

REPORT TO
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
(September 7, 2000)

PESTICIDE PROGRAM

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

In FY 2000 a cooperative agreement between the United States Department of Agriculture (USDA) and the MDA was agreed upon for the inspection of application records involving the use of restricted use pesticides on private farms. At this time enforcement actions will be taken by the USDA based on inspection results from the MDA.

Promoting Compliance

The pesticide program has undertaken many activities to promote compliance within the pesticide community. These activities include providing information and education, technical assistance, conducting sampling and inspections, and issuing enforcement actions within the statutory goals of the program:

Information and 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 Section 80-8-109, MCA, the MDA 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.

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 are available at cost to provide education on pesticide sales, handling, use, application, and disposal. A qualification exam by the MDA 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 MDA 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 MDA is able, within staff resources, to provide one-on-one personal assistance to members of the regulated community. This assistance is available at field offices and from Helena-based specialists, through formal training sessions, testing, routine inspections and compliance assistance inspections.

Sampling and Inspections

The MDA has authority to sample (Section 80-8-302, MCA); inspect (Section 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 Section 80-8-304, MCA, allows MDA 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 number of complaints, reports of damage and referrals from other agencies varies from year to year. The MDA conducts marketplace inspections at retailers to verify quantities sold and product registration.

In FY 2001 the MDA will conduct inspections to check records of restricted use pesticide applications conducted by farm applicators. This program is through a

cooperative agreement between USDA and State of Montana. MDA staff will conduct the inspections following guidelines of USDA. Results from this will be provided in the FY 2003 EQC report.

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. The policy defines those persons that are most appropriate to receive compliance assistance as newly licensed individuals and persons subject to new laws and rules.

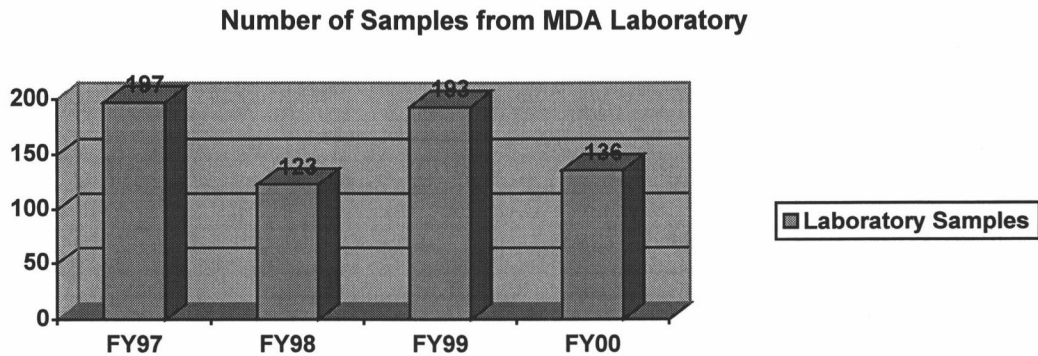
The following chart presents the number of routine inspections conducted as related to license type:

Total Routine Inspections by License Type

Group	FY 97	FY98	FY99	FY00
Commercial/Gov Applicators	507	438	391	454
Dealers	264	226	187	198
Farm Applicators	7	14	7	5
Other (Non Commercial, Public, Un licensed individuals.)	55	67	73	62
Total Inspections	833	745	658	719

The MDA also has authority, under 80-8-302 and 304, to sample pesticides, devices and the environment related to inspections and investigations. These numbers vary in accordance to the number of investigations conducted during a given year. Depending on tank mixes or how many pesticides applications are involved the number of pesticide active ingredient analysis could be multiple, and the results play a major role in enforcement decisions. |

The following graph presents the number of enforcement samples collected over the last four state fiscal years:



Enforcement Actions

Section 80-8-211, MCA, establishes violations that are cause for revoking or modifying a license. Section 80-8-303, MCA authorizes the MDA 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 MDA to issue written warnings and administrative civil penalties, and to seek judicial civil penalties or criminal penalties. The MDA issues written warnings for minor violations when this is in the public interest. Minor violations often involve general use pesticides 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 MDA 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 if the individual presents certain financial evidence that shows that the action will create a financial hardship for the person. The MDA's considers all of these factors when determining the amount of the civil penalty for a violation. The MDA 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 105 producer establishments currently registered in Montana. The MDA conducts approximately 10 inspections of these facilities each year.

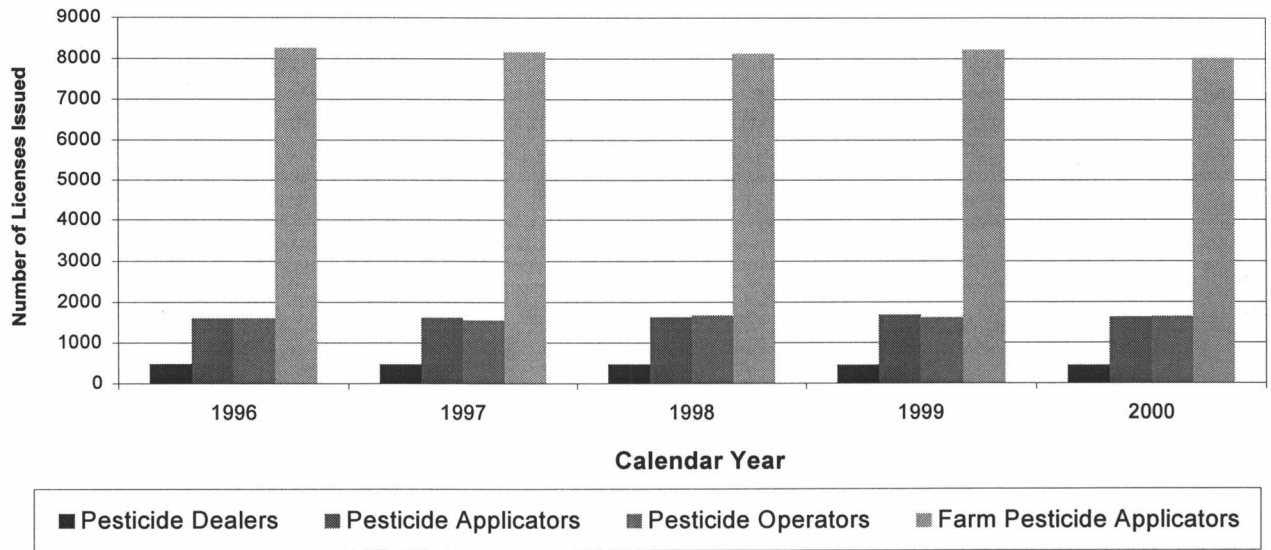
Pesticide dealers are required to become licensed. The number of licensed pesticide dealers has remained stable from 1996 to 2000 ranging from 445 to 477. Dealers who sell pesticides for home and garden use only are not required to be licensed but are part of the regulated community. MDA staff conducted 187 routine dealer inspections in FY 99 and 198 routine inspections in FY 00. In the routine inspections conducted, over 99% 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 or licensed applicator. The supervising applicator is required to license operators. The number of people licensed as pesticide applicators and operators between 1996 and 2000 has remained stable (see following chart).

Farm applicators are required to obtain a permit if they wish to apply "restricted use" pesticides. The permit is good for 5 years but requires 6 credit hours of training over the period to remain qualified. Montana has averaged 8,159 licensed farm applicators between 1996 and 2000. Persons who apply general use pesticides to their own property are not required to become licensed.

As of September 1, 2000 the total number of licensed applicators and dealers is 11,728.

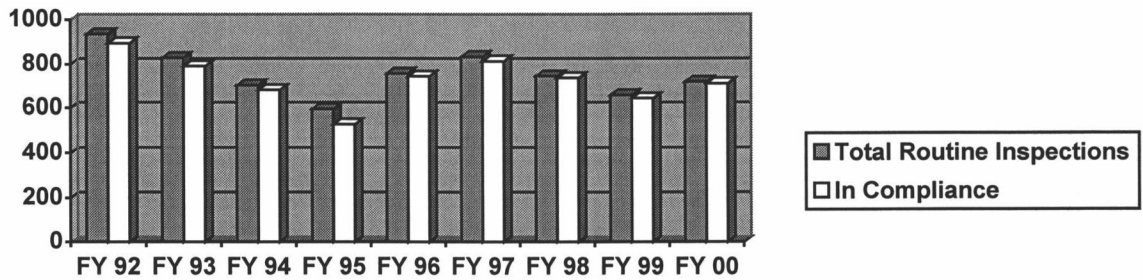
Licensed Pesticide Dealers and Applicators



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 table represents the number of different compliance actions assessed for the various license types.

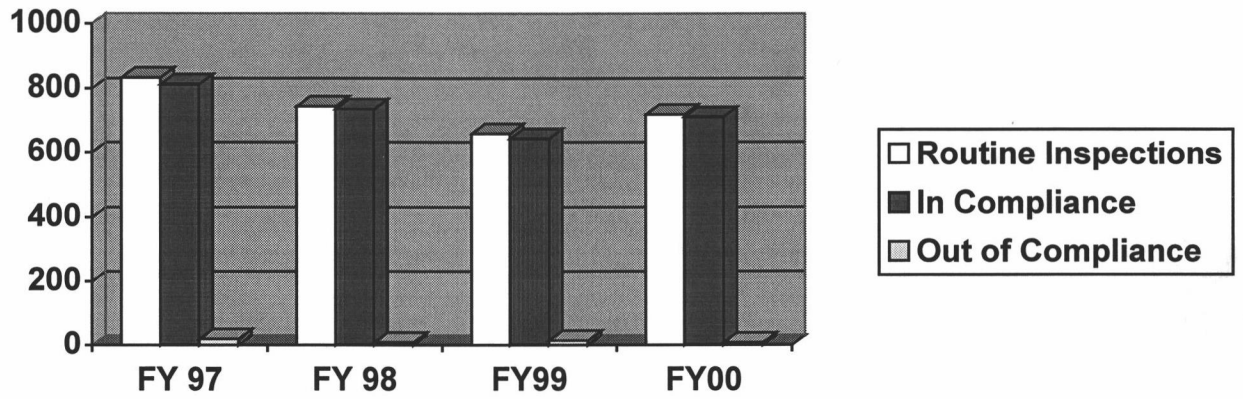
Noncompliance Actions, by license Type FY 97,98,99, and 00

Group	Comm./Gov Applicators	Dealers	Private Applicators/Public
Total Noncompliance 97 98 (99 00)	106 (56)	12 (2)	16 (29)
Written Warning 97 98 (99 00)	84 (31)	4 (1)	12 (10)
Civil Penalty 97 98 (99 00)	19 (15)	1 (0)	1 (9)
Adm. Order/Injunctions 97 98 (99 00)	2 (1)	0 (0)	0 (1)
EPA Referral 97 98 (99 00)	0 (0)	0 (1)	3 (5)
Other Enforcement Action 97 98 (99 00)	2 (16)	7 (1)	0 (4)

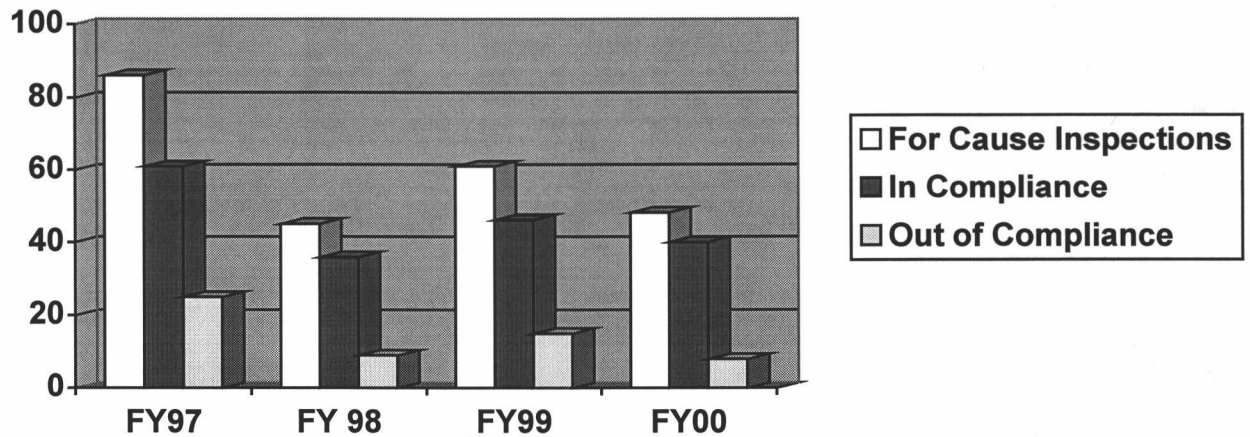
Numbers in parenthesis are from 1999 and 2000 data.

In FY 99 and 00 the MDA conducted (FY99 - 61 and FY00 - 48) 109 complaint driven investigations. During "for cause" inspections the rate of compliance in FY 99 was 75% versus the compliance rate of 98% during routine inspections. The compliance rates are similar for FY 00 (83%) during "for cause" and 99% 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 non-compliances. The compliance rates can actually be viewed as the number of persons who were in compliance. For example, in FY 00, 83% of the persons who were inspected for cause were in compliance.

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.

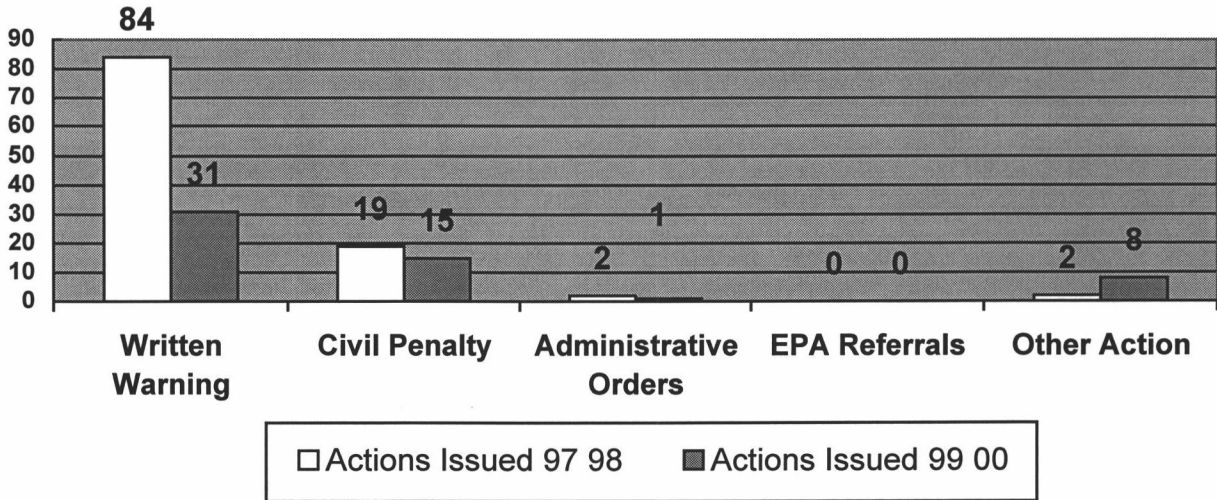
Total noncompliance's discovered during FY 97, FY98, FY99 and FY 00 are shown in the chart below.

Noncompliance Actions Issued, By Method of Discovery
FY 97 98 99 and 00

Method of Discovery	Routine Inspections				Citizen Tip or Complaint				Total			
	xxxxxxxxxx											
License Type	FY 97	FY 98	FY 99	FY 00	FY 97	FY 98	FY 99	FY 00	FY 97	FY 98	FY 99	FY 00
Commercial/ Government Applicators	31	19	4	2	32	24	24	9	63	43	28	11
Dealers	2	10	2	1	0	0	0	1	2	10	2	2
Private Farm Applicators or Private Citizen	1	2	5	6	3	10	14	13	4	12	19	19
Total	34	31	11	9	35	34	38	23	69	65	49	32

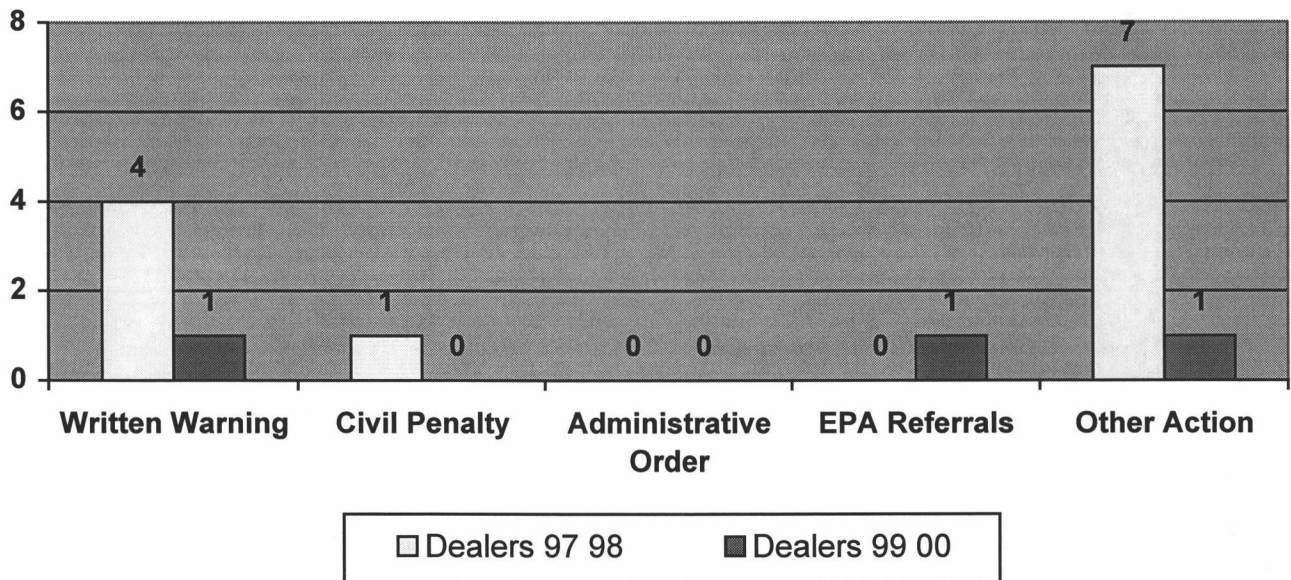
The MDA issued a total of 81 enforcement actions during FY 99 and 00. The following charts represent the types of enforcement actions issued by license type.

Enforcement Actions For Commercial/Goverment Applicators



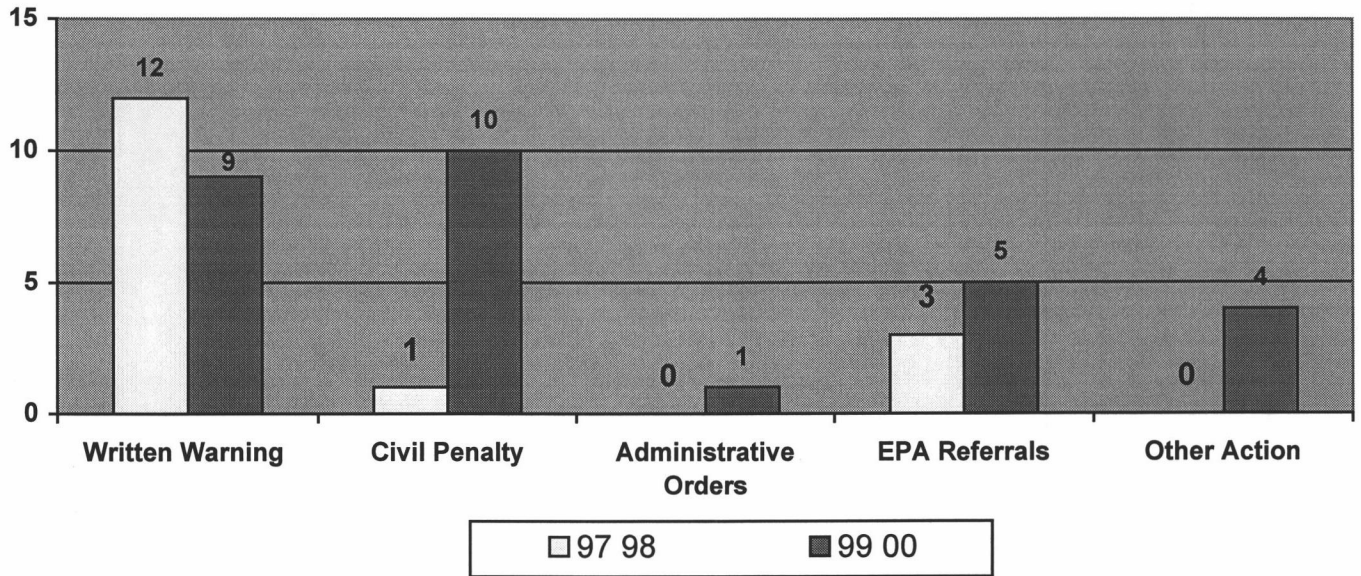
Total Actions Issued FY 97 98 = 107
 Total Actions Issued FY 99 00 = 81

Enforcement Actions For Dealers



Total Actions Issued FY 97 98 = 12
 Total Actions Issued FY 99 00 = 3

Enforcement Actions For Farm Applicators/Non-Licensees



Total Actions Issued 97 98 = 16

Total Actions Issued 99 00 = 29

The tables included as appendices 1,2,3 and 4; itemize each noncompliance and the action 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	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	Yes
July-96	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	Yes
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	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
August-96	12	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	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
January-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No

Appendix 1: Noncompliances Occurring in FY 97 and Their Resolutions

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	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	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	12	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
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	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
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

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-97	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 Operation	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	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	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
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 Operation	Written Warning	0	Closed	No
November-97	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
December-97	11	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
January-98	99	Apply/Sell Illegal Material	Civil Penalty Proposed	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

Appendix 2: Noncompliances Occurring in FY 98 and Their Resolutions

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	Embargo	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

Appendix 3: Noncompliances Occurring in FY 99 and Their Resolutions

Month NON Issued	Type of License	Description of Noncompliance	Method of Resolution	Penalty (\$)	Status	Significant Violation?
March-99	12	Misuse With Proven Harm	Civil Penalty	750	Closed	Yes
July-98	12	Use Or Sell Without License	Civil Penalty	400	Closed	Yes
July-98	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
February-99	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
April-99	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
May-99	12	Misuse With Proven Harm	Civil Penalty	250	Closed	Yes
May-99	10	Use Or Sell Without License	Civil Penalty	250	Closed	Yes
March-99	10	Sell Pesticides Without License	Civil Penalty	200	Closed	Yes
March-99	12	Use Pesticides Without License	Civil Penalty	200	Closed	Yes
March-99	12	Use Or Sell Without License	Civil Penalty	200	Closed	Yes
April-99	10	Use Or Sell Without License	Civil Penalty	200	Closed	Yes
December-98	12	Use Or Sell Without License	Civil Penalty	150	Closed	Yes
March-99	12	Use Or Sell Without License	Civil Penalty	100	Closed	Yes
March-99	10	Use Or Sell Without License	Civil Penalty	100	Closed	Yes
February-99	99	Federal Records Violation	Referral To EPA	0	Closed	No
June-99	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-99	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-99	99	Use/Apply Inconsistent With Label	Other Enforcement	0	Closed	No
February-99	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-99	99	Misuse With Proven Harm	Other Enforcement	0	Closed	No
March-99	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
January-99	12	Use/Apply Inconsistent With Label	No Enforcement	0	Closed	No
January-99	11	Use/Apply Inconsistent With Label	No Enforcement	0	Closed	No
December-98	12	Use/Apply Inconsistent With Label	Other Enforcement	0	Closed	No
February-99	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-99	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
December-98	99	Use/Apply Inconsistent With Label	No Enforcement	0	Closed	No
February-99	99	Use/Apply Inconsistent With Label	Other Enforcement	0	Closed	No
November-98	12	Faulty, Careless, Or Negligent Operation	Other Enforcement	0	Closed	No
April-99	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
February-99	99	Use/Apply Inconsistent With Label	No Enforcement	0	Closed	No
February-99	12	Faulty, Careless, Or Negligent Operation	Written Warning	0	Closed	No
February-99	12	Refuse Or Neglect To Keep Records	Written Warning	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
December-98	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
September-98	99	Apply/Sell Illegal Material	Written Warning	0	Closed	No
March-99	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-99	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
May-99	15	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
March-99	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-99	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
January-99	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-99	99	Faulty, Negligent, Or Careless Operation	Embargo	0	Closed	No
May-99	10	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
January-99	12	Faulty, Negligent, Or Careless Operation	Written Warning	0	Closed	No
March-99	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No

Appendix 4: Noncompliances Occurring in FY 00 and Their Resolutions

Month NON Issued	Type of License	Description of Noncompliance	Method of Resolution	Penalty (\$)	Status	Significant Violation?
April-00	12	Misuse With Proven Harm	Civil Penalty	1000	Closed	Yes
June-00	12	Use Or Sell Without License	Civil Penalty	500	Closed	Yes
June-00	12	Misuse With Proven Harm	Civil Penalty	500	Closed	Yes
June-00	10	Use Or Sell Without License	Civil Penalty	500	Closed	Yes
March-00	99	Misuse With Proven Harm	Civil Penalty	375	Closed	Yes
June-00	12	Misuse With Proven Harm	Civil Penalty	375	Closed	Yes
May-00	11	Misuse With Proven Harm	Civil Penalty	200	Closed	Yes
February-00	11	Misuse With Proven Harm	Civil Penalty	50	Closed	Yes
December-00	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-00	99	Use Or Sell Unregistered Pesticide	Embargo	0	Closed	No
June-00	12	Misuse With Proven Harm	Civil Penalty Proposed	0	Closed	No
June-00	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
April-00	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
June-00	12	Noncompliance With Act, Rules	Written Warning	0	Closed	No
June-00	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-00	11	Use/Apply Inconsistent With Label	Other Enforcement	0	Closed	No
January-00	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
March-00	11	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
April-00	12	Refuse Or Neglect To Keep Records	No Enforcement	0	Closed	No
June-00	12	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
February-00	11	Faulty, Careless, Or Negligent Operation	Written Warning	0	Closed	No
April-00	12	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
June-00	10	Use/Apply Inconsistent With Label	Other Enforcement	0	Closed	No
April-00	99	Use/Apply Inconsistent With Label	No Enforcement	0	Closed	No
March-00	12	Use/Apply Inconsistent With Label	No Enforcement	0	Closed	No
June-00	99	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No
April-00	99	Use/Apply Inconsistent With Label	Written Warning	0	Closed	No
March-00	10	Refuse Or Neglect To Keep Records	Written Warning	0	Closed	No

Ground Water Protection Program

The Montana Agricultural Chemical Groundwater Protection Act (MACGWPA), enacted in 1989, is a relatively new Act. Program activities to date have involved implementation of a statewide ground water monitoring system, preparation of a General Management Plan (for state driven pesticide-groundwater issues), development of a Generic Management Plan to address federally mandated pesticide-groundwater management plans, adoption of rules, promoting research of Montana's aquifers, and building cooperative working relationships with private and government groups. The MDA is, preparing, for adoption of a Specific Management Plan (SMP) for the Fairfield Bench. Compliance activities will be linked to adopted SMPs. Since there are no SMPs currently in effect, routine SMP enforcement activities have not been initiated.

Promoting Compliance

The ground water program has undertaken many activities to promote compliance within the agricultural community. These activities include providing information and education, technical assistance, conducting sampling and inspections, and in the future will issue enforcement actions within the statutory limits of the program.

Information and Education

The ground water program is presently a research and technical assistance program. The MDA provides information and assistance to pesticide users, agricultural industry, and the public to prevent ground water contamination by agricultural chemicals (pesticides and fertilizers). Through education and outreach, the MDA provides information on groundwater and agricultural chemical characterization, best management practices (BMPs) and on Specific Management Plans (SMP), which provide for the management of agricultural chemicals to prevent, minimize and mitigate their presence in ground water. The MDA is involved in an ongoing process, which identifies environmentally sensitive areas, soil, and aquifers. Information about agricultural chemicals in Montana ground water is provided through analytical results from the MDA's statewide monitoring program. Public meetings and certification training are used as a venue to inform the public about the locations and extent of the vulnerable or sensitive aquifers in Montana.

It is the public policy of the state, 80-15-103, MCA, to protect groundwater from impairment or degradation by agricultural chemicals; allow for the proper use and management of pesticides for the protection of groundwater resources and to

provide education and training to agricultural chemical applicators and the general public regarding pesticide and water resources. As required under Section 80-15-106, MCA, the MDA is required to develop and conduct appropriate educational programs. Groundwater protection is a component of all pesticide applicator training, which assures that dealers and applicators are qualified to apply pesticides safely and effectively in Montana. The MDA provides 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 MDA an opportunity to convey information about the pesticide and groundwater laws, compliance, and consequences of non-compliance with the laws as well as the detrimental effects, which can occur as a result of illegally used agricultural chemicals. In addition, training provides guidance and assistance on how to comply with laws and regulations governing pesticides.

The MDA in cooperation with MSU Extension Service (MSUES) 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. The Generic Management Plan discusses the philosophy, requirements, development and implementation of federally mandated management plans and outlines the process to be used in their development.

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 MDA 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.

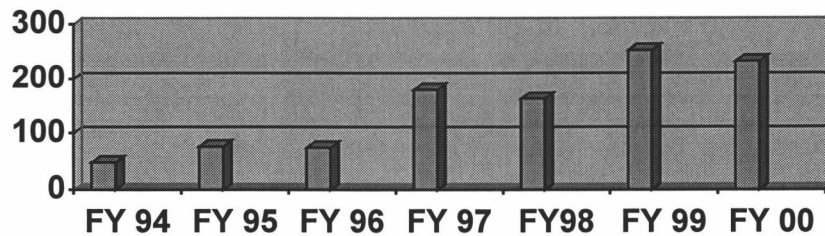
General statewide ambient ground water monitoring for contamination by agricultural chemicals has been ongoing since 1984, before the law was passed. The MACGWPA requires the development of the General Management Plan principally as a tool to identify environmentally sensitive areas, soils, and aquifers

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 training of persons within the targeted area specific to the agricultural chemical(s) as well as one-on-one outreach sessions with the agricultural chemical users who may be impacted by the plan requirements.

The Laboratory Bureau located on the Montana State University campus completes chemical laboratory analysis, for the MDA, MSU extension service and the public.

Pesticide Inspections that Checked Compliance with Ground water Protection on Pesticide Labels



Enforcement

In general, the 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 MDA 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 include training staff, developing program procedures, and preparing to write Specific Management Plans. Enforcement staff has 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, and providing best management practices information regarding ground water concerns.

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 orders to persons who violate a ground water standard or a requirement of the MACGWPA.

Section 80-15-404, MCA, authorizes the MDA 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 MDA 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 MDA 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 MDA considers all factors when determining the amount of the civil penalty in response to a

violation. MDA actions are subject to appeal according to provisions of the Montana Administrative Procedures Act.

The Regulated Community

The goal of state management plans (SMPs and PMPs) is to provide appropriate management of agricultural chemicals which will prevent, minimize and mitigate the presence of agricultural chemicals in groundwater resources. SMPs and PMPs will be specific to both the agricultural chemical and geographic area of concern. Those impacted by SMPs and PMPs will include residents who reside within the defined geographic area, public water supplies and the regulated community, i.e., those permitted or licensed to use the identified SMP/PMP agricultural chemical. The public process required under the Administrative rules of MACGWPA will involve these individuals and groups during the development and implementation of any SMP/PMP. Education and training relative to any SMP/PMP will be directed at, but not limited to, the identified regulated community. Education and training will focus on SMP/PMP conceptual goals, specific plan requirements (compliance), understanding of the agricultural chemical's behavior in the environment, knowledge of the hydrogeological environment (sensitivity/vulnerability), assessment and evaluation mechanisms and monitoring being conducted by MDA or required of individuals and/or applicators. Since inspections and investigations will be conducted under SMPs/PMPs, the regulated community will also receive education/training relevant to compliance with the plans. Compliance assistance to groups or individuals will also be available. For example, 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 PMP 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 requires the MDA and Department of Environmental Quality to adopt standards for agricultural chemicals in ground water. These standards were adopted in December of 1999. To date the MDA has not taken enforcement actions under the MACGWPA; the MDA has addressed groundwater contamination issues under the Montana Pesticide Act. Future enforcement actions under the MACCWPA will be based on the new standards.

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 MDA 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 GROUNDWATER 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 go 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, unless extraordinary circumstances arise.

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 BMPs 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 federal fiscal year.

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

Currently the MDA is researching the possibility contracting services for updating the PTS into Oracle. This would make licensing, compliance, laboratory and enforcement information more compatible and readily available.

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
- Inspect pesticide labels to assure compliance with laws and rules

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 desertification 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 for compliance activities.

Funds have been adequate but have remained static in recent years. During this biennium inspection numbers were slightly decreased because of increased costs in communications, computer hardware and software, personal services, fixed costs 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 case, 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 is working 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. Amendments to the MPA in 1995 allowed MDA to revise the civil penalty rules. This was accomplished during this biennium and the rules became effective March 12, 1999. The maximum civil penalty for a major violation of the MPA went from \$1000.00 to \$2500.00 per offense. The new rules still require MDA to consider gravity factors of the violation, degree of care taken by the offender and an individuals ability to stay in business when determining the appropriate civil penalty. This is a significant change, however to date MDA does not have enough data to show any changes or trends in compliance.

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. These standards were adopted during this biennium. MDA's enforcement of SMP's, issuance of orders, and other routine enforcement will be based on these standards.

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.
- Pesticide container rinse and disposal rules and pesticide reporting , cleanup and containment rules.

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

Table 1. PESTICIDE PROGRAM ENFORCEMENT ACTIONS

	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>
Written Warnings	58	45	20	13
Civil Penalties	11	11	14	9
Embargoes	1	9	1	1
Refer to EPA	0	2	3	0
Other Actions	0	0	5	2

Table 2. PESTICIDE PROGRAM CIVIL PENALTIES

	<u>Number</u>	<u>Total</u>	<u>Range</u>	<u>Average</u>
FY97	11	\$2,950	\$150-500	\$268
FY98	11	\$3,400	\$125-1,000	\$309
FY99	14	\$3,550	\$100-750	\$253
FY00	9	\$3,500	\$50-1,000	\$389

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