complaints by providing the needed compliance assistance to the septic pumpers. This is done by conducting a site inspection and providing education on regulator requirements and pumper responsibilities. Complaints can also result in new licenses being issued by the program.

### **Formal Enforcement Activities**

During this reporting period, the Enforcement Division managed three enforcement actions under this statute: two cases were administrative and the other was judicial. One of the enforcement actions was carried over from the previous reporting period and the other two were received as new enforcement requests. One of the three cases has been closed, and the other two are the subject of judicial judgments. The DEQ collected \$7,281 in judicial penalties during this reporting period for violations of this statute.

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

The size of the regulated community has decreased from 155 active licenses for the last reporting period to 145 active licenses. Fifteen of the active licensees were new to the program for this reporting period. Ten of the active licenses either closed or were sold during this reporting period. There appears to be a clear trend regarding the increasing number of late to no submittals

of disposal records. The DEQ's efforts to correct this problem now require all records for the previous year prior to issuing a current license.

## **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 128 licenses issued by the Solid Waste Program in Montana, as compared to 130 in the last reporting period. Solid waste management systems in Montana include 30 municipal solid waste (MSW) landfills, three construction and demolition waste landfills, 51 inert material landfills and clean wood waste burn sites, two resource recovery facilities, five large, four small and 10 animal composting operations, nine waste transfer stations, six landfarms for petroleum contaminated soils and sump solids. The Solid Waste Program also issued nine household hazardous waste and e-waste collection event licenses in the reporting period.

### **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 2,360 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. Six staff people handle these calls. This equates to approximately 9,125 calls in the FY2006 – FY2007 period.

### **Complaints and Non-compliances**

The DEQ received 138 complaints concerning solid waste during the reporting period. Of the 138 solid waste complaints, 27 are still under active investigation, 20 were investigated and no evidence of violations were found, four were closed due to a lack of information necessary to investigate, 69 were managed and closed by the Enforcement Division, eight were managed and closed by the Solid Waste Program, 10 were referred outside of the department, 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. Frequently, solid waste complaints involve junk vehicles.

### **Program Response to Complaints and Non-compliances**

Most landfills resolve problems as soon as they are noted in an inspection report. The Solid Waste Program emphasizes education and assistance over enforcement. Judicial action was taken by the department to ensure the proper closure and post closure care funding of a closed facility. In the history of the program only two landfills have had their licenses revoked for numerous solid waste violations.

### **Formal Enforcement Actions**

During this reporting period, the Enforcement Division managed 14 enforcement cases that addressed violations of the Solid Waste Management Act. Ten of the 14 cases were ongoing from the prior reporting period and four cases were new. Eight of the cases were administrative and six were judicial. One of the 14 cases is in case development, five of the cases have been closed, six are now active under an administrative order or a judicial judgment, and two are being litigated in District Court.

The Enforcement Division resolved two cases during the reporting period for penalties in the amount of \$31,375. During the reporting period, the DEQ collected \$38,541 in penalties that became due for current and prior reporting period enforcement actions.

During this reporting period, most of the cases involved the unlawful operation of a solid waste management facility without a license.

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

The benefit to the environment that has resulted from program activities at licensed solid waste management systems is the continued low number of major violations. The department is also working to license all solid waste management facilities including recycling facilities. Recycling facilities under the current regulations are solid waste management facilities and as such have to be licensed by the DEQ. The licenses issued to recycling facilities are free of charge, however, the facilities have to provide tonnage information as well as information on the types of the commodities collected and recycled.

The Solid Waste Program has also seen a gradual increase in the number of house hazardous waste and e-waste collection events in several communities around the state. This trend is helping to keep potentially harmful constituents found in household hazardous wastes and e-wastes out of landfills. The number of small compost facilities has also increased in the last reporting period. The Solid Waste Program successfully collaborated with the Department of Transportation in addressing the numerous road kill carcasses littering the state's highways by researching and licensing several animal composting facilities around the state.



## 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**

As of June 30, 2007, the DEQ regulated 828 owners of 1,425 UST facilities housing 3,850 tank systems.

### **Changes and Accomplishments**

The Federal Energy Policy Act of 2005 mandated a number of funding terms and conditions for UST Programs. Federal guidance for meeting those terms and conditions was completed in August of 2007. Montana has met most of those terms and conditions and is currently addressing the final two.

The first was to require that new UST systems be of double-walled construction and employ interstitial monitoring for their leak detection method. That condition also mandated that under-dispenser containment be installed on new systems when dispensers and associated connecting hardware are replaced. The program wrote administrative rules to effect these changes that became effective on August 24, 2007.

The second condition the UST Program must address is to ensure that each facility has a trained Class A Operator (owner or manager), Class B Operator (responsible for operation and maintenance), and Class C Operator (trained to respond to emergencies). Authority must be in place by August 8, 2009 and training is to be completed by August 8, 2012. The program is currently designing Operator Training with input from UST owners and operators.

### **Compliance Assistance and Education**

In FY2006 and FY2007 the section engaged in 12,217 compliance assistance communication events. Sixty nine percent of these were phone calls; 17 % were letters; 11 % were e-mails. The remaining were site visits and walk-ins.

The staff sends inspection reminders to all active UST facilities six months before their operating permit expires. They send warning letters 75 days before their permit expires. Section staff begins calling them 45 days before their permit expires. The day before their permit expires, they contact the owner to tell them it will be unlawful to operate after their permit 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. They offer a two-day Inspector Training each October.

Tank Helper, a free, Internet-based software program that translates underground petroleum storage tank rules into easy-to-understand instructions has won two awards. In 2006, the application won a Digital Government Achievement Award from the Center for Digital Government. It later won a Montana Information Technology 2007 Award of Excellence. It can be found at [www.Tankhelper.mt.gov](http://www.Tankhelper.mt.gov).

Tank registration fees are invoiced and collected through the Department of Revenue's One-Stop Business Licensing Program.

### **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 FY2006– FY2007 resulted in the following:

- 958 inspections identified 1,092 violations.
- 29% of the violations (313 violations) were of major significance (significant noncompliance).
- 187 facilities had major violations at the time of their inspection (19.5% of inspected facilities).
- 31% of the violations (342 violations) were of moderate significance.
- 196 facilities had moderate violations but no major ones (23.1% of inspected facilities).
- 40% of the violations were of minor significance or had no significance applied.

The program expects that compliance inspections will continue to identify a number of violations. 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 DEQ 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 operating permit expires are referred for formal enforcement. Moderate violations are given a six-month corrective action window. If uncorrected after that window they are referred for formal enforcement. Minor violations must be corrected by the next inspection cycle three years hence. If they are not, they will be elevated to moderate significance.

## **Trends/Benefits to Environment**

If the Operator Training Initiative is effective, operators will understand the value of leak prevention and early leak detection. They will understand how to operate and maintain their equipment and will understand not only how to comply with our regulations but also how those regulations protect water, their soil and their investment.

Alternative fuels bring compatibility and fuel quality issues subject to much national discussion. The UST Program intends to provide outreach on alternative fuel changeover practices, but does not contemplate regulatory amendments at this time.

## **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 includes UST owners and operators, installers, removers and inspectors. As of June 30, 2007 the DEQ licensed 56 installers, 25 removers and 31 inspectors. The program issued 449 permits to install, modify, or close UST systems during FY2006 – FY2007.

### **Compliance Assistance and Education**

The program trained, tested and licensed three UST compliance inspectors during the fall of 2005. It licensed seven new installer/removers in FY2006 and FY2007, one remover and three inspectors. It conducted four UST contractor refresher courses and two inspector refresher courses in this time period. Each of these sessions presented the opportunity for open dialogue between the program and its stakeholders.

The program conducted 69 oversight inspections (audits) on licensed compliance inspectors. These inspections provide accountability and oversight and identify training needs.

### **Complaints and Noncompliances**

The department can take enforcement action in the event of unprofessional conduct by licensed installers or inspectors. No complaints were reported in the reporting period.

**Formal enforcement**

During the reporting period, the Enforcement Division managed three enforcement cases involving underground storage tanks licensing and permitting violations. One of the cases was carried over from the previous reporting period while the remaining two enforcement cases were requested during this reporting period. All of the cases were handled as administrative actions. At the close of the reporting period, two of the three cases were under administrative orders, and the remaining case had been closed.

During this reporting period, the Enforcement Division resolved two of the cases through negotiated settlement for penalties totaling \$2,612. The DEQ has collected the \$2,612 in penalties that was assessed.

**Trends/Benefits to Environment**

The UST Program continues to streamline its paperwork requirements and permitting process.

The program is exploring on-site controls to make it harder for operators to disregard leak alarms and to use the UST equipment to a fuller capacity.

New requirements for under-dispenser containment and double-walled systems necessitated outreach and interpretation for installers and owners and operators.

## **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 DEQ. The WQA establishes the Montana Pollutant Discharge Elimination System (MPDES) for discharges of wastewater and storm water to state surface waters and the Montana Ground Water Pollution Control System (MGWPCS) governing the discharge of wastes to state ground waters. The DEQ 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 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 percentage 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 and 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 have been inventoried and work continues with agriculture interest groups to provide livestock producers 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 DEQ regulates storm water discharges through the issuance of four general permits. Phase I of the federal Clean Water Act 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. The regulations require small municipalities and small construction projects to obtain permit coverage under the MPDES program.

**CAFO** - Significant federal regulation changes have occurred in recent years a significant change at the federal level and follow up at the state level has changed the approach in Montana. Revised CAFO regulations expanded the number of operations covered by the rule and included requirements to address the land application of manure from CAFOs. The rule became effective on April 14, 2003 and authorized NPDES states were required to modify their programs by February 2005 and develop state technical standards.

EPA is currently updating the CAFO rules to reflect the changes required court decisions in 2005. Efforts to update the rules began in this reporting period and were hampered by some federal court challenges resulting in compliance deadlines being revised twice during this reporting period and extensions needed in the public comment periods. The DEQ adopted the federal regulations by reference in 2006 to ensure consistency between the programs but some portions of the rule remain unclear. State rule revisions will be required following the final federal updates and clarification.

**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%. 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.

The Water Protection Bureau manages twice the number of permits from the last reporting period. Currently, there are more than 100 sub-surface dischargers. The regulated community consists predominately of domestic waste dischargers due to subdivision growth and land

development. Facilities discharging more than 5,000 gallons per day (gpd) are required to 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 DEQ 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 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**

The Water Protection Bureau provides compliance assistance and outreach in a variety of ways to both the regulated community and the public. It assists the regulated community during facility inspections, the annual report review and response process, the permitting process, through responses to verbal and written requests for information, and in other forums. The DEQ uses training opportunities to explain regulatory requirements 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. During this reporting period, the Water Protection Bureau provided technical assistance and responded to more than 15,000 requests for information, clarification regarding regulations, and program authority inquiries. In an effort to improve service, all permit applications, technical guidance, environmental assessments and draft permits and regulations are posted on the department's website.

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

### **Complaints and Noncompliances**

The primary issues identified in noncompliance events are as follows:

- Discharging without a permit
- Failure to pay annual permit fees within 90 days of receiving an invoice.

- 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 DEQ received 604 complaints related to potential water quality concerns. The department received 11 complaints about discharges to surface water from potential CAFOs or feedlots. Seven 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 19 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. Fifty-eight MPDES complaints were received. Construction within the high water mark of a perennial stream requires DEQ authorization to temporarily exceed WQB-7 turbidity standards. This is known as "318" authorization and there were seven associated complaints during the report period. The department received five 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 97 pipeline releases called in during this reporting period. The Enforcement Division received 390 spill reports during the reporting period. Eighty-nine 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 and release remedial actions are conducted according to the protocols established by the regulating authority. The DEQ 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 220 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 220 WQA complaints, 105 were resolved voluntarily by the responsible party with compliance and technical assistance from the department; 26 were referred to an outside agency; lack of pertinent information prevented the investigation of 19 complaints; 43 were closed because no violation could be documented; and four proceeded to an enforcement action. Seventeen 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.

## **Formal Enforcement**

During the reporting period, the Enforcement Division managed 53 enforcement cases: 26 of the cases were carried over from the previous reporting period and 27 were new cases. Forty-five of the 53 cases were administrative; the remaining eight were judicial actions. One of the 53 cases is currently in case development, 21 cases have been closed, 16 cases are still active under an administrative order or a judicial judgment, a total of eight cases were withdrawn or vacated, five cases are in litigation before the BER or a District Court, and two violators have been sent Demand Letters to determine if two of the cases can be settled with an order on consent or if it is necessary for the DEQ to file a Complaint in District Court.

Thirteen enforcement actions were settled during this reporting period for penalties totaling \$190,596. During this reporting period, the department collected \$139,537 in administrative and civil penalties that became due for enforcement actions that were initiated during the previous and the current reporting period.

## **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 Clean Water Act nationwide, increasing awareness.

The number of storm water construction permits has declined since 2005; CAFO permits remain stable but are expected to increase after the inventory validation process is complete. 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.