

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



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MEMORANDUM

TO: Environmental Quality Council

FROM: Bud Clinch, Director DNRC *BC*

DATE: September 7, 2000

Re: Enforcement and Compliance Report

Attached is the Department of Natural Resources and Conservation's report to the Council regarding Environmental Enforcement and Compliance. As you may recall, DNRC has three divisions that are required to report the compliance and enforcement components of various programs. They are: service forestry (slash, hazard reduction, and forest practices); water resources (groundwater development, permits and changes, ownership updates, dam safety, and water measurement); and oil and gas conservation (information/education to public organizations, field inspections, Underground Injection Control Program, regulation, and issuance of drilling permits). In addition to this report, DNRC staff will be present at the September 11th EQC meeting to respond to your inquiries in detail.

Enclosures

Service Forestry Program - HB132 Compliance Report

I. Promoting Compliance:

The following are ongoing programs to assist regulated communities with Service Forestry Regulation Compliance.

Information/Education:

BMP literature: Law requires the state to provide BMP information to people applying for a Hazard Reduction Agreement (HRA). The packet of information sent include the Montana BMP publication; a 33-page full color discussion of BMPs relating to roads, SMZ law and management, timber harvest, stream crossings and more. Within six-months, a new, more comprehensive publication will replace the present publication.

BMP audits: The 2000 audits collected information on 40 harvested sites throughout the state. The audit effort evaluates how well BMPs are being applied and how effective they are at protecting soil and water resources. The results are published and approximately fifteen hundred copies will be distributed. Besides the results providing education information, the process itself provides a direct on the ground educational opportunity. Fifty to sixty audit team members from many backgrounds and interests become intimately familiar with how BMPs are applied on the ground. Moreover, landowners, agency professionals, loggers and others are encouraged to attend field audits to learn more about BMPs, when and how to properly apply them. The audits are a biennial effort.

Other workshops/training: Every year DNRC partners with the Montana Logging Association (MLA) to train logging professionals, forest landowners, and others about BMPs. In 2000, seven such workshops were provided. DNRC provides annual in-house training to achieve consistent legal interpretation and enforcement of regulations statewide.

NIPF landowners received broad natural resources education through the forest Stewardship program. Landowners learn about state law as part of this curriculum. This USFS program is administered by DNRC and taught through MSU Extension Service. Six workshops were provided this year.

The Department is assisting the Conservation Districts and other agencies to bring landowners workshops to help them assess their burned over property and plan their rehabilitation. Three workshops have been done with others scheduled. Information includes state regulations and where to secure help in managing forests and complying with state law.

Technical Assistance:

Forester Assistance: Service foresters in 15 unit offices and the state headquarters in Missoula are available to provide technical assistance. Assistance includes on-site visits, phone or office visits literature and consultant referrals. Literature distributed includes:

- BMP booklet (33-page color)
- SMZ regulation booklet (35-page color)
- Voluntary Wildlife Guidelines (4 page)
- HRA fact sheets (2-page)
- Montana Consultant Foresters Directory (34 pages)
- other literature not directly related to regulatory programs.

In FY 99 substantial on-site assists totaled 140 in and all technical assists equaled 1247. In FY 2000 substantial on-site assists totaled 163 in and all technical assists equaled 1282.

Alternative Practices: Another form of assist is an SMZ Alternative Practices. These are formal requests to engage in activities that may technically violate the SMZ law. However, the action(s) would meet the intent of the law and not significantly diminish the functions of the Streamside Zone.

Requests for alternative practices ("alternative" to management standards stated in 77-5-3051 MCA) are given technical review and site visits. The merits of the request are evaluated along with the proposed mitigation measures. Environmental Assessments are completed and reviewed. If a request is granted, it is often with conditions that help protect the integrity of the SMZ. Thirty nine alternative practices were issued in FY99 and Fifty in FY 2000.

Enforcing violations: Enforcement actions take on many forms but almost always involve technical assistance to help mitigate a problem.

Inspections:

When a Hazard Reduction Agreement (slash HRA) is applied for, it is evaluated for possible pre-and/or post-harvest inspections. Low hazard sites, with low fire hazard risk and low risk of SMZ damage, may not be inspected at all. Conversely, high hazard sites may receive multiple visits.

Sites inspected for HRA compliance must meet the "four-foot flame length" standard. SMZ inspections typically occur in conjunction with an HRA inspection or when a possible violation is reported to the Department.

Enforcement Actions:

Hazard Reduction (Slash): HRA violations result when hazard reduction work does not meet state standard, fees are not paid or deadline for compliance is exceeded. Inadequate hazard reduction work may result in bond forfeiture, billing to have work done and/or penalty assessment. These consequences result when the Department "takes over" HRAs that are in non-compliance.

The HRA law has a unique system where the landowner is watching the operator to ensure hazard reduction compliance and the operator is watching the mills to ensure fee compliance. When the operator (logger) delivers logs to the mill, money is withheld on a per-unit basis for fees and a performance bond. When compliance is achieved, the bond is refunded to the operator. If the "slash" account has discrepancies, the operator generally notifies DNRC of a potential fee compliance problem at the mill. The Department's accounting system verifies the problem. If discrepancies or delinquent payments are taken care of promptly, the matter is settled. If not, a process ensues to recover fees, which may result in a fine and/or a mill audit.

SMZ law: SMZ enforcement actions include:

- warnings: letters documenting violations, which may or may not include damage repair requirements. Warnings do not involve a penalty.
- orders: letters requiring stoppage of prohibited activity and repair.
- Prior to May of 2000 an Order may or may not have included a penalty. Since May of 2000 the revised forest practices procedures provide that all Orders must include a penalty.

Fines levied require substantial documentation and legal processes, which may include formal court cases. To date, no fines have been challenged in court proceedings. The details of current enforcement actions are presented in the "Noncompliance Section". The various forms of violations and accompanying Department responses included:

Administrative Notices/Orders:

Verbal Warnings	Issued when the forester discovers a minor technical problem with little or no damage or mitigation required, and the forester is reasonably certain that corrective and/or preventive action will be taken in the future.
Formal (written) Warning	Issued to document violations and damage and to define required mitigation and repair work.

Administrative Penalties/Sanctions:

Notice of Violation

Issued upon serious offenses, or with significant damage, to repeat violators, or when warnings have expired and *repair* actions have not been completed in a reasonably timely manner. Typically includes a requirement to mitigate damages, description of repair work and possibly a requirement to cease all activity until the repairs have been completed. A time period by which all damages must be repaired and the penalty paid is included. A penalty always accompanies an Order.

Opportunity for Hearing

The order becomes final unless, within 30 days after the notice is mailed, the person named requests in writing a hearing before the Department. Upon receipt of such a request, the Department schedules a hearing.

Rescinding of Order

If the Department finds that a violation has not occurred, or that site rehabilitation is not warranted, it rescinds the Order.

Civil Penalties

Penalties may be assessed for any and all violations. The maximum penalty amount is \$1,000 per violation, with each day of violation considered a separate violation.

II. The Regulated Community

Service Forestry typically deals with three regulated communities, each subject to different legislation, but with overlap between them. These regulated communities are:

The regulated community under the **Hazard Reduction Act** includes anyone (1) clearing rights of way (except temporary logging roads), (2) cutting forest products, building haul roads, and/or carrying out timber stand improvement activities on private lands. Purchasers of such forest products are also part of the regulated community in that they must insure the persons they are purchasing forest products from have complied with hazard reduction regulations.

Persons encouraged to use **Best Management Practices** are those involved in timber sale planning and harvest, associated road construction, and other related activities. It is estimated that thousands of people engage in such activities each year, mostly in western counties.

Persons subject to the requirements related to **Streamside Management Zones** include those conducting timber sale activities in areas where such activities should be modified due to potential effects on aquatic resources. The Zone extends at least 50 feet (slope distance) from the ordinary high water mark of a water body, and further where there are wetlands or where steep or erosive soils require additional width.

III. History of Compliance

Trends in compliance with Service Forestry program rules and requirements are described and illustrated below.

Compliance with **Hazard Reduction** requirements has shown improvement over the last 15 years, as the number of state takeovers of hazard reduction activities has stayed relatively constant or declined, while the number of active HRAs more than doubled in the same time period. Relevant data for **calendar years** are shown below.

	<u>CY1985</u>	<u>CY1990</u>	<u>CY1995</u>	<u>10-yr. Avg.</u>
Private land harvest (Million Board Feet)	561.3	611.9	693.2	634.8
Active HRAs	1,790	2,681	4,555	2,779
State takeovers	69	66	54	68

As of July 1, 1998, there were 4083 active HRAs. Harvest volume and state takeovers are about the same as the 10-yr. Average.

Compliance with **Best Management Practices** requirements has improved over the last five years, as shown below.

	1990	1992	1994	1996	1998
Number of sites evaluated	44	46	46	44	47
Application of practices that meet or exceed BMP requirements	78%	87%	91%	92%	94%
Application of high-risk practices that meet or exceed BMP requirements	53%	72%	79%	81%	84%
Number of sites with at least one major departure in BMP application	61%	43%	37%	27%	17%
Average number of departures in BMP application per site	9	5.6	3.9	3.0	2.0
Number (proportion) of practices providing adequate protection	80%	90%	93%	94%	96%
Number (proportion) of high-risk practices providing adequate protection	58%	77%	83%	86%	89%
Number (proportion) of sites having at least one major/temporary or minor/prolonged impact	64%	37%	28%	34%	26%
Average number of impacts per site	8	4.6	3	2.3	1.5

SMZ violations over the six-year history of enforcement do not yet establish a clear trend. The most severe enforcement actions which include fines in the Order are listed below:

Fines Collected:

Tony Pearson	9/21/94	\$ 1,075
Lee Rost	1/11/96	17,450
Ron Myrstol	2/16/96	237
John Wemble	7/25/96	9,512
Intermountain Res. Inc.	3/97	1,800
Richard Schmaus	4/98	4,000
Jack McLeod	1/11/2000	8,500
Louisiana Pacific		5,000

<u>Total</u>		<u>\$ 47,574</u>
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The balance of unspent funds as of 7/1/98 was \$24,634. Because these funds have been de-ear-marked, it will no longer be possible to compare collections versus expenditures in the statewide accounting system.

Fines Pending (billed but not collected):

Lakeshore Tie & Lumber Co	\$11,500
Louisiana Pacific	\$ 600

<u>Total collected and billed</u>	<u>\$59,674</u>
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IV. Noncompliance

HRA:

The two areas of non-compliance are hazard reduction and fee collections. The measure of hazard reduction non-compliance is the number of HRA agreements the Department must take over because the HRA holder has not completed the terms of their HRA. In FY99, there were 59 takeovers and 65 in FY2000. There are approximately 50 wood producing manufacturers that are occasionally or habitually non-compliant with fee payments. We work with mills to correct non- or tardy reporting. Occasionally, a mill audit must be done to gain compliance. Such action often results in a fine or performance bond being imposed.

SMZ Law:

Violations result in some form of either a warning or a violation. The following table details the number and type of the warning and orders issued in FY97 and FY98:

	FY99	FY00		FY99	FY00
# WARNINGS ISSUED	16	9	# ORDERS ISSUED	0	2
RULE VIOLATED			RULE VIOLATED		
SMZ WIDTH	9	1	SMZ WIDTH	0	1
BURNING	0	0	BURNING	0	0
EQUIP OPER	12	7	EQUIP OPER	0	2
CLEAR CUT	1	1	CLEAR CUT	0	1
ROAD CONST	1	2	ROAD CONST	0	0
HAZ MAT	1	0	HAZ MAT	0	0
SIDE CAST	0	0	SIDE CAST	0	0
SLASH IN STREAM	4	1	SLASH IN STREAM	0	1
TOTAL PROHIBITED ACTS AFFECTED	28	12	TOTAL PROHIBITED ACTS AFFECTED	0	5

BMPs:

Because the BMP program is non-regulatory, there are no official violations of BMPs. The BMP audits give us some idea of how well BMPs are applied over time. There has been steady improvement in the 10-year history of audits. The 2000 audit results have not yet been compiled.

Service Forestry Program - HB132 Compliance Report

HRA Program

I. Promoting Compliance:

Information/Education:

- Stewardship program. Landowners learn about state law as part of this curriculum.
- **NEW:** CD sponsored workshops for landowners with burned forest land.

Technical Assistance:

- Forester Assistance: Service foresters in 15 unit offices and the state provide technical assistance including on-site visits, phone or office visits literature and consultant referrals. Literature distributed includes:
 - HRA fact sheets (2-page)
 - Montana Consultant Foresters Directory (34 pages)
- In FY 99 substantial on-site assists totaled 140; all technical assists equaled 1247.
- In FY 00 substantial on-site assists totaled 163; all technical assists equaled 1282.

Inspections: On-site or affidavit compliance done. Mill audits may be done.

Enforcement Actions:

- bond forfeiture,
- "takes over" of HRAs in non-compliance.
- billing to have work done and/or penalty assessment
- Mill audit and resultant fees and possibly penalties

II. The Regulated Community

- **Hazard Reduction** Act includes anyone (1) clearing rights of way (except temporary logging roads), (2) cutting forest products, building haul roads, and/or carrying out timber stand improvement activities on private lands. (3) Purchasers of such forest products.

III. History of Compliance

	<u>CY1985</u>	<u>CY1990</u>	<u>CY1995</u>	<u>10-yr. Avg.</u>
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Private land harvest				
(Million Board Feet)	561.3	611.9	693.2	634.8
Active HRAs	1,790	2,681	4,555	2,779
State takeovers	69	66	54	68

As of July 1, 2000, there were 3994 active HRAs.

IV. Noncompliance

- FY1999; 59 takeovers
- FY2000; 65 takeovers

SMZ Program

Promoting Compliance:

Information/Education:

- Literature distributed
 - SMZ regulation booklet (35-page color)
 - Voluntary Wildlife Guidelines (4 page)
 - Montana Consultant Foresters Directory (34 pages)
- Workshops/training:
 - Montana Logging Association (MLA) sponsored workshops
 - **NEW:** CD sponsored workshops for landowners with burned forest land.

Technical Assistance:

- Forester Assistance: Service foresters in 15 unit offices and the state headquarters in Missoula are available to provide technical assistance. Assistance includes on-site visits, phone or office visits literature and consultant referrals.
 - In FY 99 substantial on-site assists totaled 140; all technical assists equaled 1247.
 - In FY 00 substantial on-site assists totaled 163; all technical assists equaled 1282.
- Alternative Practices: Another form of assist is an SMZ Alternative Practices.
 - 39 alternative practices were issued in FY 1999
 - 50 in FY 2000.

Inspections: Concurrently with HRA inspections or when alleged violation reported

Enforcement Actions:

- warnings: letters documenting violations, which may or may not include damage repair requirements. Warnings do not involve a penalty.
- orders: letters requiring stoppage of prohibited activity and repair and require a fine.

II. The Regulated Community

- **Streamside Management Zones** include those conducting timber sale where such activities are modified to protect aquatic resources.

III. History of Compliance

- In the last 6 years, eight fines have been collected totaling \$47,574.
- Two fines are pending from violations in the biennium totaling \$12,100

IV. Noncompliance

WATER RESOURCES DIVISION

WATER OPERATIONS PROGRAM - HB 132 COMPLIANCE REPORT

Promoting Compliance

Over the past two years, the Dam Safety program has undertaken the following to promote compliance with the statutory goals of the program:

1. **Enforcement Tools**

The existing database of dams was modified in 1998 to keep track of deadlines and permit conditions. This database is referred to on a regular basis to assist the Program in sending out reminders of upcoming deadlines (see attachment). The database was further modified in 2000 to better monitor emergency action plans.

2. **Enforcement Actions**

Enforcement actions are usually on a case by case basis, depending on the threat to life and property. Although the Dam Safety Act gives authority to levy a fine or place a lien on property, this has not been done to date. Generally, we have been able to work with dam owners in violation of a permit condition to resolve any conflicts. In most instances, a reservoir level restriction eliminates safety concerns until the violation has been resolved. All reservoir level restrictions currently in place have been agreed to voluntarily by the dam owners. Currently, we have voluntary restrictions on Bair Dam, in Meagher County, Tin Cup Lake Dam and Nevada Creek Dam, in Powell County. The restrictions on Bair and Nevada are due to concrete deterioration in the spillways. The restriction on Tin Cup is due to embankment stability problems. We also have a complete reservoir drawdown with Northern Pacific Reservoir Dam in Jefferson County, due to stability problems. We also have a complete reservoir drawdown with Northern Pacific Reservoir Dam in Jefferson County, due to stability problems.

3. **Technical Assistance/Outreach**

Currently, the Program's primary outreach effort is to get emergency action plans up to date on all high hazard dams. This requires careful coordination with the owners and the local Disaster and Emergency Services. We are continuing efforts to get seepage monitoring plans implemented as well.

In 1999 a significant problem developed at Miller Dam, in Flathead County. The Dam Safety Program provided extensive technical assistance in dealing with this serious emergency.

4. Information/Education/Training

Public education and training is one of the primary emphasis of the Dam Safety Program. In 1999, we held a seminar in Butte on Hydrology in Montana. In April 2000, we held a seminar in West Yellowstone on the Seismic Design of Dams.

The Dam Safety Program has been taking the lead in getting training for the Helena and regional office engineers on dam safety engineering issues. In order to have effective enforcement in the many technical issues associated with dams, there needs to be adequate training. For example, the Program, with assistance of federal funds, sent all regional engineers to an intensive weeklong seminar on dam inspections put on by the Bureau of Reclamation in Denver.

The Regulated Community

Figure 1 shows the breakdown of types of dams that are regulated by the Program. The majority of the reservoirs permitted by DNRC are irrigation reservoirs. There are also a significant number of flood control structures.

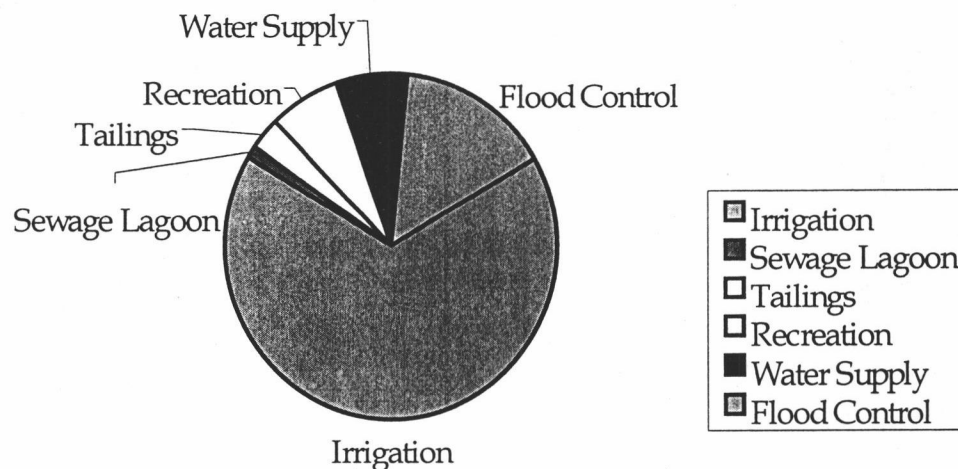


Figure 1

Even though the Program does not regulate federal dams, we keep involved with the federal agencies that deal with dams. Annually, the Dam Safety Program meets with the Bureau of Reclamation, the Bureau of Indian Affairs, the Natural Resources Conservation Service, the U.S. Forest Service and the Bureau of Land Management. The purpose of these meetings is to discuss relevant dam safety issues such as sharing dam safety training and to maintain communications between state and federal agencies.

History of Compliance

The Dam Safety Law required that operation permits be submitted for all high hazard dams by July 1995. This was achieved. Several Dams were permitted prior to this date and renewals are now necessary. No permits have been denied

to this date, although as discussed above, some reservoir level restrictions are in place.

All of the dams that require permits have valid permits or are in the renewal process. Currently, we have 37 dams in the renewal process.

As part of the permit, dams are required to have an emergency action plan in place. Currently, 100% of permitted dams have an emergency action plan in place. As discussed below, some of these plans need to be updated.

Noncompliance

Currently, there is the possibility that some dams currently classified as not high hazard have become high hazard due to recent development below the dam. We have initiated a program where regional offices reevaluate the hazard of dams with new downstream development. This will primarily effect dams in the Missoula office area.

An annual update of emergency action plans is required. This requires coordination with the dam owner, local Disaster and Emergency Services and the sheriff, and can be a considerable amount of bookkeeping. Although it is ultimately the responsibility of the dam owner, the Program has found that without Program involvement, updates do not occur on a regular basis. Currently, we have 64 emergency action plans that are lacking the annual update. We recently hired a new staff member, using federal funds, to specifically address the need for plan updates and testing. We anticipate having 100% compliance with annual updates by the end of the year.

With many operation permits, specific conditions are attached to permit with deadlines specified. Several of these conditions are past due. The Dam Safety program generally has to work with dam owners to address these conditions. This is an ongoing effort.

An inspection by a licensed engineer is required every five years. We remind the dam owner of the need to conduct this inspection well in advance. Currently, we only have one owner that is in the process of renewal, but has yet to conduct the annual inspection. We are working with this owner to do this as soon as possible.

Additional Comments

The Dam Safety Program believes that overall compliance is very good. It is the opinion of the Program that in order to achieve compliance with the Dam Safety Act, considerable outreach is necessary by the State. When a dam owner realizes the importance of properly maintaining monitoring and inspecting their dams, they go out of their way to stay in compliance.

The programs good compliance can be partly attributed to the excellent relationship that has been developed between Dam Safety Program staff and the dam owners. You would expect that staff turnover would have some effect on this relationship. However, internally within the program, a well-developed forum for communication between staff members, bureau chief and regional offices has prevented any problems.

The Dam Safety Program has made significant progress in overall compliance since inception of the dam safety act in 1985. Table 1 shows a representative list of dams with major deficiencies in 1985 that have now been corrected.

<u>Dam Name</u>	<u>Original Deficiency</u>	<u>Repair</u>	<u>Current Status</u>
Upper Glaston Lake	Slope instability	Add downstream berm	Compliance
Delmoe Lake	Slope instability	Add downstream berm	Compliance

Water Measurement Program

The purpose of the Water Measurement Program is to provide technical information and assistance in the measurement of surface water diversions. The program focuses on streams where dewatering causes conflicts between water users or impacts resources. The Program continues to investigate streams for program inclusion.

Big Hole River

The Big Hole River has been de-listed from potential designation as a "chronically dewatered watercourse." This action was the result of substantive progress made by the Big Hole Watershed Committee in implementing a Drought Management Plan. The plan was implemented last summer (1999) and is in effect this year due to drought conditions.

The Water Measurement Program continues to represent the DNRC at Watershed Committee meetings, and provides snowpack and streamflow data to the Committee. The Program continues to conduct a hydrologic study of Big Lake Creek in the upper basin. The study aids in determining the feasibility of creating a storage project. Stored water would be released to improve flows on the upper river to protect arctic grayling.

Jefferson River

The Water Measurement Program has been instrumental in forming the Jefferson River Watershed Council, a group represented by irrigators, recreationists, conservation organizations and agencies. The group concentrates on the River from Twin Bridges to just past the Waterloo Bridge. This river reach experiences the most severe dewatering.

The group formed in June 1999, and has been meeting monthly since October 1999. The Water Measurement Program, along with DFWP, has drafted a Drought Management Plan, which will be tested this summer. The Water Measurement Program has installed a recording streamgage at the Waterloo Bridge and will collect and analyze the data. Additionally, the Program continues to measure irrigation diversions, and is conducting an efficiency study of the Parrot Canal, the largest, most senior water user in the system.

Musselshell River

Installation of measuring devices continues on Musselshell River diversions. Several field trips have been conducted to spot-check compliance, and provide technical assistance to water users. Several Water Development grant applications have been received requesting partial reimbursement for installation of headgates and measuring devices. The Lewistown Regional Office is assisting with these efforts.

Mill Creek

Measuring devices have been installed on the major diversions from this tributary of the Yellowstone River. Program staff continues to collect diversion measurements at random and maintain contact with the water users and with Fish, Wildlife & Parks, which administers water leases on Mill Creek.

Dayton & Ronan Creeks

Water Measurement Program staff assisted the NRCS and Lake County Conservation District by installing measuring devices on irrigation diversions on Dayton and Ronan Creeks, near Dayton, Montana. The project is an effort to monitor and increase instream flows to protect Bull and Cutthroat trout habitat in these Flathead Lake tributaries.

Sweeney Creek

Sweeney Creek is located in the north end of the Bitterroot valley. Water users experience conflicts because streamflows and irrigation diversions have never been quantified. The Water Measurement Program has installed and rated a staff gage on Sweeney Creek to help the water users monitor their supply. Measuring devices have also been inspected and rated.

WATER RIGHTS PROGRAM - HB 132 COMPLIANCE REPORT

Regulated Community

Montana water law applies to a variety of interests. It encompasses the general public or anyone who might want to "throw a pump" into a river or lake. It also encompasses almost 200,000 water users who have water right permits, claims, certificates, or reserved rights and compliance means conforming to the limits of these water uses.

Over the past two years, the water right program has undertaken the following to promote compliance with the statutory goals of the program:

Information/Education

Water right staff have spent hundreds of hours educating the public and sister agencies such as title companies, real estate professionals, attorneys, water right consultants, bankers on water rights and specifically the requirement to properly file ownership updates with the DNRC when property changes ownership.

Water rights staff has updated and published our informational booklet *Water Rights in Montana* which is made available to the public. Water right staff in the regional offices have a large amount of public contact. Statewide it is likely that they discuss water rights in general with at least 80 people each day.

Activities Promoting Compliance

Compliance with Montana Water Law is encouraged in many ways.

Water Right Ownership Updates

85-2-424 requires that although water rights transfer with property, the DNRC ownership records must be updated. 10,383 Water Right Ownership Updates were received during the FY99-00 biennium.

Groundwater Development -- 35 gpm and 10 af per year or less

During the FY99-00 biennium 6,020 Notices of Completion of Groundwater Development were received by water right staff, in addition to thousands of well logs. When we receive a well log, we send a reminder letter advising the well owner of the requirement to file this document with our office. Hundreds of these reminder letters are sent and we regularly see an increase in the filing of these documents.

Permit and Change Notice of Completion -- Project Completion

At the time a new permit or change authorization is issued, the appropriator is given a reasonable time period in which to complete the project. Within a few months of the completion deadline, we send a reminder that they must file their Notice of Completion of their project. If the project isn't complete, they must apply for an extension of the deadline. If we don't receive the notice or the extension, we take action to terminate the permit or change authorization. During the FY99-00 biennium, we terminated 65 permits and changes for this reason.

Permit and Change Notice of Completion – Measuring Report Due

Many water use permits and change authorizations are issued with measurement requirements. These requirements differ depending on the unique situation, but for those permits where the water user is required to submit reports annually, we send a letter at the beginning of the irrigation season, so they will remember to measure throughout the season, and then in the fall after the season has ended, we send a letter reminding them to submit the report of their water use. These reports are then analyzed and compared to permitted limits and follow-up contact is made with those water users who have not complied with the limits of their permits or change authorizations. If we don't receive a report we follow-up with the appropriator and in those cases where they refuse to comply, we terminate their permits. Noncompliance in this area is rare.

Water Use Complaints

It is estimated the regional offices may annually receive 500 phone calls or letters alleging violations of the water use act. However the bulk of the complaints are resolved by telephone simply by educating the involved parties. A small number -- approximately 150 this past biennium have required additional follow-up, investigations, or correspondence. It is through this mechanism that we typically become aware of unauthorized water uses. Someone complains and we work with the involved parties to bring them into compliance by filing the appropriate applications.

Noncompliance

As mentioned above, most of our "regulated community" are faced with termination of their permits for noncompliance issues. Others who use water in violation of the water use act can face fines up to \$1,000 per day. During this biennium, we did not have occasion to levy such fines.

Status of Compliance with, and Enforcement of, Montana's Natural Resource and Environmental Laws HB 132

Board of Oil and Gas Conservation
Oil and Gas Conservation Division

Program Description:

The Oil and Gas Conservation Division is the staff of the Board of Oil and Gas Conservation and is attached to the Department of Natural Resources and Conservation for administrative purposes.

The Board is the entity charged with enforcement of oil and gas conservation laws. The Division staff implements Board policy and performs enforcement and compliance activities using delegated authority from the Board. Significant non-compliance issues are brought to the Board for resolution; staff generally handles routine minor compliance actions and the initial attempts to resolve more serious compliance problems. The Board and staff are responsible for administration of the Underground Injection Control Program (UIC) under a delegation of primary enforcement authority from the U.S. Environmental Protection Agency effective November 19, 1996. This program requires enforcement and compliance activities, which are subject to periodic federal review and oversight.

Promoting Compliance

Information/Education

Because of the make-up of the Board of Oil and Gas Conservation, relationships with professional/technical organizations, land and mineral organizations, and oil and gas associations are somewhat built-in. One or more Board members participate in the currently active state land and mineral owners associations, the Montana Geological Society, the Society of Exploration Geophysicists, Association of Professional Landmen, and the state's oil and gas associations. In addition to the informal information/education relationships that arise from Board and staff participation in organizations, attempts are made to provide information about the Board's programs through direct contact with organizations, providing Internet accessible information at the Board's Website, and by soliciting public involvement at the Board's periodic meeting and hearings. Customarily, the Board's administrator attends in an official capacity meetings of the Montana Petroleum Association, Northern Montana Oil and Gas Association, Northeast Montana Land and Mineral Owners Association, and often discusses current issues with the officers of such organizations either in person or by telephone.

Technical Assistance

Most technical assistance is provided on a one-to-one basis with the operator. Although many field inspections are done without operating personnel present, inspectors are available to meet with operators to discuss compliance issues. Office staff frequently provides direction for operators in interpreting and complying with field orders and rules, preparing for Board hearings, and reviewing technical information for compliance with the Division's requirements. Guidance documents for the UIC program are posted on the Website as is the full text of the Board's administrative rules. A link is provided to the Legislative Branch Website for access to the appropriate statutes.

Inspections

One third of the Board's staff is dedicated to the field inspection program. Inspectors are assigned to geographical areas of the state and have responsibility for performing both regulatory and UIC inspections. The UIC program requires testing of injection wells for mechanical integrity at least every five years. A test must also be performed every time the injection packer is unseated. Other priority inspections include witnessing of well plugging, witnessing of surface casing cementing, and review of oil and gas properties for regulatory compliance before approval of an ownership change. The Board has five full time inspectors and one chief inspector. Field inspectors also supervise the plugging of wells by companies under contract to the Board, under the ongoing orphan well plugging program. Field inspectors performed approximately 2500 well inspections during Calendar Year 1999.

Enforcement Actions

Staff initiates enforcement actions and if not resolved at the staff level incidents of non-compliance are brought to the Board for enforcement action. Most enforcement actions take the form of a "show cause" hearing before the Board. The Board also has authority to bring actions in civil court, and for willful pollution, to recommend criminal prosecution. Other enforcement actions include forfeiture of reclamation bonds for failure to properly plug and restore abandoned wells, monetary penalty assessments for non-compliance, and "pipeline severance" - an order preventing the sale of oil produced in violation of the rules.

The Regulated Community

Montana has about 350 active oil and gas operators. Some operators produce only oil and some only gas, but many produce both products. In addition, the Board has some regulatory authority over seismic exploration operations. Seismic exploration permits are issued at the county level, and the Board regulates shot hole plugging, setbacks from springs or water wells, cleanup of seismic lines, and similar requirements.

The Board staff issue drilling permits for all oil and gas exploratory and development wells except wells on land held in trust for Indian Tribes or Indian Allotees. Staff issued 549 drilling permits in 1999.

There are approximately 6500 wells in active status in the state; some wells are seasonally affected and do not produce all of the time. For example, some gas wells are only produced during the winter months where gas demand is high. Some remotely located oil wells are shut-in during winter months when operating costs are too high to justify production. Oil price also affects the number of wells that produce. Marginally economic wells are typically shut-in or produced for only a few days each month during times of low price.

History of Compliance

Using the docketed show cause hearings as a yardstick, incidents of significant non-compliance are relatively rare. In 1997 seven cases were docketed. Four cases were docketed in 1998, eight in 1999, and with two more hearing dates still available in 2000, there have been five cases docketed for hearing. For planning purposes, we estimate seven show cause hearings constitute an average enforcement year.

Noncompliance

Most violations are discovered by field inspection, some through review of (or failure to file) required reports and a few by public or landowner complaint. The following table lists noncompliance issues that were docketed during calendar year 1999 and to date in 2000.

Calendar Year 1999

Order Number	Operator	Violation	Penalty	Current Status
32-99	Carrell Oil Company	Delinquent Reports	None	Reports filed by deadline - Closed
33-99	Ron and Magaret Sannes	Failure to Plug Wells	Ordered to plug one well, restore surface by deadline	Required work performed, pending assessment deferred
69-99	Nerdlihc Company, Inc	Failure to pay injection well fee	None	Fee paid by deadline - Closed
70-99	Central Resources Inc	"	Revoked permit	See Order 91-99
75-99	Rossmiller, Duard & Elmer	Failure to Plug Wells	Bond Forfeiture	Bond received - Closed
83-99	United States Energy Corporation	Failure to Plug Wells	Bond Forfeiture	Bond received - Closed
84-99	McCulliss Resources Co	Delinquent Reports	Admin. Authorized to access \$50/month penalty	Reports received by deadline - Closed
91-99	Central Resources Inc	Failure to pay annual injection fees	\$900	Fees and Penalties paid - Closed

Calendar Year 2000

34-2000	Wade S. Hawley dba Gallup City Oil.	Numerous cleanup/spill violations	Shut-in order 104-97 appealed to Supreme Court	Supreme Court found for the Board. Compliance with order was achieved by hearing date and Order was rescinded - Closed
46-2000	Merrill S. Hawley dba Hawley Oil, Hawley Hydrocarbons and Hawley Northrop	Required cleanup not performed, unauthorized discharges	Shut-in order 104-97 appealed to Supreme Court	Supreme Court found for the Board. Compliance with order was achieved by hearing date and Order was rescinded - Closed
78-2000	C-W Oil & Gas	Failure to plug wells	Compliance schedule required	Progress satisfactory to date - Pending
79-2000	Fulton Fuel Company	Failure to plug well	none	Well plugged prior to deadline - Closed

Enforcement Policies

The enforcement/compliance policies for the UIC program are set by the Memorandum of Agreement between the Board and EPA, the Board's Civil Penalty Policy, and EPA guidance contained in a memorandum dated December 4, 1986 entitled "UIC Program Definition of Significant Noncompliance". All of these documents are part of the primacy application package submitted to and approved by the U.S. EPA. These documents explain the nature of significant violations, expected staff response and timelines, and guidance for recommendations by the staff for penalties to be assessed by the Board.

The enforcement policy under the regulatory program for non-UIC violations consists of a delegation of authority to the Board Administrator for assessment of monetary penalties within the range established by the Board, procedures for resolution and the timeframe for expected compliance action, and the procedure for referring unresolved issues to the Board. These policies have been in effect for a number of years and the regulated community is generally familiar with the process.

Compliance tracking is formalized in the UIC program. The Division is using a Risk Based Data Management System (RBDMS) to track UIC permitting, monitoring, and compliance issues. This database, running under Microsoft Access™ and Microsoft SQL Server, was developed through a U.S. Department of Energy grant for the specific purpose of performing data management for the UIC program. RBDMS is capable of operating the entire oil and gas program and it is the Division is migrating all of its data management needs to RBDMS; this process is nearing completion.

The administrative chain of command for enforcement and compliance actions starts at the field inspector, progresses through the Chief Field Inspector, to the Administrator (and/or UIC director for UIC violations). The Board of Oil and Gas Conservation is the final authority for enforcement decisions. Decisions of the Board may be appealed to District Court.