

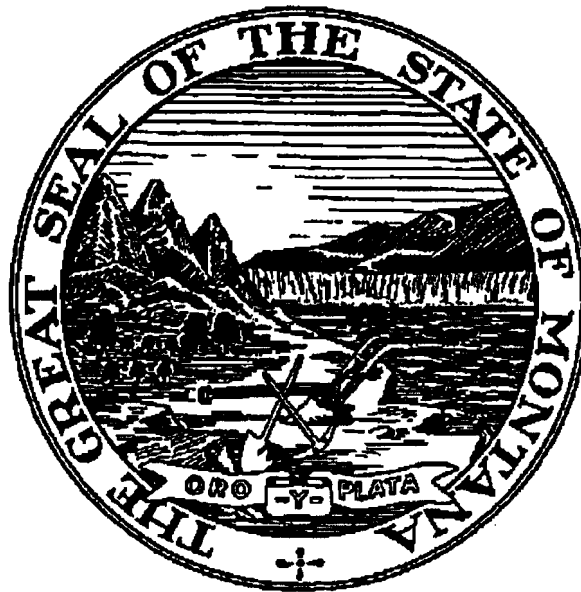
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OCT 16 1998

REPORT TO

**ENVIRONMENTAL
QUALITY COUNCIL**

**ENVIRONMENTAL QUALITY COUNCIL ON
PESTICIDE AND GROUND WATER ENFORCEMENT
PROGRAMS
PURSUANT TO TITLE 75, CHAPTER 1, PART 3,
SECTION 314**



**MONTANA DEPARTMENT OF AGRICULTURE
RALPH PECK, DIRECTOR
OCTOBER 16, 1998**

PESTICIDE PROGRAM

Montana Pesticide Act (MPA) and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

The Montana Department of Agriculture (MDA) enforces the MPA and FIFRA. Enforcement of the federal law is accomplished through a cooperative agreement with the U.S. Environmental Protection Agency. The agreement provides primacy to Montana acting through the MDA to enforce pesticide laws.

Promoting Compliance

Over the last two fiscal years the pesticide program has undertaken the following to promote compliance with the statutory goals of the program:

Information/Education

The agency has a variety of methods to promote and improve compliance. The pesticide program relies on education and educational requirements to ensure that dealers and applicators are qualified. As required under 80-8-109, MCA, the department is required to develop and conduct appropriate educational programs. The educational program informs individuals dealing with pesticides the correct methods of formulating, applying, storing, disposing, handling and transporting pesticides. Currently the MDA has 10,970 licensed pesticide dealers and applicators.

The MDA conducts educational programs for pesticide dealers, commercial applicators and government applicators. The MDA in cooperation with MSU Extension Service provides initial training and testing of farm applicators. Subject to available funds, the MDA and MSU Extension Service are establishing a program for the general public and retailers on pests, pesticides and alternative control methods. A variety of training manuals is available at nominal charge to provide education on pesticide sales, handling, use, application, and disposal. A qualification exam by the Department is required for licensing of commercial and government applicators. Once examined and licensed these individuals must obtain 12 credit hours of training over a 4-year period to remain qualified. An 80% or higher score on the examination results in an applicator being "certified" and qualified to use "restricted use" category pesticides that are more hazardous.

Education gives the department an opportunity to encourage persons to comply with pesticide laws by discussing needs for the law and training individuals how to comply and understand each specific requirement of pesticide law. Information provided informs persons of the consequences of noncompliance including the detrimental effects from illegally used pesticides.

Technical Assistance

The MDA assists the regulated community and the general public by providing information and technical expertise on pesticide related questions. The department is able, within staff resources, to provide one-on-one personal assistance to members of the regulated community. This assistance is available through field offices and from Helena-based specialists.

Inspections

The department has authority to sample (80-8-302, MCA); inspect (80-8-304, MCA) and analyze pesticides or devices distributed within the State of Montana to determine whether such pesticides or devices are in compliance. The Laboratory Bureau located on the Montana State University campus completes the chemical analyses for the MDA, extension service and the public.

The inspection and investigation authority granted under 80-8-304, MCA, allows department staff or authorized agents, upon reasonable cause, with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times. Compliance inspections of licensed dealers and applicators are conducted in the first year of licensure and routinely every 3-5 years thereafter. Routine inspection goals are determined prior to the inspection year and average approximately 700 per year. The routine inspections are conducted with commercial/government applicators, dealers and permitted farm applicators. Inspections are conducted with unlicensed pesticide users upon the receipt of a complaint except that the MDA conducts a limited number of inspections of unlicensed persons (farms, nurseries) that are subject to worker protection standards. The number of investigations varies from year to year because pesticide use varies with weather conditions, pest outbreaks, rainfall, crop types or prices. The MDA conducts marketplace inspections at retailers to verify quantities sold and product registration.

A written Compliance Assistance Inspection Policy and Procedure was implemented in February of 1996. The goals of the policy are to use a variety of tools (inspections, education, and assistance) to achieve compliance, and to focus more on assisting people to achieve compliance than on issuing formal enforcement actions. The policy defines those persons that are most appropriate to receive compliance assistance which are newly licensed individuals and persons subject to new laws and rules.

The following chart represents the number of routine inspections conducted as related to license type.

Total Routine Inspections by License Type

Group	FY 97	FY 98
Commercial/Gov Applicators	507	438
Dealers	264	226
Farm Applicator	7	14
Other(Non, Public,Unlic.)	55	67
Total Inspections	833	745

Enforcement Actions

Section 80-8-211, MCA, established violations that are cause for revoking or modifying a license. Section 80-8-303, MCA authorizes the department to embargo pesticides that are adulterated, misbranded, or not registered. Section 80-8-304, MCA authorizes the MDA to issue compliance orders requiring a person to correct violations to clean up spilled pesticide. Section 80-8-306, MCA, authorizes the department to issue written warnings and administrative civil penalties, and to seek judicial civil penalties or criminal penalties. The department issues written warnings for minor violations when this is in the public interest. Minor violations usually involve general pesticides only and result in no harm.

The Montana Pesticide Act (Act) defines major or serious violations that are subject to civil penalties in Section 80-8-306 (5)(e), MCA. The Act specifically states that the department is required to consider gravity of the violation, the degree of care taken by the offender, the degree of harm caused and the effect on the person's ability to stay in business. The department considers all of these factors when determining the amount of the civil penalty for a violation. Department actions are subject to appeal according to provisions of the Montana Administrative Procedures Act.

The Regulated Community

Pesticide manufacturers and formulators are businesses that repackage or produce pesticides. They can be identified because they are required to register with the Environmental Protection Agency (EPA). There are 98 producer establishments currently registered in Montana. MDA conducts approximately 10 inspections of these facilities each year.

Pesticide dealers are required to become licensed, and in 1996 there were 477 licensed dealers and 469 licensed dealers in 1997. Dealers who sell pesticides for home and garden use only are not required to be licensed but are part of the regulated community. MDA staff conducted 235 routine dealer inspections in FY 96 and 201 routine inspections in FY 97. In the routine inspections conducted, over 97% of the dealers are in compliance with pesticide laws.

Commercial and government applicators are required to obtain a license. Commercial applicators are persons who apply pesticides for hire, and government applicators are persons who apply pesticides for a public entity with which they are employed. Operators are persons who apply pesticides under the supervision of a certified/licensed applicator. The supervising applicator is required to license operators.

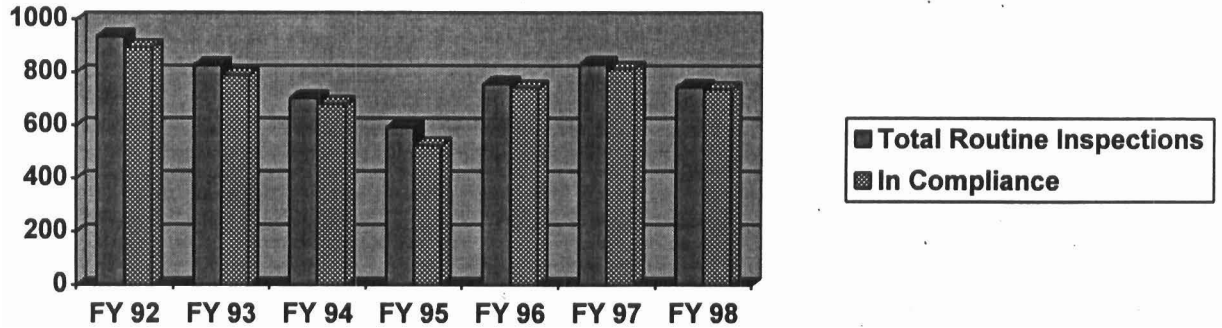
In 1996, 1,602 commercial and government applicators and 1,561 operators were licensed. There were 1,616 licensed commercial and government applicators and 1,557 operators in 1997, and 1,606 applicators and 1,606 operators in 1998 to the date of this report.

Farm applicators are required to obtain a permit if they wish to apply "restricted use" pesticides. The MDA issued 8,270 farm applicator permits in 1996 and 8,160 in 1997. The permit is good for 5 years but requires 6 credit hours of training over the period to remain qualified. Montana currently has 8,000 licensed farm applicators and an unknown number of persons who apply general use pesticides but are not required to become licensed.

History of Compliance

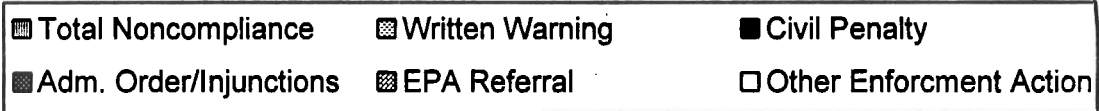
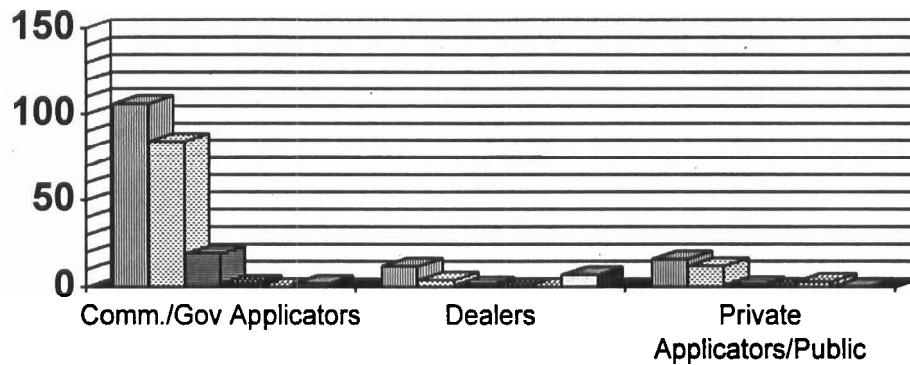
The MDA conducts comprehensive inspections and investigations in that a single inspection covers all aspects of state and federal laws. One inspection therefore can result in multiple violations such as misuse, faulty operations, records or licensing.

History of Compliance



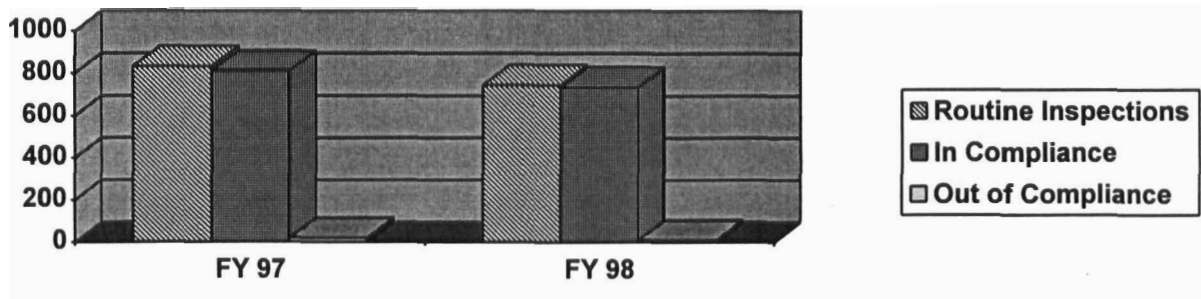
The trend in compliance is a result of the comprehensive inspections and investigations conducted by the MDA staff. The following graph represents the number of different compliance actions assessed for the various license types.

Noncompliance Actions, by License Type, FY 97 and 98

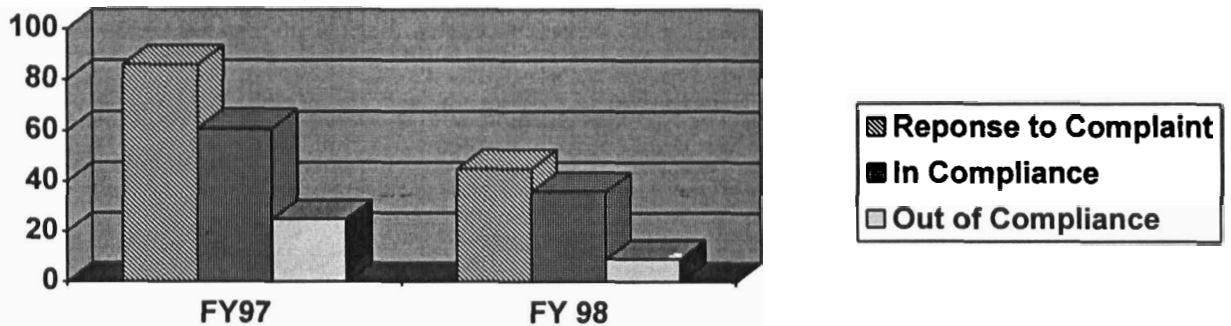


In FY 97 and 98 the MDA conducted (FY97 - 86 and FY98 - 45) 131 complaint driven investigations. See the chart in the section on inspections for the number of routine inspections in FY 97 and 98. During "for cause" inspections the rate of compliance in FY 97 was 71% versus the compliance rate of 98% during routine inspections. The compliance rates are similar for FY 98 (80%) during "for cause" and 98% during routine inspections. The following graphs show the numbers of routine and for cause inspections and the number of these that were in compliance or that had one or more noncompliances. The compliance rates can actually be viewed as the number of persons who were in compliance. For example, in FY 98, 80% of the persons who were inspected for cause were in compliance. Inspections conducted = 45; 36 persons were in compliance, which = 80%; 9 were out of compliance, which = 20%.

Total Routine Inspections, Numbers In Compliance and Out of Compliance



Total For Cause Inspections, Numbers in Compliance and Out of Compliance



Noncompliance

Most violations are discovered through inspections, tips and complaints. Inspections resulting in an extensive investigation will be classified as a case. Upon completion if it is determined that there is insufficient evidence to support an enforcement action or no violation has occurred; the investigation is closed.

When violations have not caused significant damage and are a first offense, the MDA will frequently issue a written warning.

Total noncompliances discovered during FY 97 and FY98 are shown in the chart below.

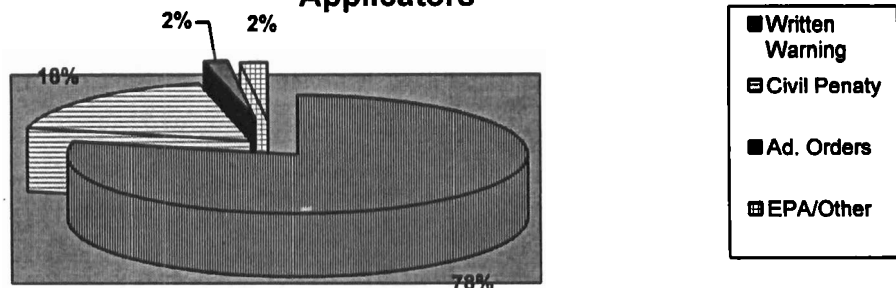
Noncompliance Actions Issued, Discovered by Method, FY 97¹ and 98

Group	Total	Routine Inspections	Citizen Complaint or Tip
Commercial/ Government Applicators	(63) 43	(31) 19	(32) 24
Dealers	(2) 10	(2) 10	(0) 0
Private/Farm Applicators or Private Citizen	(4) 12	(1) 2	(3) 10
TOTAL ACTIONS	(69) 65	(34) 31	(35) 34
	134	65	69

¹ Numbers in parenthesis noncompliance actions issued in FY 1997

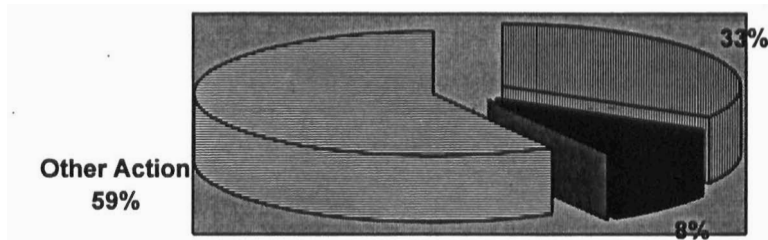
The MDA issued a total of 134 enforcement actions during FY 97 and 98. The following charts represent the types of enforcement actions issued by license type.

Enforcement Actions For Commerical/Goverment Applicators



Total Actions Issued = 106

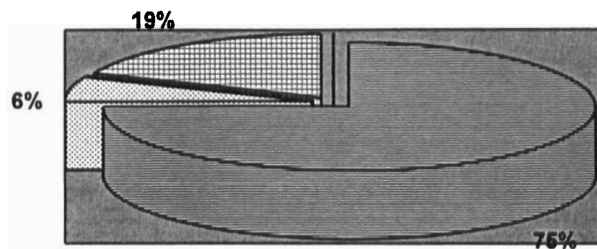
Enforcement Actions For Dealers



- Written Warning
- Civil Penalty
- Ad. Orders 0%
- EPA Ref. 0%
- Other Action

Total Actions Issued = 12

Enforcement Actions For Farm Applicators/Non-Licensees



- Written Warning
- Civil Penalty
- Ad. Orders 0%
- EPA Ref.
- Other Action 0%

Total Actions Issued = 16

The tables included as appendices 1 and 2, itemizes each noncompliance and the action of taken by the MDA.

Appendix 1: Noncompliances Occurring in FY 97 and Their Resolutions

Month NON Issued	Type of License	Description Of Noncompliance	Method Of Resolution	Penalty (\$)	Status	Significant Violation?
July-96	12	Misuse With Proven Harm	Civil Penalty	500	Closed	Yes
September-96	12	Misuse With Proven Harm	Civil Penalty	500	Closed	Yes
September-96	12	Commercial Application Without License	Civil Penalty	400	Closed	Yes
January-97	12	Failure To Keep Application Records	Civil Penalty	350	Closed	Yes
January-97	12	Misuse With Proven Harm	Civil Penalty	300	Closed	Yes
September-96	12	Use Or Sell Without License	Civil Penalty	250	Closed	Yes
April-97	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
April-97	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
September-96	12	Use Or Sell Without License	Civil Penalty	150	Closed	Yes
July-96	12	Failure To Keep Application Records	Civil Penalty Proposed	0	Closed	No
July-96	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	12	Failure To Keep Application Records	Written Warning	0	Closed	No
August-96	12	Misuse With Proven Harm	Written Warning	0	Closed	No
August-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	10	Use Or Sell Unregistered Pesticide	Referral To EPA	0	Closed	No
August-96	12	Use Or Sell Without License	Written Warning	0	Closed	No
August-96	12	Use Or Sell Without License	Written Warning	0	Closed	No
August-96	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
August-96	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
August-96	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
September-96	15	Failure To Keep Application Records	Written Warning	0	Closed	No
September-96	12	Failure To Keep Application Records	Written Warning	0	Closed	No
September-96	12	Handle Or Apply Without Label	Written Warning	0	Closed	No
September-96	12	Handle Or Apply Without Label	Written Warning	0	Closed	No
September-96	12	Misuse With Proven Harm	Written Warning	0	Closed	No
September-96	12	Misuse With Proven Harm	Written Warning	0	Closed	No
September-96	12	Noncompliance With Act	Written Warning	0	Closed	No
September-96	12	Operate Equipment Without License	Written Warning	0	Closed	No
September-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-96	12	Use Or Sell Without License	Written Warning	0	Closed	No
September-96	12	Use Or Sell Without License	Civil Penalty Proposed	0	Closed	No
September-96	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
November-96	12	Failure To Keep Application Records	Written Warning	0	Closed	No
November-96	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
November-96	10	Sell Unregistered Pesticide	Written Warning	0	Closed	No
January-97	12	Apply/Sell Illegal Material	Written Warning	0	Closed	No

Appendix 1: Noncompliances Occurring in FY 97 and Their Resolutions

January-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
February-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
February-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
February-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
February-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-97	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
March-97	12	Sale Of RUP To Noncertified Person	Written Warning	0	Closed	No
March-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-97	15	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-97	12	Apply Inconsistent With Label	Written Warning	0	Closed	No
April-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
April-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
April-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
April-97	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
May-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No

Appendix 2: Noncompliances Occurring in FY 98 and Their Resolutions

Month NON Issued	Type of License	Description Of Noncompliance	Method Of Resolution	Penalty (\$)	Status	Significant Violation?
May-98	12	Misuse With Proven Harm	Civil Penalty	1000	Closed	Yes
July-97	12	Misuse With Proven Harm	Civil Penalty Proposed	500	Closed	Yes
May-98	12	Failure To Keep Application Records	Civil Penalty	500	Closed	Yes
May-98	12	Use Or Sell Without License	Civil Penalty	500	Closed	Yes
September-97	12	Misuse With Proven Harm	Civil Penalty Proposed	250	Closed	Yes
July-98	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
November-97	12	Misuse With Proven Harm	Civil Penalty Proposed	150	Closed	Yes
September-97	12	Use Or Sell Without License	Civil Penalty	125	Closed	Yes
September-97	10	Use Or Sell Without License	Civil Penalty Proposed	125	Closed	Yes
July-97	12	Apply/Sell Illegal Material	Civil Penalty Proposed	0	Closed	No
July-97	12	Faulty Or Unsafe Equipment	Written Warning	0	Closed	No
July-97	12	Faulty Or Unsafe Equipment	Written Warning	0	Closed	No
July-97	12	Faulty, Careless, Or Negligent Operatio	Written Warning	0	Closed	No
July-97	99	Operate Equipment Without License	Written Warning	0	Closed	No
July-97	12	Operate Equipment Without License	Written Warning	0	Closed	No
July-97	99	Operate Equipment Without License	Written Warning	0	Closed	No
July-97	12	Operate Equipment Without License	Written Warning	0	Closed	No
July-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
July-97	10	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
July-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
July-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
July-97	10	Sale Of RUP To Noncertified Person	Written Warning	0	Closed	No
July-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
July-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
July-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
July-97	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
July-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
July-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
August-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
August-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
September-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-97	10	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-97	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
October-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
November-97	12	Apply/Sell Illegal Material	Written Warning	0	Closed	No
November-97	12	Faulty, Careless, Or Negligent Operatio	Written Warning	0	Closed	No

Appendix 2: Noncompliances Occurring in FY 98 and Their Resolutions

November-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
December-97	11	Use/Apply Inconsistent With Label	Civil Penalty Proposed	0	Closed	No
January-98	99	Apply/Sell Illegal Material	Written Warning	0	Closed	No
January-98	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
January-98	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
January-98	99	Use Or Sell Unregistered Pesticide	Written Warning	0	Closed	No
January-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
January-98	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
January-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
January-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-98	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
March-98	13	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
March-98	99	Use Or Sell Without License	Written Warning	0	Closed	No
March-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-98	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
May-98	12	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	12	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	10	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	10	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	10	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	10	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	10	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
May-98	10	Use/Apply Inconsistent With Label	Embargo	0	Closed	No
July-98	99	Sell Adulterated/Misbranded Pesticide	Referral To EPA	0	Closed	No
July-98	99	Sell Adulterated/Misbranded Pesticide	Referral To EPA	0	Closed	No

Ground Water Protection Program

MONTANA AGRICULTURAL CHEMICAL GROUNDWATER PROTECTION ACT (MACGWPA)

The MACGWPA was enacted in 1989, so it is relatively new. Program activities to date have involved implementation of a statewide ground water monitoring system, preparation of a General Management Plan, adoption of rules, promoting research of Montana's aquifers, and building cooperative working relationships with private and government groups. In the near future, the MDA will begin the preparation and adoption of Specific Management Plans (SMP) which will be enforceable. Most compliance activities will be linked to the adoption of SMP's; and, since no SMP's are currently in effect, routine enforcement is not yet underway.

Promoting Compliance

Over the last two fiscal years the ground water protection has undertaken the following to promote compliance with the statutory goals of the program:

Information/Education

The ground water program is presently a research and technical assistance program. The department dedicates efforts to provide information and assistance to prevent ground water contamination by agricultural chemicals. Through education and outreach, the department provides information on Specific Management Plans (SMP) which provide for the management of agricultural chemicals to prevent, minimize and mitigate their presence in ground water. The department is involved in an ongoing process which identifies environmentally sensitive areas, soil, and aquifers. Information about agricultural chemicals in Montana ground water is provided by results from the MDA's statewide monitoring program. Through public meetings and certification training the public is informed of the locations and extent of the vulnerable or sensitive aquifers.

The groundwater program relies on education and educational requirements to assure that dealers and applicators are qualified. As required under Section 80-15-106, MCA, the department is required to develop and conduct appropriate educational programs. The educational program informs individuals of the public policy in Section 80-15-103, MCA. The MDA will provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods. Education gives the department an opportunity to convince person to comply with pesticide laws by discussing needs for the law and training individuals how to comply and understand each specific requirement of pesticide law. Information provided informs persons of the consequences of noncompliance including the detrimental effects from illegally used agricultural chemicals.

The MDA in cooperation with MSU Extension Service (MSUES) and the county extension service provide initial training and testing of farm applicators. One of the major topics covered during recertification training courses is how to protect Montana's ground water from pesticide or fertilizer contamination. A variety of training manuals are available at a nominal charge to provide education on agricultural chemical handling, use, application, and disposal. The Montana General Agricultural Chemical Ground Water Management Plan is a comprehensive strategy for Montana to protect ground water from agricultural chemicals. Protecting Our Water Resources, developed in cooperation with MSUES, provides information that fertilizer facilities can use to protect ground water.

Technical Assistance

The philosophy of the agency, as guided by the Montana constitution and statute, is that agriculture and ground water in the state can be protected and enhanced through the judicious use of pesticides and fertilizers. The department dedicates most of its program effort to prevention of ground-water contamination by agricultural chemicals through the use of MDA, EPA, and MSU Extension Service bulletins, brochures, and other training aids.

The Agricultural Chemical Ground Water Protection Program is presently a research and technical assistance program. General statewide ambient ground water monitoring for contamination by agricultural chemicals has been ongoing since 1984, before the law was passed. The Montana ACGWP Act required the development of the General Management Plan principally as a tool to identify environmentally sensitive areas, soils, and aquifers and to develop best management practices for the use of agricultural chemicals in Montana.

When Montana implements a SMP it may be necessary to have one-on-one outreach sessions with the agricultural chemical users who may be impacted by the plan requirements.

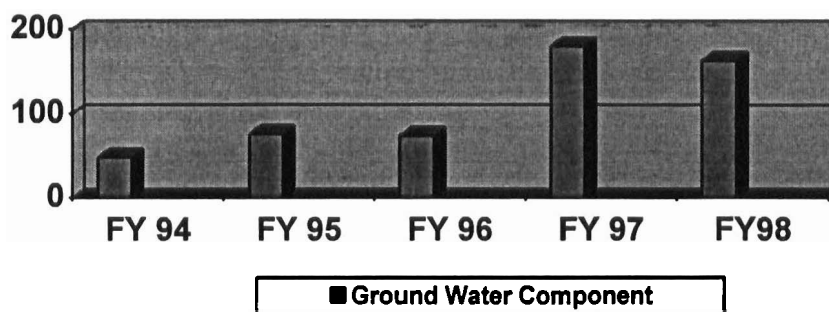
Inspections

When Specific Management Plans are implemented, routine inspection of persons subject to the plans will begin. The details of an inspection program will be prepared commensurate with the development of SMP's. The department has authority (Section 80-15-401, MCA) to sample and inspect and perform analysis of ground water, inspect monitoring equipment and inspect and copy records required by the Montana Agricultural Chemical Ground Water Protection Act. The MDA can investigate conditions relating to compliance with agricultural chemical labels, management plans, monitoring requirements, ground water protection requirements and violations of plans or compliance orders. Samples collected during an investigation are sent to the MDA Laboratory Bureau located on the Montana State University campus for chemical laboratory analysis. The laboratory conducts chemical analyses for the MDA, MSU extension service and the public.

The inspection authority granted under Section 80-15-401, MCA, allows department staff or authorized agents, upon reasonable cause, with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times. Pesticide inspection records in FY 97 and 98 show that 343 inspections included a ground water component. This component includes activities such as checking for compliance with ground water protection requirements on labels, sampling ground water and investigating conditions related to agricultural chemicals in ground water.

MDA staff conducts ground water education outreach during most routine inspections and reviews all chemical labels for ground water specific requirement. The following chart represents the groundwater component of inspections.

Pesticide Inspections that Checked Ground Water Label Requirements



Enforcement

In general, the Montana Department of Agriculture (MDA) is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans for Montana. The agricultural chemical ground water General Management Plan (GMP) was published in 1994. This plan is not enforceable. It provides guidelines, information and sets the policy for additional site specific or chemical specific plans, which will be enforceable. The MDA, in concert with the Department of Environmental Quality (DEQ), Water Quality Division (WQD), is authorized to sample ground water for the presence of agricultural chemicals. The MDA is authorized to prepare, implement, adopt and enforce specific management plans (SMPs) for specific management zones and/or for specific agricultural chemicals. These plans are adopted by rule and are enforceable documents. The MDA, working with other agencies and the Montana State University (MSU) Extension Service in particular, has provided considerable training and education to users of agricultural chemicals on ground water science, pollution prevention, and the proper use of agricultural chemicals.

Current enforcement activities are primarily in training staff, developing program procedures, and preparing to write Specific Management Plans. Enforcement staff have investigated a number of sites where ground water or soils are contaminated with agricultural chemicals. Since 1995 pesticides inspections have included a ground component. This component includes activities such as checking for compliance with ground water protection requirements on labels, sampling ground water, and investigating conditions related to agricultural chemicals in ground water.

About 30% of the ground water program staff will be involved in direct field enforcement and compliance activities (investigations, inspections, case review, enforcement response and program management) when a routine enforcement program is implemented.

The ground water law provides a full range of penalties ranging from written warnings to license revocation or criminal actions.

Section 80-15-403, MCA, provides the MDA with the statutory authority to issue compliance to persons who violate a ground water standard or a requirement of the Act.

Section 80-15-404, MCA, authorizes the department to commence a civil action seeking a permanent or temporary injunction pursuant to Sections 80-3-306 or 80-10-303, MCA, as applicable; for a violation that is subject to a compliance order under Section 80-15-403, MCA.

Section 80-15-412, MCA, authorizes the MDA to assess administrative civil penalties up to \$1,000 per offense, except that the maximum civil penalty is \$500 for farm applicators possessing a pesticide permit or using fertilizers

Sections 80-15-413 and 414, MCA, authorizes the department to seek a judicial civil penalty or a criminal penalty for a violation of the provisions of Section 80-15-402, MCA.

The Act specifically states that the department is required to consider gravity of the violation, the degree of care taken by the offender, the degree of harm caused and the effect on the person's ability to stay in business. The department considers all factors when determining the amount of the civil penalty in response to a violation. Department actions are subject to appeal according to provisions of the Montana Administrative Procedures Act.

The Regulated Community

Currently, 10,970 licensed pesticide dealers, commercial and farm applicators and an unknown number of persons could be subject to a Specific Management Plans developed under the MACGWPA.

As specific management plans are written, the regulated community will be identified. Each SMP will have an associated regulated community. Since each SMP is for a specific agricultural chemical, the regulated community will be the users of the specific chemical. SMP's may also apply to geographic area; i.e. with vulnerable ground water. This will further define the regulated community. The EPA has informed states that specific management plans will be required for certain chemicals that have a potential to enter ground water. An example of one of these chemicals is atrazine. If a SMP is adopted for atrazine, it will specify conditions for sale or use which will be enforced and thereby create a specific regulated community of atrazine dealers or users.

The program seeks to prevent pollution of Montana's ground water resources from agricultural chemicals, specifically pesticides and fertilizers. As such, the regulated community is not easily identifiable as with other programs. The regulated community is essentially the landowners above the potentially affected aquifer or the person(s) who uses/use agricultural chemicals which could contaminate an aquifer. This can include chemical applicators, chemical dealers or manufacturers through spills and mishandling, and the landowner. Pesticide dealers, fertilizer dealers, and some pesticide applicators are required to be licensed by the MDA and would be identifiable for training and possible regulation. On a voluntary basis, the same is true for landowners who desire training on ground water pollution prevention techniques or best management practices (BMPs).

History of Compliance

Routine compliance activities will be linked to the development and implementation of SMP's. Since no SMP's are currently in effect, there are no significant compliance activities to report.

The Montana Agricultural Ground Water Act (Act) requires the Department of Environmental Quality to adopt standards for agricultural chemicals in ground water. DEQ has proposed standards but not yet adopted them. This has affected the ability of the department to conduct investigations or take enforcement actions. To date the MDA has not taken enforcement actions under the Act; the MDA has addressed groundwater contamination issues under the Montana Pesticide Act.

Noncompliance

An agricultural chemical user may be out of compliance if they violate the provisions of an SMP; or if they contaminate ground water in excess of a standard, or violate an administrative order.

Since the Act became effective, the MDA has issued 4 administrative orders requiring cleanup of pesticide spills, sampling soils and ground water, and some soil removals. These orders were issued using authority of the Montana Pesticide Act. The department has issued informative letters to fertilizer facilities with soils contaminated with high levels of nitrate with the potential of impacting groundwater. The letters provided information to improve operational activities to minimize further contamination. The information contained best management practices for handling and storage containment of fertilizers.

COMPLIANCE/ENFORCEMENT -- GENERAL FOLLOW-UP QUESTIONS
for the
MONTANA PESTICIDES ACT
and
MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT

A. Enforcement Policies

1. Does your agency have a written compliance and enforcement policy and procedures manual for each program reviewed today. Please describe (including any specific components related to information, technical assistance, incentives, penalties, etc.).

The Montana Department of Agriculture (MDA) has a Pesticide Enforcement Response Policy that was developed in 1989. This policy will require updates as the ground water program becomes operational. Two MDA staff members are on a national work group to develop a Quality Assurance Plan (QAP) and Quality Management Plan (QMP) which may include some elements of an Enforcement Response Policy.

The MDA has a series of Standard Operating Procedures (SOP's) for pesticide and ground water programs that define how to conduct enforcement actions such as issuance of inspections, sampling, written warnings, confidentiality and for case preparation and case review.

The Montana Pesticides Act (MPA), Montana Agricultural Chemical Ground Water Protection Act (MACGWPA) and the Administrative Rules of Montana (ARM) authorize the MDA to conduct enforcement activities and take actions. Elements that are required to be considered when assessing penalties are gravity of the violation, extent of damage, degree of care, and whether significant damage occurred.

- Does the manual clearly define responsibilities of staff, decision points, criteria for decisions, decision-makers, and response criteria?

Staff responsibilities for minor pesticide violations are defined in the Written Warning SOP. Major violations involving a civil penalty, compliance orders, and license revocations go through extensive review. They start with a recommendation from the investigator, a review from Helena case review staff and then to the bureau chief. Depending on the sensitivity or severity of the case, the administrator, department attorney and director may be involved in the review and decision for enforcement actions.

- Are the policies understandable to the public and the regulated community?

Yes, we believe so.

- How do you assure staff familiarity with the policies and procedures?

The MDA has an internal training program for new employees and experienced staff. Staff also participate in the decision making process for enforcement actions and participate in writing procedures and rules and are updated through weekly communication and staff meetings.

The MDA also gives staff members the opportunity to attend federally sponsored courses and supports requests for other types of training. Enforcement staff are required to complete a Basic Inspector Training Course and a 40-hour Safety Training Course and must maintain the certification on an annual basis. As policies and rules change, staff is updated. Staff receive ongoing internal training in new areas such as Worker Protection Standards and ground water.

- Are time lines reasonable?

Yes, reasonable time lines for conducting pesticide investigations and issuing enforcement actions are established in the SOP's. Timeliness and response is enhanced by field offices strategically located throughout the state.

To date, the MDA has not issued any enforcement actions using the authority of MACGWPA, but we have addressed several ground water issues using the authority of the MPA.

- How are violations tracked within the programs? Are decisions well-documented?

All complaints are initially recorded on a complaint tracking form that includes the date the complaint was received. The program manager or bureau chief assigns the complaint to an investigator for an investigation. The program manager monitors progress of the investigation to assure that time lines established by SOP are followed. Appropriate enforcement actions are taken within time lines established by SOP.

To assist in assuring that cases are handled in a timely manner, the program manager keeps an updated case listing and monitors the status of cases by using an electronic tickler file.

Decisions and enforcement actions are documented in all case files and case files have been maintained for at least the last 10 years.

- Is the chain of command clear and consistent?

The chain of command is clear and consistent and is established in the position descriptions and department organizational charts of employees and reemphasized in routine staff meetings.

B. Use and Balance of Enforcement Tools

1. Please describe how your program balances "compliance assistance" efforts with traditional enforcement activities (if any). Does your funding scheme adequately support

this balance? Are you making any efforts to shift this balance (e.g. working to implement BMPs where there were none before, etc.)?

Traditional enforcement activities are balanced by training programs, in cooperation with industry, and compliance assistance.

The MDA's certification program conducts testing and training for commercial, governmental, non-commercial applicators, dealers, and for private applicators using restricted use pesticides. The MDA participates and promotes governmental and industry training. The MDA attends and participates in industry and trade association meetings, tours, workshops, and other special events. The MDA offers training manuals, copies of the laws and rules, and assistance publications to the public and industry.

In 1993 the MDA implemented Compliance Assistance for the new EPA Worker Protection Standard program. In 1997 we adopted a written policy for a broad-based compliance assistance program. The program consists of field outreach and training to assist people in complying with the law.

See response to D2 for funding information.

The MDA has developed "Best Management Practices" (BMPs) to protect ground water from agricultural chemical contamination as a part of the General Ground Water Management Plan. The regulated community is encouraged to adopt BMP's as a part of their normal daily activities.

2. Does your program have written assistance and outreach goals? How do you integrate participation of the regulated community in program and rule development?

Generally, goals for pesticide training are established by statute and rule. The MACGWPA and rules require educational programs for agricultural chemical users.

Compliance assistance inspections goals are established in a Compliance Assistance Policy, and the goal is to inspect each new person during the first-year licensed or to inspect licensees affected by newly implemented rules and regulations.

Prior to developing and during drafting of new rules, they are discussed with the regulated community, and upon completion of the draft rules, they are sent to private industry associations for review and comment. This process is accomplished prior to notice of formal comments in the Montana Administrative Register.

C. Record Keeping/Measuring Success/Legislative Oversight

1. If you have not already done so, please describe and/or demonstrate how your programs keep records of compliance and enforcement activities. Do you provide annual summaries of these records? How are these records made available to the public?

The MDA maintains the Pesticide Tracking System (PTS), an electronic database, which tracks all routine inspections, samples, violations and enforcement actions. A compliance history on any licensed individual can be produced by the individual's identification number which is part of the license number. Examples of other reports that can be generated by the PTS are inspection and sample reports, damaged environment reports, violation reports, and quarterly accomplishment reports. The MDA also tracks compliance and enforcement actions through hard copy case files and inspection reports.

Field Services Bureau (FSB) prepares quarterly reports throughout the fiscal year. These reports are a summary of numbers of inspections, samples and enforcement actions, and at midyear and year end, a narrative. These reports include federal and state activities conducted during the fiscal year.

These reports are available to the public on request, and the activities are discussed at training sessions and association meetings.

2. In your opinion, what information (i.e. "indicators") might best be used to judge the effectiveness or success of each of your compliance/enforcement programs, in relation to the relevant statutory goals? How might such information be collected, maintained, and reported? Is such information currently being collected? If not, what would it take to collect it?

The purpose statement of the MPA provides a foundation for evaluating the program, it states:

"The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vectorborne diseases. However, the protection of man and his essential needs--water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous--is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides."

Indicators for this evaluation might include:

- Checking agricultural commodities for violative residues that exceed tolerances or for unregistered residues
- Maintaining records of human exposure or illness
- Evaluation of pesticides or pest products to determine their effectiveness for the control of agricultural pests, disease vectors and nuisance pests
- Maintain records of violations and records of damage caused by agricultural chemicals
- Monitor residues in the environment (i.e. water and air)
- Maintain records of harm to vegetation, animals and pollinating insects

Some of this information is being collected on a routine basis during investigations and monitoring. In the past, samples have included: air, water, wildlife; representative samples of selected agricultural commodities (marketbasket surveys); and environmental studies on selected

pesticides.

D. Seriousness (Risk) of Violation

1. Is there an emphasis in your programs and policies on preventing and correcting violations that pose the greatest risk to human health and the environment? If so, please describe how this is emphasized.

The pesticide training and education programs required by statute help to prevent violations by providing information on where violations have occurred or are occurring and how they can be prevented. The training is intended to promote safety, minimize violations, and reduce risk to human health and the environment.

The MDA training programs consist of initial and recertification training on a scheduled basis for commercial, governmental, non-commercial applicators, and dealers. The MDA also has an agreement with the cooperative extension service for training private applicators to use restricted pesticides. The enforcement staff participates in this training on a routine basis.

The MDA's internal policy is to assign priority to issues involving risks to human health and the environment. MDA staff take quick action to investigate these issues and coordinate with other agencies.

The MPA and MACGWPA authorize civil penalties that are stricter for violations that result in damage to human health, the environment, and agriculture. Intentional violations that result in damage are subject to judicial civil penalties and criminal penalties.

E. Staffing/Resources/Contracting

1. When issuing contracts, does your agency retain in-house all regulatory decision making and quality control functions? Do contract stipulations protect against conflict of interest?

The pesticide and ground water enforcement programs have not contracted enforcement work to this date; i.e. inspections, sampling and investigations. Several contracts are in progress that involve development of pesticide training programs. These contracts do not involve regulatory decision making.

2. Please comment as to whether you feel funding is sufficient to carry out your programs' statutory obligations?

The programs are funded by revenue from pesticide licenses, pesticide product registration, fertilizer registration assessment, and EPA grants. The program does not receive any general fund revenue.

Funds have been adequate but have remained static in recent years. We project budget

difficulties because of increased costs in communications, computer hardware and software, personal services, salary savings and inflation.

3. Do any of your programs suffer from inability to retain staff? How has or will these problems be addressed?

The MDA pesticide and ground water enforcement programs have benefited from reasonable staff retention. We have seen some turnover because our salaries are not compatible with private industry, the federal government, or in some cases, other state agencies.

F. Primacy (this topic area is being addressed in separate EQC efforts)

G. Further Recommendations

1. How is your agency improving coordination with local jurisdictions regarding delegated or overlapping regulatory functions?

The MPA authorizes local jurisdictions to adopt certain pesticide regulations and clearly defines the MDA's role in coordinating with local jurisdictions as they develop and administer local regulations. The MDA worked with the city of Missoula as their city council considered the adoption of a local pesticide ordinance. The MDA is not aware of any other overlapping pesticide regulatory functions in local jurisdictions (municipalities and counties). The department maintains an open line of communication with local jurisdictions on questions or concerns regarding pesticide regulation.

The MDA is not aware of any overlapping ground water regulatory functions with local jurisdictions. However, during the Specific Management Plan (SMP) development process, the department will work closely with local conservation districts, local watershed groups and local water quality districts (if one has been formed) to make sure that their protection efforts become part of the overall plan for the area and are not duplicated.

2. How quickly does your agency respond to citizen complaints regarding how those complaints have been resolved?

When the agency receives a written complaint, it responds within several working days or at a time requested by the complainant. The MDA's response customarily includes a follow up investigation, consisting of an on-site visit and sampling. The complainant and regulated party are apprised of analytical results usually within 30 days. The MDA's policy is to inform citizens within one year regarding the findings of their complaint. In many cases citizens are informed in less than a year.

3. Is all statutorily-required rule making complete for the programs included in this review?

At this time, the MDA has completed all mandated rulemaking for the pesticide and

ground water programs. We are in the process of revising the pesticide civil penalty rules to incorporate amendments to the MPA adopted in 1995.

The MACGWPA requires that the Department of Environmental Quality, Board of Environmental Review adopt, by rule, standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The MDA's development and enforcement of SMP's, issuance of orders, and other routine enforcement is contingent upon the DEQ Board's adoption of standards. To date, the DEQ has proposed rules but they have not been adopted.

4. What means does your agency have to recognize environmental protection efforts, including public/private cooperative efforts?

While we are not clear on the applicability of this question to the pesticide program, all citizens including industry and environmental groups have equal opportunity for participating in program and rule development. Examples of where the MDA has recognized environmental efforts include:

- Prevention of drift to organic crops.
- Waste Pesticide Collection Program administered by MDA, funded by industry.
- The pesticide dealer plastic container recycling project.
- The MDA Model School IPM pesticide program.

The MACGWPA and rules require that the MDA consult with local, state and federal agencies, universities, and agricultural chemical user groups and the public, to identify the provisions, best management plans and practices, information and data needed, other agricultural chemicals of concern and plans for development of the SMP. During this process, the MDA will certainly recognize and endorse any ground water protection efforts that agencies, groups and individuals have put in place and ensure that they become part of the SMP(s).

5. Has DEQ developed Ombudsman-like programs for pollution prevention in media other than air quality.

N/A

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