Report to the Montana Environmental Quality Council

Environmental Enforcement and Compliance

FY 2001 – FY 2003

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Introduction

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

Noncompliances or violations are discovered in three ways: inspections, review of self-monitoring reports and citizen complaints or spill reports. Regulatory program staffs discover noncompliances through inspection work at permitted facilities and through the review of self-monitoring reports submitted by the permitted entities. A warning letter is usually sent in response to a minor violation and a violation letter is sent for significant violations. The purpose of these letters is to notify the permittee that the DEQ believes a violation has occurred, to explain the circumstances of the alleged violation, to describe what is required to return to compliance and to invite the person to discuss the allegations.

The Enforcement Division operates a complaint clearinghouse to track and manage the response to citizen complaints and spill reports submitted to the DEQ. The Enforcement Division manages about 1,000 complaints and spills each year. Approximately 23% are associated with permitted facilities or individuals and are referred to the appropriate DEQ regulatory program for resolution. Forty-seven percent of the reports received are determined to be valid. The Enforcement Division issues warning or violation letters as appropriate and provides compliance assistance to help responsible parties return to compliance. Only 2%of violations discovered during a complaint investigation result in formal enforcement.

Most formal enforcement actions are requested by the regulatory programs to address a significant violation at a permitted facility. A formal enforcement action, which may include required corrective action and/or a penalty assessment, is typically sought for violations classified as significant, whether or not the violation can be corrected. Penalty actions are also initiated against recalcitrant violators who ignore the recommendations in a violation letter and who have repeated minor violations. To initiate formal enforcement, the regulatory program submits an enforcement request form. After the director approves the request, the Enforcement Division staff work with legal staff to calculate penalties, draft orders, negotiate settlements and monitor compliance with DEQ's orders. The Enforcement Division manages approximately 300 formal enforcement cases each year, most of which include a penalty.

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

Description of Statute and Program
The Solid Waste, Megalandfill Siting, Infectious Waste Management and the Septage Disposal Acts are to ensure the proper management of solid waste management systems and to prevent the improper and unregulated disposal of solid wastes. This is to ensure the protection of public health and safety and conserve natural resources. The Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana. These wastes include municipal solid waste, commercial and industrial non-hazardous wastes, infectious medical wastes, used tires, construction and demolition debris, and septic tank pumpings.

Description of Regulated Community
There are currently 274 licenses issued by the Solid Waste Program in Montana, as compared to 268 in the last reporting period. Solid waste management systems in Montana include 30 municipal solid waste (MSW) landfills, 1 MSW incinerator, 2 construction and demolition waste landfills, 51 inert material landfills and clean wood waste burn sites, 2 resource recovery facilities, 3 waste composting operations, 9 waste transfer stations, 6 landfarms for petroleum contaminated soils and sump solids, 1 infectious waste treatment facility and 167 septic tank pumper land application sites.

Compliance Assistance and Education
The major outreach efforts conducted by the Solid Waste Program are the site visits to proposed facilities and inspections of license holders. The Licensing Program staff visits every proposed solid waste facility and actively encourages prospective applicants to attend pre-submittal scoping meetings to facilitate the licensing process. Septic tank pumpers are subject to limited inspections due to lack of program funding.

The major formal educational outreach is a series of regular training sessions conducted for landfill operators organized by the Montana State University Extension Service through a contract from the Solid Waste Program with the Montana Association of Counties. The program staff participates in or provides instruction at all of the training sessions. The program also published 4 newsletters for a total of 2,900 copies. The staff spends considerable time answering questions over the telephone or by e-mail. The program averages about 25 calls per day for various kinds of technical assistance. Eight staff people handle these calls. This equates to approximately 19,500 calls in the FY01-03 period.

Complaints and Noncompliances
In FY01- FY03, the Solid Waste Program conducted 259 solid waste facility inspections. Of these, 50 major and 70 minor violations were noted during the inspections. Some facilities had multiple violations and some had none. Seven

landfills continue to be in corrective measures for groundwater contamination and another four landfills are required to do additional sampling because of low levels of groundwater contamination. Four landfills require methane gas control measures.

The department received 252 complaints concerning solid waste during the reporting period. Of these, 7 involved licensed landfills regulated by the Permitting & Compliance Division's Waste Management Section. The remaining 245 complaints involved: private landowners or businesses with illegal dumpsites (46%); asphalt and or construction and demolition wastes (33%); tires (12%); and 9% of the complaints involved dead animal disposal.

Program Response to Complaints and Noncompliances

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

The department closed 150 (60%) of the complaints after working with the responsible party to achieve compliance; 35 complaints were closed because there were no violations; 6 complaints could not be investigated due to lack of information; 17 complaints were referred to an outside agency; 4 complaints resulted in enforcement requests; and, 40 are under active investigation.

Formal Enforcement Actions

During the reporting period, the Enforcement Division managed a total of 25 enforcement cases; 16 of the cases were ongoing from the prior year and 9 were new. Sixteen of the 25 cases were administrative and nine were judicial. Four of the 25 cases are currently in development; 10 have been closed; eight are still active under an administrative order or a judicial judgment, and three are being litigated in district court. The department settled 5 cases during the reporting period for penalties in the amount of $20,300. The average settlement penalty was $4,060 and, to date, the department has collected a total of $19,800. The unpaid penalties are either due at a future date, are being paid in installments, or the violator has been referred to collections for being delinquent in payment of the penalty.

Most of the cases cited the responsible party for the unlawful operation of a solid waste management facility without a license. Three of the cases were taken for unlawful storage of waste tires without a license. The remainder of the cases dealt with violations concerning operational deficiencies and the failure to pay annual fees. Two significant actions involved the failure of private landfill operators in the Lewistown area to provide adequate closure and post-closure financial assurance.

Benefits to Environment/Trends

The benefit to the environment that has resulted from program activities at licensed solid waste management systems is the reduction the number major violations. While the numbers and types of complaints are similar from year to year, the number of violations posing threats to the environment have decreased. In addition, no new facilities have been added to the corrective action list for ground water contamination during the reporting period.

The numbers of violations found has increased in conjunction with the increased numbers of landfill inspections during the period FY01- FY03. This was a result of an additional solid waste inspector being added to the staff.

It should be noted that the Solid Waste Management Act authorizes a $1,000 civil penalty for each day of violation. Consequently, the department is required to initiate a resource-intensive and time-consuming judicial action when it believes a penalty is warranted. Administrative penalty authority would allow the department to assess penalties more efficiently.

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

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

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

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

Septage Disposal Laws, 75-10-1201, MCA

Brief description of statute and program
The Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana including septic tank pumpings.

Description of Regulated Community
There are 167 septic tank pumper land application sites.

Compliance Assistance and Education
The program has conducted joint training for septic pumpers with the EPA, has published articles in a newsletter mailed to all licensed pumpers and is conducting training for local sanitarians. Septic tank pumpers are subject to limited inspections due to lack of program funding.

Complaints and Noncompliances
The department received 36 complaints concerning septic pumpers during the reporting period. Of the 36 total complaints, all but 6 involved septic pumpers licensed by the State of Montana. The majority of the septic pumper complaints involve land application practices by the septic pumpers.

Program Response to Complaints and Noncompliances
The program closed 19 (53%) of the complaints after providing the needed compliance assistance to the septic pumper; four complaints were closed because no violation was noted; one complaint was referred to an outside agency; three septic pumper complaints resulted in an enforcement action; and, nine are under active investigation.

Formal Enforcement Activities
The department initiated two cases under this statute, one administrative and one judicial. The cases involve the failure to properly treat septage at the disposal site through tilling and lime application. The administrative case is in development and the other site is active under a judicial order.

Trends/Benefits to Environment
This statute was recently enacted and no enforcement trends are available.

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

Description of Statute and Program
This Act requires the department to license and regulate motor vehicle recycling facilities (MVRFs) and to administer a program for the control, collection, recycling and disposal of junk vehicles and component parts. The state program provides annual financial grants to counties to administer the program on a local level. The program also oversees the operation of the county programs and approves their annual budgets and expenditures.

Description of Regulated Community
The total size of the regulated community is any Montana citizen possessing a junk vehicle, plus any governmental or commercial entity active in or possessing junk vehicles. During the FY01-03 period there were 689 new and renewal licenses issued by the Junk Vehicle Program. Of that total, 533 were private recycling facilities. The number of licenses has remained stable throughout the reporting period.

Each county has to acquire, develop, and maintain property for free motor vehicle graveyards. Ten of 56 counties have merged with other counties or districts. There are 52 licensed county motor vehicle graveyards. In each year of the reporting period 48 inspections were completed and less than 10 violations were found each year.

Compliance Assistance and Education
Motor vehicle recycling facilities and graveyards are inspected for compliance each year. The inspections include a detailed assessment of the adequacy of the facility's shielding to screen the junk vehicles and component parts from public view and a review of the facility's records. During the FY01-03 reporting period the staff conducted 748 inspections at regulated facilities, approximately 205 inspections per year.

Each county program is provided with a comprehensive Motor Vehicle Recycling and Disposal Program Reference and Guidance Manual. Annual training is also provided to all county programs. The training is usually offered in Billings and in Helena.

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

Complaints and Noncompliances
The department received 78 complaints concerning junk vehicles during the reporting period. This number remains consistent at about 18 to 22 per year. Seven of the 78 involved facilities licensed by the department. Frequently junk

vehicle complaints include used oil and solid waste components. In the course of doing inspections over 25% of the regulated facilities are found to have violations.

Program Response to Complaints and Noncompliances

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

The program closed 43 (55%) of the complaints after providing compliance and licensing assistance; six were closed because no violation was noted; four were referred to an outside agency; two resulted in an enforcement action; and, 23 are still under investigation.

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

Formal enforcement

During the reporting period, the Enforcement Division managed 19 enforcement cases; eight were ongoing from the prior year and 11 were new cases. Ten cases were administrative, eight were judicial and one case was referred to the Glacier County Attorney. Two of the 19 cases are currently in development, eight have been closed, seven are still active and under either an administrative order or a judicial judgment, one is in litigation and one was referred. The Department settled four cases during the reporting period for a total of $330,900. The average settlement penalty was $82,725.

The enforcement actions were primarily taken for the failure to obtain a motor vehicle recycling facility license and the failure to properly shield junk vehicles from public view. In addition, several enforcement actions alleged the failure to maintain required records.

Two significant cases, Michael Cavanaugh, Roundup, and Rod and Linda Robinson, Oilmont, were resolved only after the department obtained the court's permission to obtain title to the violators' vehicles and disposed of them at the state's expense. These cases were extremely time-consuming and resource intensive. In the Robinson case, the district court awarded the department a penalty in the amount of $68,400. In this case, as well as the three others where the court awarded penalties, the department has not been able to collect the penalties because the defendants do not have the ability to pay.

Benefits to Environment/Trends

One trend that has been observed is that the number of complaints about junk vehicles has increased in the western part of the state. This can be attributed to increasing populations and expansion of housing into more rural areas.

During the reporting period the program has also observed that many of the owners of longtime, established motor vehicle recycling facilities are retiring or leaving the business. The newer operators tend to be more professional, focused on recycling and aware of environmental issues. The training provided to new licensees has contributed to this improvement.

In general, improved performance at county graveyards and MVRF has resulted in the continued reduction in the potential for ground and surface water contamination from leaking fluids at these facilities and improvement in the aesthetic impacts to the surrounding environment resulting from the proper shielding of junk vehicles from public view.

It should be noted that the Motor Vehicle Recycling and Disposal Laws only authorize a $50 civil penalty for each day of violation and do not provide administrative penalty authority. Consequently, the department is required to initiate a judicial action when it believes a penalty is warranted. Such actions are time-consuming and resource intensive for both the department and courts. Administrative penalty authority would allow the department to assess penalties more efficiently. However, in these past cases, the authority of the district court was necessary to compel the violator to comply.

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

Description of Statute and Program
The Public Water Supply Section (PWSS) implements and enforces the Montana Public Water Supplies' Distribution and Treatment Law and has primary enforcement authority for implementation and enforcement of the federal Safe Drinking Water Act. Public water suppliers must comply with stringent monitoring and treatment requirements

Description of Regulated Community
The program regulates approximately 2,025 public water supply systems which includes approximately 667 community systems. A *community water system* is a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A *transient water system* means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are approximately 1,131 transient systems. A *non-transient water system* is a public water supply system that is not a community water system and that regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are approximately 227 non-transient systems.

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

Staff participates in a very active statewide operator-training program that also involves other technical assistance providers. The program emphasizes operator training, technical assistance, and proper water treatment and monitoring. Providing monitoring schedules for water systems had proven very valuable for the system and to the program. These activities promote public health protection through preventive measures. The program performs routine sanitary survey inspections of public water systems to identify possible system deficiencies that may affect compliance. The program also provides technical assistance to water suppliers to address specific compliance issues. Technical assistance is provided in the office or via the telephone, or directly on site, depending upon the circumstances.

Plan review is performed prior to construction of system improvements to ensure compliance with minimum design standards. Conformance with minimum design standards helps to ensure a long-term life of system components, and minimizes the possibility of non-compliance problems related to system construction.

Complaints and Noncomplaints
The department received 54 complaints concerning public water supplies during the reporting period. Of the 54 total complaints, all but 4 involved public water supplies regulated by the department. The majority of the complaints were about the quality of drinking water.

Program Response to Noncompliances
The program closed 25 of the complaints when return to compliance was documented; 20 complaints were closed because no violation was noted; 4 complaints resulted in enforcement requests and 5 are still active.

Formal Enforcement
During the reporting period, the Enforcement Division managed a total of 128 enforcement cases; 63 of the cases were ongoing from the prior year and 65 were new cases. Eighty-seven of the 128 cases were administrative, 17 were judicial and 24 were referred to EPA for enforcement actions. Twelve of the 22 cases are currently in development; 43 have been closed; 40 are still active under an administrative order or a judicial judgment; one cases is in litigation before a district court, eight cases were withdrawn or vacated, and 24 were referred.

The department settled 38 enforcement cases during the reporting period for penalties in the amount of $62,965. The average settlement penalty was $1,657 and to date, the department collected $40,834. The unpaid penalties are either due at a future date, are being paid in installments, or have been referred for collection.

Benefits to Environment/Trends
During FY01 and 03 the program was fully staffed and the number of violations reported was lower as compared to FY02 when the program was not fully staffed. During FY03 the program has competed over 500 monitoring schedules for the regulated systems. During FY02 the program was unable to attract and retain qualified staff because of non-competitive compensation. In the past year the department has implemented Pay Plan 20, which has improved pay for staff. The 2003 legislature approved three new water quality specialists and one homeland security person for water system assessments. Additional staff will provide on-site technical assistance and improve compliance for the regulated public water supply systems. The additional staff will also help the current staff with the new rules that EPA will be implementing in the next five years.

The large number of enforcement actions taken under the Public Water Supply Laws reflects large size of the regulated community. Most of the enforcement actions were initiated for the failure to monitor for coliform bacteria and nitrate, and the failure to provide public notification of the violations. The failure to provide public notice places users of the water supply at risk because they cannot make informed decisions concerning their consumption of water provided by the supplier. Most of the enforcement actions were taken against small water

systems that serve cafes, bars and trailer courts rather than large municipal water supplies. Several enforcement actions were taken for the construction of public water supplies without prior plan review and approval.

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

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

Description of Statute and Program
The Public Water Supply Section implements and enforces the Water Treatment Plant Operators Law. The program also implements training, testing, and continuing education services for water and wastewater operators and provides general assistance to the public and other state and federal agencies.

Description of Regulated Community
Although exact numbers vary continually, there are approximately 667 community public water supply systems and 227 non-transient public water supply systems that must retain the services of a certified operator. There are presently 321 public sewage systems that must retain the services of certified operators. Approximately 1,215 public water and wastewater system owners employ approximately 1,471 certified operators in Montana.

Compliance Assistance and Education
During FY's 01 - 03, the Water and Wastewater Operator Certification Program has held six Water and Wastewater Operator Advisory Council meetings, and five Continuing Education Credit Review Committee meetings. Training new operators on certification requirements has been ongoing and the program continually explores new technology such as CD-ROMs and Internet to make training more accessible to operators. The program has supported new operator training in conjunction with examination sessions, which are being held at small system training, DEQ water schools, in DEQ offices, and at Montana Rural Water Systems and Montana Association of Water and Sewer Systems conferences.

Complaints and Noncompliances
The department received 4 complaints about operators of public water systems during the reporting period.

Program Response to Complaints and Noncompliances
The program investigated the complaints. Two of the complaints were found to be outside the regulations in the statute, one operator was given a probationary period to come into compliance and a letter of concern was given to the fourth. The program will continue to work with these individuals.

Formal enforcement
Violations caused by the failure to have a certified operator are usually addressed with a formal enforcement action under the Public Water Supply laws.

Trends/Benefits to Environment
This program ensures that the operators of water and wastewater treatments systems are qualified and trained in order to protect human health.

Montana Asbestos Control Act, 75-2-501, MCA

Description of Statute and Program

The Air and Waste Management Bureau's asbestos program regulates projects in buildings involving the abatement of asbestos-containing material (ACM) and accredits and approves courses for five asbestos occupations. The EPA has delegated authority to the program to administer the National Emission Standards for Hazardous Air Pollutants for Asbestos, which governs building renovations/demolitions, asbestos disposal, and other asbestos-related activities.

Description of Regulated Community

The regulated community under the Asbestos Control Act consists of anyone conducting an asbestos abatement project or building demolition that contains three or more linear or square feet of material or project containing greater than 1% asbestos. Any building renovation/demolition is subject to the inspection requirements, and further requirements apply if the results of the inspection show material containing 260 linear feet or 160 square feet of regulated ACM. The Department issued an average of 250 permits and conducted an average of 110 compliance inspections during the reporting period.

Compliance Assistance and Education

Over the reporting period, the regulated community and the public have become more aware of asbestos and the associated regulations. The program has made an effort to educate local authorities on the asbestos regulations. This allows the local authorities that are in a position to raise awareness (i.e. sanitarians, building code officials, etc.) to offer this information to the regulated community and the public in their locales. The program, along with the DEQ Small Business Assistance Program, conducted asbestos conferences during fiscal years 2002 and 2003 aimed at educating general contractors and consultants regarding the asbestos regulations and requirements. The Small Business Assistance Program has also prepared informational publications entitled "Asbestos in the Home" and "Asbestos Regulations for Contractors."

Complaints and Noncompliances

The Department received 175 complaints concerning asbestos during the reporting period. Of those, 104 complaints involved the failure to conduct an asbestos inspection prior to building renovation or demolition. The department received 42 complaints related to improper asbestos abatement techniques, which is a slight increase over the past. In addition, the department received 27 complaints related to general asbestos handling such as questions about home insulation, removal of non-friable asbestos such as siding or roofing, and methods for proper asbestos disposal. The department also received two complaints about firefighter training that used old buildings because all friable and non-friable ACM must be removed prior to any training burns.

Program Response to Complaints and Noncompliances
Valid complaints are usually documented and resolved through the use of warning letters, violation letters, or formal enforcement. By using warning letters for minor first offenses, the Department can assist responsible parties in complying with the rules. The warning letter is then considered in any future enforcement action relative to a history or pattern of violations. Major violations or repeat offenses, usually result in formal enforcement and a civil or administrative penalty.

During the reporting period, the department issued 77 warning and violation letters, which is an increase over past years. The increase is evidence of the rate of non-compliance with the notification and inspection requirements. The primary violation that the program is finding is failure to conduct an asbestos inspection. Based on the violation letters and the number of complaints received by the department, the inspection and notification requirements make up over 50% of the violations.

Formal enforcement
During the reporting period, the department managed a total 19 enforcement cases; seven were ongoing from the prior year and 12 were new cases. Ten of the 19 cases were administrative, six were judicial, and three were criminal cases. Two of the 19 cases are currently in development; seven have been closed; five are still active and are either under an administrative order or a judicial judgment; two are being litigated either before the Board of Environmental Review or a District Court; and three cases were referred a county attorney for prosecution. The department also referred asbestos violations that occurred at a Missoula daycare center to the Missoula County Attorney's Office for prosecution. Missoula County's action resulted in three criminal convictions and penalties. The department settled six cases during the reporting period for a total of $24,338 in settlement penalties. The average penalty under the Asbestos Control Act was $4,065.

Formal asbestos enforcement actions were taken primarily for engaging in an asbestos-type occupation without accreditation and conducting an asbestos abatement project without a permit. In the latter part of the reporting period, enforcement actions also included a failure to conduct an asbestos inspection prior to a building renovation/demolition. These violations were significant because when building renovation/demolition is conducted without a permit and accredited personnel, proper work practices are not followed. Improper work practices often result in a release of asbestos that exposes the workers and the public to asbestos. When the violations involved a renovation, corrective actions were taken to ensure that no residual asbestos contamination remained in the building.

Trends/Benefits to Environment

The number of permits issued for the reporting period has remained consistent, as have the number of compliance inspections conducted by the program. The rate of compliance with abatement and handling regulations, as determined by inspections of permitted projects, is greater than 95%, with a consistent trend since fiscal year 1999.

The department is concerned about a high rate of noncompliance with the asbestos notification and inspection requirements. The number of building renovation/demolitions occurring in the state is inconsistent with the low number of notifications received by the program, which indicates a potential for a high rate of noncompliance with these regulations. This is however, consistent with what other states are experiencing. During the reporting period, the program gathered information from several major cities in Montana and concluded that noncompliance with the asbestos notification and inspection requirements exists. The department will be moving forward with broadening the awareness of the asbestos regulations throughout the state as part of the effort to attain a higher level of compliance with the asbestos requirements by emphasizing the notification and inspections requirements.

The program has seen a significant increase, approximately 50%, between fiscal years 1999 and 2000, in the number of inquiries about asbestos regulations. The increase is attributed to the tragic health impacts resulting from the exposure to asbestos in Libby, Montana. The inquiries include both verbal and written requests for information regarding the regulations but also information on asbestos exposure and the techniques that should be utilized to safely remove asbestos. This number of inquiries has remained consistently high for the reporting period.

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

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

Description of Statute and Program
As a state program authorized by EPA, and through the Montana Hazardous Waste Act and its administrative rules, the Hazardous Waste Program controls a universe of waste that is identical to the federal program administered by the EPA.

Description of Regulated Community
As of July 1, 2003, there were 10 permitted facilities in Montana and numerous hazardous waste handlers, including 45 transporters and 112 generators who were required to resister with the program.

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

In FY 03 the program began the development of a comprehensive compliance assistance CD ROM to provide a single source of all hazardous waste and used oil compliance assistance information and education. The CD will be completed by the end of the first quarter of FY 04. The CD will contain all of the information previously provided as separate items, such as the small business handbook, contractor information sheets and waste specific handouts, as well as applicable forms, virtual shops, up to date information on pollution prevention and the latest copy of the Administrative Rules of Montana.

The program typically plans and conducts a series of inspections of the regulated community using a compliance monitoring strategy that defines the number of inspections that staff should conduct at each category of handler. In FY 03, the department began two compliance initiatives designed to focus on two possible areas of serious noncompliance with hazardous waste and used oil regulations, wood products hog fuel and gas compression stations. These initiatives allowed the department to focus its attention on more complex aspects of the hazardous waste regulations or expanded the scope of inspections to new previously unexamined business sector. Although initiatives dilute inspections at traditional handlers, the department intends to continue using initiatives in the future because they allow the department to expand its effectiveness and more fully complete its mission.

Complaints and Noncompliances

The department received 69 complaints concerning hazardous waste during the reporting period. The number of complaints received during each of the previous 3 fiscal years has decreased slightly each year. There were 35 spills/releases, 23 dumpsites, 7 drums with unknown contents, and 4 explosive ordinance complaints taken during the reporting period. The majority of the hazardous waste complaints have been filed against businesses for poor waste management practices.

The department received 134 complaints concerning used oil during the reporting period. The number of complaints received each of the last 3 fiscal years has remained relatively steady. There were 54 spills/releases, 35 dumpsites, 31 associated with dust abatement, 12 used oil storage, and 2 used oil-burning complaints.

The most common complaint has been against businesses and private individuals for not removing and properly disposing of used oil that has been spilled, released, or purposely dumped onto the ground. The next most common complaint has been concern for a private individuals applying do-it-yourselfer (DIY) generated used oil on either their own personal property, or on public property for dust abatement. Used oil cannot be placed on public property for any purpose, but the department's administrative rules have not disallowed the practice of applying DIY used oil on private property as long as the used oil is applied in such a manner as to not threaten state waters.

Program Response to Noncompliances

Of the 69 hazardous waste complaints, 23 were investigated and no hazardous waste violations were found, 1 was closed due to a lack of information necessary to investigate, 17 were managed by the Enforcement Division, and 19 were managed by the Air and Waste Management Bureau, 6 were referred outside of the department, and 4 became enforcement requests for administrative enforcement action.

Of the used oil complaints, 37 were investigated and no used oil violations were found, 9 were closed due to a lack of information available to investigate, 75 were managed by the Enforcement Division, 7 were managed by the Air and Waste Management Bureau, and 6 were referred outside of the department.

During the reporting period, the department conducted 1,100 inspections, issued 127 warning letters for minor violations and issued 18 violation letters for more serious violations.

Formal enforcement

Enforcement actions under the Hazardous Waste Act were taken primarily for the release of hazardous waste into the environment and the operation of a

hazardous waste management facility without a permit. Several cases addressed labeling and reporting violations, and the improper management of wastes such as exceeding waste storage time limits.

During the reporting period, the Enforcement Division managed a total of 22 enforcement cases; 14 of the cases were ongoing from the prior year and 8 were new cases. Seventeen of the 22 cases were administrative and five were judicial. Two of the 22 cases are currently in development; nine have been closed; eight are still active under an administrative order or a judicial judgment; two cases are in litigation before the Board of Environmental Review or a district court and one case was withdrawn.

The department settled 10 enforcement cases during the reporting period for penalties in the amount of $176,301. The average settlement penalty was $17,630 and to date, the department collected $66,330. The unpaid penalties are either due at a future date, are being paid in installments, or a portion of the settlement penalty was offset by a Supplemental Environmental Project (SEP). In addition, the department accepted two SEPs valued at $38,224 to offset $38,244 of the settlement penalties.

Benefits to Environment/Trends

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

The costs associated with waste disposal have resulted in pollution prevention efforts on the part of regulated entities and a change in the number of generators. This is complimented by compliance assistance efforts by program personnel. The number of transporters and permitted facilities have changed slightly or remained relatively constant. The number of permitted facilities is relatively steady because there is no market for new commercial facilities in Montana and because the requirement for facility-wide corrective action at permitted facilities acts as a disincentive.

The department sees a slight decreasing trend in the number of inspections over the reporting period, but notes that the relative amounts of violation letters issued as a result of those inspections have remained the same. The decline in the number of inspections is attributed to staff time dedicated to increased compliance assistance and the planning and implementation of state-only compliance initiatives.

The most frequently observed violations during the reporting period continue a long-established trend: deviations from pre-transport hazardous waste management and used oil labeling requirements. Despite the program's attempts at compliance assistance through inspection and educational outreach these types violations still occur. As such, violations are the result of an individual's decision to deviate from regulatory requirements, and not due to the

novelty or complexity of the requirements. However, there was no increase in serious noncompliance that threatened human health or the environment.

The department believes that hazardous waste compliance and enforcement activities result in cleaner soil and water for Montanans consistent with the direction of the Montana Hazardous Waste Act. Informal and formal enforcement actions deters violators, eliminates competitive disadvantages, and sends a message to the remainder of the regulated community that the department will exercise its authority to ensure compliance.

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

Description of Statute and Program
The Air and Waste Management Bureau is responsible for administering the portions of the Federal Clean Air Act, the Clean Air Act of Montana and companion administrative rules that pertain to compliance of air emissions from various types of facilities. Through these regulations the department is responsible for achieving and maintaining levels of air quality within our state that will protect human health and safety, and to the greatest extent possible, prevent injury to plant and animal life and property.

Description of Regulated Community
The regulated community consists of stationary sources that have the potential to emit greater than 25 tons per year of any one regulated pollutant, and any portable source that has the potential to emit greater than 15 tons per year of any one regulated pollutant. Currently, there are approximately 500-600 facilities that have air quality permits. The program also processes approximately 200 permitting actions each year with about 50 being actions for new permits.

Compliance Assistance and Education
The program provides compliance assistance and training in a variety of ways to both the regulated community and the public. Educating the regulated community occurs during facility inspections, the permitting process, in responses to verbal and written requests for information and in other forums. Educating the public also occurs in various forms, generally by responding to both verbal and written information requests. Also, program staff has made presentations to groups (educational facilities, local organizations, etc.) when requested.

The program has focused education in specific areas for this reporting period. The National Emission Standards for Hazardous Air Pollutants (NESHAPS) otherwise known as the Maximum Achievable Control Technology (MACT) standards being promulgated by the EPA have raised many questions from both the public and the regulated community. It has been working with the regulated community and the public to understand these standards, as well as the permitting requirements necessary to maintain compliance with these new standards.

The program has also focused on the energy industry this reporting period. It has made a coordinated effort between both the permitting and compliance staff to work with the regulated community and the public to help them understand the state's regulations and authorities to protect the air quality. The DEQ's Small Business Assistance Program has issued several informational publications during the reporting period. These publications focused on educating the drycleaners and wood furniture manufacturers subject to MACT standards, as well as outreach newsletters to the concrete, asphalt and sand gravel producers.

The formal enforcement procedures deter violators, as well as raise the awareness of the regulated community that the department will exercise its authority to ensure compliance. Other activities conducted by permitting and compliance staff are resulting in better air quality for the state of Montana. The department's efforts in permitting and applying the Best Available Control Technology process encourages better emissions control on a continual basis. Also, the Title V operating permit program has encouraged the major sources to be more aware of their compliance status. Also, over the last two years the department has been conducting full compliance evaluations on facilities.

Complaints and Noncompliances

The department received 195 complaints concerning air quality emissions during the reporting period. Of the 195 total complaints, 54 involved the Billings refineries. Many of these complaints were self-reported emissions of NO_2, H_2S, or SO_2 due to malfunctions or equipment failures. The number of complaints remained fairly constant during the reporting period. The department received 47 complaints involving emissions from other industrial sources. The number of complaints decreased slightly each year during the period. In addition, 25 complaints were received involving asphalt plants, crushers or concrete batch plants. The remaining 69 complaints involved emissions from mobile sources, grain elevators, paint spraying operations and other miscellaneous sources each averaging a few complaints per year.

The department received 156 dust complaints during this reporting period. The largest single category of dust complaints involved dust from county roads. Another significant source of dust complaints was from subdivision construction and large building construction projects.

The department received 149 open burning complaints during the reporting period. Of these complaints, over one-half were for disposing of prohibited material and items by open burning. The number of complaints of private individuals conducting prohibited burns was slightly higher than commercial enterprises. The department received 48 smoke complaints due to slash burning. In 26 of these complaints, the complainant could not identify the responsible party. Most of the remaining complaints were slash burns being conducted in accordance with the open burning rules. The remaining few complaints involved construction companies conducting open burns without a permit or firefighter training burns

The department received 52 odor complaints during the reporting period. The majority of the odor complaints involved odors from an unknown source. Odors from feedlots and spray-painting operations made up the remaining complaints. The department received 15 indoor air quality complaints in the first two years of the reporting period. No indoor air quality complaints were received in fiscal year 2003. The state of Montana does not have indoor air quality standards or regulations.

Program Response to Complaints and Noncompliances
Most air quality emission complaints are referred to air quality staff and are resolved by that program. With the exception of county roads, most dust complaints are easily resolved by requesting the responsible party take reasonable precautions to control the dust. The program's request is documented in writing to ensure the responsible party's awareness of the rules and to assist toward compliance. When the program receives open burning complaints it is the program's policy to send a letter to responsible parties to provide the information necessary to ensure the responsible party's awareness of, and compliance with, the rules.

On June 8, 2001, the Board of Environmental Review (BER) repealed the odor nuisance rule. While the rule has been repealed, the program still investigates odor complaints if the odors are at or can be attributed to a regulated facility or operation. The civil remedies for public and private nuisances still apply to odor situations. The county attorney usually enforces these remedies.

The program issues violation letters in response to violations of the air quality rules and permit conditions. The violations are discovered generally by inspections or report review, each about 50%. The program has guidelines from the EPA to determine the high priority violators and it also reviews the type of violation, the significance of the violation, and the source's compliance history to determine whether or not to seek formal enforcement. Violations are also closed without formal enforcement being requested for several reasons. A primary example may be the fairly new Title V Operating Permits and the associated reports required by the permits. Because these were new permits and sources were familiarizing themselves with the reporting requirements over the last five years, the department has generally closed the violations with the submittal of the required data for first time violators.

Formal enforcement
During the reporting period, the department managed a total of 36 enforcement cases; 13 were ongoing from the prior year and 23 were new cases. In 26 of the 36 cases, enforcement was administrative, nine were judicial, and one case was referred to the EPA for enforcement. Five of the 36 cases are currently in development; 18 have been closed; nine are still active under an administrative order or a judicial judgment; three cases are in litigation before the BER or a District Court, and one case was referred to EPA for prosecution.

The department settled 21 enforcement cases during the reporting period for penalties in the amount of $2,539,851. The average settlement penalty was $120,945 and to date, the department has collected $556,624. The unpaid penalties are either due at a future date or are being paid in installments. In addition, the department accepted four SEPs valued at $127,966 to offset $60,200 of the settlement penalties.

The department's assessment of penalties is highest under enforcement of the CAA. Penalties collected under the CAA are deposited into the Alternative Energy Revolving Loan Account. Reasons for the higher penalties are: the program is mature with established policies and procedures; excess emissions migrate large distances where a large number of the population can inhale pollutants and EPA oversight ensures that state enforcement is stringent. Air quality enforcement actions were taken primarily for exceeding the permitted emission limits, installing equipment that potentially increases emissions prior to obtaining a permit modification, failure to conduct source tests and failure to pay annual fees. Most violations are typically corrected prior to the initiation of the enforcement action.

The most significant penalty case involved 1,052 violations of a 3-hour SO_2 emission limit over a seven-month period at the ConocoPhillips Billings Refinery. The case settled for a $2,073,400 penalty of which $207,300 was paid in cash and the remaining $1,866,100 will be mitigated pending completion of a $3,000,000 SEP that involved the installation of a flare gas recovery system.

Another significant case involved violations of an air quality permit caused by blowing dust at the Montana Resources Inc., mill and mine in Butte. The department, EPA-Butte Office, and the Silver Bow County Sanitarian's office received approximately 481 calls from citizens concerning large clouds of dust blowing over the City of Butte and adjacent residential and commercial areas. The case was resolved with a $94,575 settlement penalty and the company implemented corrective action to stop the dust. The settlement penalty was resolved with a cash payment of $31,285, a $23,930 SEP that involved the purchase of air monitoring equipment for the Butte-Silver Bow Health Department and an $86,160 SEP that involved hydro-seeding to stabilize the portion of the impoundment, which could not be covered.

Trends/Benefits to Environment

The size of the regulated community has remained consistent for fiscal years 1999-2003 with an average of 267 permitted stationary sources. The number of sources inspected has also remained consistent for the reporting period.

The program has seen an increase of about 33% in the number of portable source permits over the last five years. The increase in the number of permitted portable sources can be attributed to public outreach and assistance, and recognition of the regulations by the regulated community. Also, the increase in urban development has attributed to an increase in activity in this industry, which includes concrete and asphalt plants and sand and gravel crushers.

The program does not see a trend in the number of violation letters issued for fiscal year 1999-2003. The numbers vary from year to year. However, the types of violations seem to remain consistently about half air emissions violations and half record-keeping violations.

The number of air emissions complaints involving the Billings Refineries have remained fairly consistent during the reporting period and the number of complaints from other industrial sources have decreased slightly each year. The number of road dust complaints has slightly decreased each year in the reporting period. The program has noted an increase in the number of sandblasting dust complaints, mainly in Billings, due to a local controversy. The department and Yellowstone County are working on a solution. The number of burning prohibited materials complaints has increased slightly during each year of the reporting period. The number of smoke complaints involving unknown burners decreased significantly toward the end of the reporting period.

Montana Opencut Mining Act, 82-4-401, MCA

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

Description of Regulated Community
The regulated community varies greatly. The permit holders vary from small one or two person entities that mine several thousand cubic yards of material annually and have one permit to multinational companies that have several hundred employees, mine over several million cubic yards of material annually, and have several permits. Some permit holders only supply a small local market while other companies ship mined product out of state. Several cities have permits with the program, as do all 56 counties along with some state agencies. The federal government also has several permits with the program.

In FY2001, the program had a total of 1,970 active permitted operations, in FY2002 there were a total of 1,961 operations, and for FY2003 the total was 1,915.

Compliance Assistance and Education
The program assists the regulated community and the general public by providing information and technical expertise on opencut-mining related questions. Subject to staff and time limitations, the program provides one-on-one personal assistance to members of the regulated community. One specific example of note is that the program has created a Power Point presentation involving the “do’s and don'ts” about mining operations and reclamation and guidance in filling out the various forms and drafting a permit map.

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

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

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

Program Response to Noncompliances
Minor violations are generally resolved by a phone call or visit that bring the operator back into permit compliance. Letters, such as Warning or Violation Letters, may also be used to obtain compliance. The Air Quality Program addresses those potential violations where dust is the major concern. Some complaints, most often those involving mining without a permit or outside a permit area, are generally resolved through formal enforcement action.

During the reporting period, 16 violations were documented for mining outside of the permit area, 11 for mining without a permit, 8 for inadequate bonding, 11 for failure to salvage or wasting topsoil, 4 for inadequate reclamation, 3 for failure to reclaim as specified in the permit, 3 for illegally disposing of solid waste in the permitted area, 3 for mining operations violations, and 3 for impacts to water.

Formal enforcement
During the reporting period, the Enforcement Division managed a total of 41 enforcement cases; 12 were ongoing for the prior year and 29 were new cases. Forty cases were administrative and one was judicial. Two of the 41 cases are currently in development; 22 have been closed; seven are still active and are either under an administrative order or a judicial judgment; six are being litigated before the Board of Environmental Review or in district court; and one case was vacated. The department settled 24 cases during the reporting period for a total of $36,941. The department has collected $31,191 of the penalties. The average settlement penalty was $1,539.

The primary violations for which an enforcement action was initiated were: mining outside of the permitted area; mining without a reclamation permit; failure to provide adequate bond and failure to salvage topsoil.

Trends/Benefits to Environment
The number of permit applications received has remained fairly consistent for the past three years, but, in certain areas of the state, the complexity of them and comments on them from the public have increased markedly. This is especially true in the high growth counties of Yellowstone, Gallatin, Flathead and Ravalli. In those counties we have operations encroaching onto rural residential areas, and

new subdivisions encroaching upon existing gravel operations. These situations have resulted in questions, concerns, and conflicts regarding impacts to groundwater and domestic water supplies, air quality, and truck traffic and public safety, among others. Addressing the concerns of locals, holding public hearings, investigating complaints, analyzing the applications for compliance and contacting the applicant about needed corrections and revisions have stretched staff resources of the Opencut Program. The staff has not able to keep up with the workload; thus, many sites have gone without needed compliance inspections. There are also active operations that have gone unpermitted for various lengths of time because of the lack of time and resources to check for such operations or to follow-up on them once we know about them. The general public has assisted the program by notifying it of certain unpermitted operations.

The number of pending permits has drastically increased over the reporting period. As indicated above, most of the pending permits are waiting for replies from the applicants on deficiencies. Many of the pending permits are large operations that require water quality and quantity studies and are near residential areas. Over the reporting period, the program has witnessed a significant increase in the number of pending permits that require more information and studies, especially concerning issues on water quantity and quality. These types of applications require a considerable amount of staff time to review and analyze than operations that are proposed in sparsely populated areas or do not actually encroach on groundwater. Public involvement and comments have also increased during the reporting period, particularly in the areas of high population growth in the counties mentioned above, and this also requires more staff time to investigate and respond to issues raised. The vehicles for such responses are environmental assessments or letters to commentors.

Over the reporting period, federal and state road projects have increased, resulting in an increasing numbers of submitted permit applications for sand and gravel mines. Since Montana has a short construction season, the companies working on road projects have a short period of time to get permits and perform the work. This requires the staff to do what it can to review the applications, inspect the sites, contact the operator concerning any deficiencies, write environmental assessments, and make permit decisions. At the same time staff resources are not sufficient to inspect many of the sites when they are active to see if they are in compliance with their permits.

It should be noted that the statutory maximum penalty for violations of the Opencut Mining Act is $1,000. Increased penalties for additional days of violation may only be assessed if the violation continues after the violator is served with a formal notice of violation and order. Orders are usually issued after the violation has occurred. This condition limits the amount of the penalty that can be assessed. The department is concerned that the relatively low penalties do not provide an adequate deterrent to violators and does not level the economic playing field. Operators who mine gravel without a permit and later sell

the gravel realize a substantial economic benefit. The failure to obtain a permit and provide adequate bond creates a significant reclamation liability for the department in the event the operator or the landowner cannot afford proper reclamation.

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

Description of Statute and Program
The Coal and Uranium Program is responsible for permitting, inspecting and otherwise managing regulatory compliance of coal and uranium prospecting, mining and reclamation operations in the state.

Description of Regulated Community
There are six major coal development companies actively mining in Montana. With the exception of one comparatively small operation, all of the active mines are located in southeastern Montana. Of these, one company holds six permits (Western Energy) other companies hold one or two permits. All of the active coal mines are strip mines. One underground coal mine is currently permitted, and coal is being produced under that permit.

Currently prospecting/exploration activities in Montana are limited to coal and are generally conducted by companies having operating mines in the state. These activities generally involve areas of potential expansions of existing mines. One new company has been prospecting lignite coal in eastern Montana since FY 2002. Since commencement of FY 2001, several prospective entrepreneurs have initiated preliminary efforts to evaluate the feasibility of opening new, comparatively small, mines.

Compliance Assistance and Education
Prospecting inspections are conducted to evaluate site situations prior to initiation of activity, and during and after prospecting activities as necessary to ensure compliance with regulations and permit conditions.

Each active mine site must be inspected monthly, including one complete inspection every quarter. For each inactive mine site, one complete inspection per quarter is required. Additional inspections are conducted as necessary to insure compliance with regulations and permit conditions.

Staff interacts with representatives of the regulated industry, government agencies, interested members of the public and special interest groups on a frequent basis. Using telephone, fax and e-mail, interpersonal meetings and other forums, compliance issues and problems relating to prospecting and mining are evaluated and resolved. Activities and efforts to promote compliance assistance and education also include participation in and sponsorship of seminars, conferences and symposia. These interactions and efforts appear to facilitate the conduct of coal prospecting and mining business with moderate formal enforcement action or litigation required.

The greatest incentive for compliance with coal and uranium rules and regulations is the cost effectiveness of doing so. Costs associated with discovery, evaluation, mitigation and final resolution of non-compliance issues

are high, for both the regulated industry and the regulatory agencies. Multiple violations of the same or similar regulatory requirement can establish a pattern of violations that may lead to cessation of part or all of a prospecting or mining operation. Additionally, there is a readily accessible nationwide system allowing all state and federal regulatory agencies to track and evaluate compliance problems related directly or indirectly to a given coal mine permittee or applicant. If a given permittee or corporate entity does not meet regulatory obligations under one permit, other permits may be obstructed.

Complaints and Noncompliances

The department received 13 complaint reports associated with activities (except activities affecting air quality) at coal mines or "strip mines". All complaints were actually spills caused by accidental releases from vehicles, fuel storage or transport facilities, and a substation. There was also a "coal sludge" release. Pollutants released were: diesel (25-250 gallons); mineral oil (25-8,000 gallons); hydraulic oil (100 gallons); transmission fluid (100 gallons); coal sludge (84 gallons); used oil (30 gallons); and, ammonium nitrate (25 gallons). The Coal and Uranium Program provided cleanup oversight for all 13 spills.

Program Response to Complaints and Noncompliances

The program refers to the issuance of a notice of a "violation" of a statutory or permit requirement as a Notice of Noncompliance (NON). While NONs generally relate to failure to conduct operations in the field as approved, some are issued for administrative failures. In general, if a compliance problem can be corrected in the field and no resource was lost (such as soil lost to runoff), an operator may be issued a maintenance item rather than an NON. The maintenance item requires work to be performed within a specified time frame or prior to occurrence of a specific event. Issuance of NONs may result in a requirement to make minor or major adjustment to permits and/or operations, may involve significant monetary penalties, or if the violations are minor, a waiver of penalties. The program must also issue a "Cessation Order" whenever a regulated activity creates a real or imminent threat to public health or safety, or causes significant and imminent environmental harm. NONs are discovered as a result of program field inspections, review of reports and data, citizen complaints or by notification by the permittee.

Violations may require the permitee to perform on-the-ground work, such as filling in rills and gullies, upgrading sediment control, or repairing unauthorized disturbance of native ground. Others may require a permitting action, typically a minor revision, to implement a revised or new way of doing something. Violations which involve monitoring practices may need to be resolved by minor revisions to a monitoring plan, or may be such that data were not collected and are forever lost. Some violations specifically involve reclamation practices, such as regrading of the surface, soil replacement or seeding. Resolution typically entails adjustment of reclamation practices that provide compliance with the rules and permit. Violations involving a water effluent problem may require water

treatment and sediment control structures being in place and functioning or revising treatment practices or structures. Although uncommon, exorbitant failures to carry out permit commitments can result in permit revocation and bond forfeiture.

Formal enforcement

During the reporting period, the Enforcement Division managed a total of 41 enforcement cases; 17 were ongoing for the prior year and 24 were new cases. All of the cases were administrative. Twenty-eight of the 41 cases have been closed; seven are still active, four are in settlement negotiations or have been appealed to the Board of Environmental Review and two cases were vacated. The department settled 34 cases during the reporting period and collected a total of $308,260 in penalties. Excluding a $300,000 penalty payment that resolved 14 pre-May 1998 enforcement actions against Mountain, Inc., Roundup, the average settlement penalty was $413.

Trends/Benefits to Environment

Since 1996, 10 to 20 violations per year have been issued. The primary violations at coal mines that resulted in an enforcement action were caused by a failure to follow approved mine operational requirements, failure to properly control sediment and stormwater, failure to properly reclaim disturbed lands and sampling or monitoring violations. Department regulations must be as stringent as federal regulations that essentially require that a penalty must be assessed for all violations. The statutory maximum penalty for violations of the Montana Strip and Underground Mine Reclamation Act is $5,000 for each violation. Although most of the past violations did not pose a significant threat to human health or the environment and a large penalty is not warranted, it is questionable whether an average penalty of $413 provides an adequate degree of deterrence against future violations, particularly when the penalty is assessed against a mining corporation.

The Coal and Uranium Program has had a relatively stable regulated community of six or seven operators for the past 20 years. Partial inspections may occur based on special needs or as part of a discipline-specific inspection. The number and frequency of such inspections may vary year to year, but the average over the report period is likely to continue for the foreseeable future. The number of bond release applications has been steadily increasing during the report period. A significant increase in the number and complexity of these applications and resultant inspections is expected to occur beginning in 2004. Minor revisions are required when a permit page or map needs to be changed; revised language has been drafted into some permits that allows for flexibility in reclamation practices. The number and complexity of revisions to ARM, departmental guidelines and operating permits have increased or are expected to increase significantly in 2004, due in large part to the passage of HB 373 during the 2003 legislative session.

Montana Water Quality Act, 75-5-101, MCA

Description of Statute and Program
The Montana Water Quality Act (WQA) prohibits the construction, operation and use of any disposal system or outlet structure that discharges to state waters without a current permit from the department. The WQA establishes the Montana Pollutant Discharge Elimination System (MPDES) for discharges of wastewater and storm water to state surface waters and the Montana Ground Water Pollution Control System (MGWPCS) governing the discharge of wastes to state ground waters. The department has been delegated authority under the federal Clean Water Act to issue permits pursuant to the National Pollutant Discharge Elimination System (NPDES). Because of the distinct differences in the regulated community and subject regulations, wastewater permits are typically separated into five different categories: 1) MPDES (Public and Private Facilities); 2) MPDES - Storm water; 3) MPDES – Concentrated Animal Feeding Operations (CAFO); and, 4) Ground Water Pollution Control System (GWPCS) permits for administrative and accounting purposes.

The WQA also states that is unlawful to cause pollution or violate any provision of the act unless explicitly authorized by the department pursuant to Section 308 (Short-term water authorization – water quality standards) or Section 318 (Short-term water quality standards for turbidity). The Permits Program also provides 401 certifications pursuant to section 401 of the Federal Clean Water Act for federal activities or permits that result in a discharge to state waters.

Description of Regulated Community
Because of the differences in the regulated community, this section is broken down into program areas.
MPDES Facilities – This category includes both individual permits issued to both major and minor public and industrial facilities and facilities authorized to discharge under a general permit. It is estimated that a high percent of the regulated community obtains permit coverage for wastewater discharges and the regulated community is well informed about the consequences of discharging wastewater without a permit. Problem areas include the following:

- Wastewater facilities including both public or private wastewater lagoons that were designed as non-discharging systems, but are now discharging due to lack of proper maintenance or other factors.
- Oil and Gas production wells were inventoried by EPA in 1998 and a number of facilities were identified that were discharging to state waters, primarily ephemeral drainages, without a permit.
- Short-term discharge such as hydrostatic pressure tests of pipelines, tanks and related facilities, construction dewatering and cooling water discharges do not obtain permit coverage. Because dischargers are required to pay fees, many smaller operators do not apply for the necessary permits.

Storm water – Due to the high number of facilities and lack of numeric effluent limitation, the department regulates storm water discharges through the issuance of three general permits. Phase I of the federal CWA storm water regulations addressed large municipal separate storm sewer systems and industrial facilities, including construction activities greater that 5 acres. With the exception of several industrial sectors, such as, auto salvage yards, compliance with these regulations is relatively high. In March of this year, Phase II of the federal storm water program when into effect nationwide, including Montana. These new regulations require small municipalities and small construction projects to obtain permit coverage under the MPDES program. The increased number of storm water permit authorizations issued in FY 03 may reflect the implementation of these new regulations. However, since this in a new program, the estimated compliance is relatively low at this time. The department has initiated a major education program to inform the regulated community, including mass mailings, distribution of brochures and other education efforts.

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

CAFO - The number of CAFO permit authorizations issued in the three-year period has increased approximately 10 percent per year. The existing CAFO regulations have been in effect in Montana since 1974 however the number of permitted operations remains relatively low. Where data is available, it is estimated that less than 10 percent of the regulated community is in compliance with the permit requirements.

GWPCS – The Montana GWPCS was established in 1982 and includes both a ground water quality standards and a permit program. The GWPCS permit program regulates facilities that discharge wastewater, or have the potential to contaminate state ground water through the concentration and surface storage of pollutants. The percentage of the regulated community subject to the GWPCS program is difficult to assess but is estimated to be less than 10 percent. This is due to several factors. First, there are currently 18 categories of activities, which are exempt from the permit requirement. Eleven of these exemptions were established by the legislature and the remaining seven are adopted by the Board of Environmental Review in rule. The purpose of these exemptions is to minimize duplicative permitting among other state programs that regulate certain categories of activities, however, it does create confusion in the regulated community about the need to obtain discharge permits.

Second, in 1998, the Board of Environmental Review modified the ground water regulations and deleted the exemption for facilities discharging under the federal Underground Injection Control (UIC) System. The UIC program requires

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

Finally, the current ground water program operates with about 1.25 FTE or about one-fourth of the estimated staff to operate a ground water program. This situation was compounded when the ground water rules were changed to require public facilities discharging more than 5,000 gallons per day to obtain a permit. The low staffing levels make it virtually impossible to track compliance, conduct inspections, and issue and renew discharge permits in a timely manner.

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

308 – A 308 Authorization is required for activities such as emergency remedial activities in state waters and for the application of pesticide used to control nuisance aquatic organisms or to eliminate nonnative or undesirable species. The number of authorizations has increased over the years as the awareness of this program increases. The regulated community includes owners of both public and private irrigation ditches, mosquito control districts and fish management agencies. With the exception of fisheries management projects, which have a high rate of compliance with Section 308, it is difficult to assess the compliance of the regulated community.

Compliance Assistance and Education

The Water Quality Discharge Permit Section staff interacts daily with members of the regulated community and public by initiating and receiving telephone calls, writing letters, and scheduling and attending meetings. Technical assistance commonly includes answering questions concerning permitting procedures and what conditions a permit might stipulate. Also common are inquiries from already permitted dischargers concerning details of their permit conditions, and advice on how to meet those conditions. Also, all permit applications, technical

guidance, environment assessment and draft permits and regulations are posted on the department's website.

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

Complaints and Noncompliances
The primary issues identified in noncompliance events are as follows:

- Failure to pay annual permit fees within 90 days of receiving an invoice.
- Exceedance of effluent limits as specified in the permit, or a whole effluent toxicity test.
- Failure to conduct monitoring.
- Failure to operate and maintain treatment systems or best management systems in proper condition, especially for storm water discharges.
- Failure to comply with record keeping and reporting requirements in the permit.
- Failure to comply with sewage sludge and pretreatment requirements.

The department received 1,388 complaints related to potential water quality concerns. Upon receipt, the complaints were coded into one of three basic categories: authorized discharges of pollutants (122); unauthorized discharges of pollutants (988); and the placement of a waste where it may pollute state waters (278).

The department received 63 complaints about discharges to surface water from potential CAFOs or feedlots. Thirty-one of the complaints received actually met the permitting criteria to be a CAFO and were referred to the Permitting and Compliance Division's Water Protection Bureau for resolution. Feedlots not large enough to be CAFOs are considered Animal Feeding Operations (AFO). The 32 AFO complaints managed were commonly due to animals confined in a small corral with open access to a creek. Other types of MPDES Permits most often complained about include storm water discharges from construction sites and subdivisions, and construction dewatering activities. Fifty-five storm water complaints were received. Construction within the high water mark of a perennial stream requires department authorization to temporarily exceed WQB-7 turbidity standards. This is known as "318" authorization and there were 31 associated complaints during the report period. The department received 5 complaints related to discharges permitted under the Ground Water Discharge Pollution Control System during the reporting period. GWPCS complaints are typically about facilities that have sewage lagoons or similar structures and have a potential to discharge to groundwater.

Unauthorized discharges are associated with transportation related fuel spills and releases from stationary fuel storage tanks and pipelines. Releases from tanks

are examined under the Montana Underground Storage Act Section and will not be discussed here. There were 35 pipeline releases called in during this reporting period. The program received 667 spill reports during the reporting period. Ninety-two of these impacted ground or surface water. When surface water impacts are documented, ENFD ensures that state waters were promptly cleaned up to reduce long-term impacts, and clean up efforts are verified through laboratory analysis. The department works closely with both state and federal agencies that have jurisdiction over the oil and gas industry, and tribal lands, to ensure spill & release remedial actions are conducted according to the protocols established by the regulating authority. The department receives spill and release reports via the: 1) 24-hour Duty Officer (431-0014); 2) the Enforcement Division (444-0379); and, 3) the Remediation Division Petroleum Release Section Leak Officer (444-1420).

The remaining 20% of water-related investigations are generated by citizen allegations that someone or something has placed material in a location that may threaten water quality. Of the 278 WQA complaints, 117 were resolved voluntarily by the responsible party with compliance and technical assistance from the department; 35 were referred to an outside agency; lack of pertinent information prevented the investigation of 36 complaints; 63 were closed because no violation could be documented; and 3 proceeded to an enforcement action. Twenty-four are currently under active investigation by the department. The majority of WQA complaints receive a field inspection to validate the allegation. All documented violations receive written notification with appropriate recommendations and reasonable time lines to complete corrective action.

Program Response to Complaints and Noncompliances

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

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

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

Formal enforcement
When a violation of the Water Quality Act is documented, the Enforcement Division will send a Violation Letter informing the responsible party of the violation and, when warranted, initiate a formal enforcement action. Of the 92 incident reports during the reporting period, one resulted in a formal enforcement action under the Water Quality Act. When a threat to groundwater is imminent or impacts to groundwater are documented, ENFD refers the incident to the Remediation Division's Groundwater Remediation Program (GRP) for appropriate follow-up action(s). GRP typically sends a Violation Letter and requires submittal of a work plan to address extent of environmental impacts.

Not all investigations can determine the amount of pollutant released or environmental impact. However, based upon the volumes that were reported, an estimated 1,088,503 gallons of petroleum hydrocarbons, production water, sewage and other pollutants were released to soil and water during the reporting period. Regarding number of spills: crude oil accounted for ~7%; production water was an ~6%; refined petroleum hydrocarbons (gas diesel, oils) was 51%; the remaining 36% was a combination of sewage, sediment, paint, and others. The department is working to be able to more accurately document volume and type of pollutants released to the environment for future reports.

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

The number of storm water, CAFO ground water permits and 308 authorizations has increased in the last three areas; while MPDES permits remain relatively stable.

The number of violation letters sent and number of inspections conducted declined in fiscal year 00 and 01 and have returned to more normal levels in the last two years. This was due to large staff turnover during this period and the recruiting and training of new staff.

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

Brief Description of Statute and Program
The Subdivision Review Section is responsible for the technical review and processing of 1,200 to 1,600 subdivision applications (approximately 4,000 to 6,000 new lots, less than 20 acres in size) each year for adequacy of water supply, wastewater treatment and disposal, solid waste disposal, and storm water control systems.

Description of Regulated Community
The regulated community includes all subdivisions approved by the department that hold a certificate of subdivision approval. Current electronic records indicate that, since 1983, over 21,000 subdivisions were approved in Montana. The number of individual lots included within a subdivision application can range from one to several hundred.

The annual number of subdivisions reviewed and approved over the past three years has remained relatively constant with 1,161 approved in FY01, 1,129 approved in FY02 and 1,191 approved in FY03 (approximately 4,500 new lots each year). This is slightly down somewhat from previous years. The section also made water quality nondegradation determinations for approximately 7,400 individual and community wastewater treatment systems in FY01 through FY03 to ensure compliance with the Water Quality Act.

Compliance Assistance and Education
The program provides technical assistance and training on the requirements of the laws and regulations to county health departments, county commissioners, and to developers and their consultants. Most technical assistance is provided by phone or in the office, and staff routinely interacts with applicants on a daily basis.

Over the past three years, the program has increased efforts to provide more formal educational training regarding rule interpretations and technical analyses to county sanitarians and consultants. Program staff has provided 5 or 6 off-site training sessions per year since 2001. Staff also will occasionally conduct field investigations of proposed subdivisions, however, personal contact by phone and in office meetings is the most effective means to provide compliance assistance.

In 2002 and 2003, several key administrative rules were modified, through the efforts of a task force that has met monthly for 5 years, to provide greater consistency and to streamline the application process, thereby promoting greater compliance Three technical publications (DEQ circulars) to facilitate compliance also were created/revised during this period.

Complaints and Noncompliances
The most common noncompliance issue involving the Sanitation in Subdivisions Act arises when lots within a subdivision do not meet the conditions of the certificate of subdivision approval. This type of noncompliance occurs when facilities are constructed that are either substandard or different than what was originally approved. The most serious type of noncompliance occurs when a non-approved wastewater treatment/disposal system is constructed. In this situation the original nondegradation analysis may no longer be valid, water quality standards may be exceeded, and public health may be threatened.

The Subdivision Review Section has no means to determine the number of subdivisions that are presently out of compliance with the Sanitation in Subdivisions Act since the non-complying activity is generally conducted long after the original certificate of subdivision approval is issued. In some instances, potential noncompliance situations have been prevented by the department while conducting inspections during construction activities. More commonly, noncompliance situations are identified to the department through complaints by neighbors and concerned citizens, and by county sanitarians who observe non-compliant facilities during inspections for septic system installations.

From FY01 through FY03, there were 44 complaints of potential violations of the Sanitation in Subdivisions Act and associated rules. These were mostly filed by citizens concerned about well water quality and quantity as well as the adequacy and location of their neighbor's wastewater treatment system. Some complaints are filed by the department in response to notifications by county health departments. There has been no clear trend as to the number of complaints received over the past several years. There were 11 complaints received in 2001, 20 complaints in 2002, and 13 complaints in 2003. Not all complaints were determined to be actual violations of the Sanitation in Subdivisions Act that need formal enforcement action by the department.

Program Response to Complaints and Noncompliances
The majority of the complaints, once validated, are referred to the Subdivisions Program. They are resolved by the responsible party submitting a revised subdivision proposal to the department or conducting necessary corrective actions to bring the subdivision back into compliance with the original approval.

Formal enforcement
During the reporting period, the Enforcement Division managed a total of 10 enforcement cases. All of the cases were referred for enforcement during the reporting period. Nine of the 10 cases were administrative and 1 was judicial. Four cases have been closed; four are still active under an administrative order or a judicial judgment; one case is being litigated in district court; and one case was withdrawn.

The department settled three cases during the reporting period: two administrative cases with total penalties of $6,000 and one judicial case with a settlement penalty of $49,625. The department accepted a cash penalty payment of $12,375 and a SEP valued at $74,250 to offset $37,250 of the judicial settlement penalty. To date, the department has collected the $18,375 that was owed for penalties.

Trends/Benefits to Environment

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

The most common violation for which an enforcement action was initiated under the Act was the failure to follow the conditions of the Subdivision Certification Approval. The one judicial case involved the unlawful construction of at least 16 condominium units and the foundation for another building at Big Sky in violation of the Certificate of Subdivision Approval. The ongoing SEP in this case involves monitoring of surface water quality in the Big Sky area.

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

Description of Statute and Program
The Hard Rock Program of the Environmental Management Bureau administers the Montana Metal Mine Reclamation Act, the Montana Environmental Policy Act, and administrative rules on hard rock mining. The functions of the program are: (1) regulation of hard rock mining and reclamation activities; (2) reclamation of bankrupt or recently abandoned mining sites with forfeited reclamation bonds; (3) implementation of environmental analysis provisions of MEPA and the hard rock mining and reclamation statutes; and (4) administration of the Small Miner Exclusion and Exploration programs.

Description of Regulated Community
Currently the program administers 70 permits covering 62 mines. There are four active metal mines and a fifth is returning to production after a three-year shutdown. There are also four major limestone quarries, and three talc mines, along with several other operations that produce building stone, riprap, and aggregate. The other properties are inactive or in reclamation, with five being reclaimed at the direction of the program. There are 124 current exploration licenses and 530 Small Miner Exclusions.

In mid-2003, the program administers 724 permits, exploration licenses, and Small Miner Exclusions. Since staff do not visit every site each year, particularly the Small Miner and exploration sites, it is not possible to estimate a specific compliance percentage. Based on past experience, though, it is reasonable to say that at any given time, the great majority of the regulated community universe, in excess of 95%, is believed to be in compliance.

Compliance Assistance and Education
Compliance assistance is provided through a combination of pre-application plans of study, application review, MEPA coordination, and post-permit issuance inspection and review.

Identification and analysis of baseline data for the potentially affected environment is the first step in preparing an application for an Operating Permit. A plan of study to produce the baseline report is not required by law but provides an opportunity for the program to work with the mining company to “do it right the first time.” During the permit application review period staff work with applicants to produce a mine plan that should comply with mining, air and water laws. This effort includes coordination with other state and federal agencies to assist in identifying the diverse resource areas that may be affected.

Compliance assistance continues after a permit is issued. Program staff perform from one to four regularly scheduled inspections of every permit area each year to ensure that the provisions in the permit are adhered to. Lead staff, hydrologists, soil specialists and engineers become familiar with projects and

assist permittees in recognizing potential violations before a noncompliance occurs.

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

Complaints and Noncompliances

During the reporting period, the department received 15 complaints alleging 16 potential violations at hard-rock mining and mineral exploration areas. The 16 potential violations may be classified as follows: 5 regarding accidental releases of mine processing solutions or vehicle fluids; 3 involving water quality; 3 regarding waste disposal; 3 about permit compliance; and 2 alleging lack of a permit.

Program Response to Complaints and Noncompliances

The Enforcement Division refers all metal mining complaints to the program for resolution. Minor violations are often resolved with phone calls or visits that bring the operator back into compliance. Letters, such as Warning or Violation Letters, may also be used to obtain compliance. Some complaints, especially those involving large releases of mine processing fluids, may generate a formal enforcement action.

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

Formal enforcement

During the reporting period, the Enforcement Division managed a total of 13 enforcement cases; eight were ongoing from the prior year and five were new cases. Ten of the cases were administrative and three were judicial. Seven of the 13 cases have been closed; four are still active and are either under an administrative order or a district court order and two are being litigated in district court. The department settled eight cases during the reporting period for a total of $58,248. The department has collected $21,073 of the penalties. If the $42,500 penalty that was awarded as a sanction against Stansbury Holdings is excluded, the average settlement penalty was $2,625.

The most common violations for which enforcement actions were initiated were for the failure to properly reclaim, failure to provide adequate bond and mining without a permit. Seven of the 13 enforcement actions were taken against persons or firms holding either a Small Miner Exclusion Statement or Exploration License and the remaining six were against firms that have an operating permit.

Benefits to Environment/Trends

The regulated community has shrunk significantly for several years, due to a combination of economic and sociopolitical factors. High prices for gold and other metals in the 80's and early 90's sparked an exploration boom in Montana and most other western states, leading to the development of several new mines in Montana. After holding relatively steady for several years, gold prices declined from $400/oz in 1996 to $260/oz in 2001; exploration for gold and other metals dropped off sharply, not just in Montana, but everywhere in the US except Nevada. More exploration licenses have been placed inactive in Montana than new ones issued in every year since 1994. Consolidation of major mining companies and emphasis on foreign exploration have led to closure of many exploration programs across the country during this same period.

Montana voters passed I-137 in 1998 that banned the use of cyanide to process gold or silver ore mined from an open pit. Since the technology applicable to the types of ore bodies most likely to be found by further exploration in Montana has been banned, mining companies see little incentive to renew exploration in the state. There are no pending applications for new metal mine permits, and no significant increase in the size of the regulated community should be expected anytime soon. The one area of increased activity over the last three years does not involve metals: a prolonged boom in home construction has led to increased demand for landscape rock and building stone from small-scale excavations.

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

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

Description of Statute and Program
The Major Facility Siting Program includes certification that energy facilities such as large transmission lines and pipelines are needed; and that their location, construction, and operation minimize impacts. The program also has responsibility as the lead state agency for hydroelectric dams greater than 50 mega watts (MW) being licensed or relicensed by the Federal Energy Regulatory Commission (FERC).

Description of Regulated Community
The regulated community consists of operators of large energy facilities covered by MFSA. Twenty-nine facilities are covered under MFSA. All but three are believed to be operating in compliance with certificates.

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

The program reviews results of monitoring reports and PPL Montana's proposed recovery measures for leaks and spills from the "closed loop" ash disposal system for PPL Montana's Colstrip Units 3 and 4, and suggests follow-up investigations, proposes alternative cleanup and prevention measures as necessary, and works cooperatively to identify underlying causes and alternative solutions to seepage and leaks. More recently, staff worked with PPLM to implement a paste system at one of the ash disposal ponds in an effort to reduce leakage of contaminated water from the pond and remediate a failed dam. Additional investigations are underway to identify the maximum extent of seepage from process and ash disposal ponds so that the major portion of leakage can be recovered and water quality standards attained.

The program monitors the cleanup, reclamation and revegetation for Express Pipeline project to see that remaining areas disturbed during construction are adequately reclaimed. Staff is also working with the Western Area Power Administration and coordinating permitting and MEPA compliance with other state agencies.

Complaints and Noncompliances
Occurrences of non-compliance are found through on-site inspections, review of required monitoring reports, response to spills reported on the spill hotline, or through citizen reports. There are 3 facilities currently not in compliance.

Colstrip Units 3& 4: The certificate requires that the facilities be operated as a closed loop system so that there is no leakage from the wet process ash disposal

system. Groundwater monitoring or spills reported to the program indicate where facilities are not operated as a closed loop system. Groundwater is being adversely affected by the release of process water with, among other things, elevated total dissolved solids and specific electrical conductivity, boron, selenium, and sulfate. The certificate requires a system of monitoring wells.

During the reporting period, the department received 9 complaints and/or spill notifications about PPL Montana's Colstrip Power Plant. Prohibited releases from the system, which may violate water quality standards, are usually discovered through PPL self-reports or complaints from nearby residents.

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

Express Pipeline: Express Pipeline has not achieved complete compliance with revegetation standards that require 90% ground cover of perennial non-weedy species within five growing seasons after completion of construction.

Program Response to Noncompliances
Complaints are referred to the program. Violations may be resolved with phone calls or visits targeted at improving pipeline system integrity or reclamation. Staff is also working with the Western Area Power Administration and coordinating permitting and MEPA compliance with other state agencies.

Formal Enforcement
No formal enforcement actions were initiated under this statute during the reporting period.

Trend/Benefits to Environment
When facilities are not operating in compliance with the certificate or mitigating measures specified in a certificate are not adequately addressing the problem, the program must wait for the applicant to propose a change in operation or design before the underlying cause can be addressed. Likewise, unforeseen circumstances arising over the life of a project (for example, a dam failure at Colstrip) must be addressed by applicant initiative rather than the program making a simple change to certificate conditions. In certain cases, it would be more expeditious for the program, in conjunction with the applicant and affected public, to propose a modification to a certificate condition to achieve a timely solution.

Montana Underground Storage Tank Act, 75-11-501, MCA

Leak Prevention Program

Description of Statute and Program

The Environmental Services Section (ESS) of Technical Services Bureau operates the state's leak prevention program for underground storage tanks. The program's goal is the prevention and early detection of leaks from underground storage tanks (UST) in order to prevent or minimize soil and groundwater contamination. The leak prevention program has two components: ensuring proper operation and maintenance of tanks through its operating permit program; and ensuring proper installation and modification of tanks through its installation permitting program.

Description of Regulated Community

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

As of June 30, 2003, the department regulated 850 owners of 1,515 UST facilities which house 4,198 tank systems. On July 1, 2000, the department regulated 1,556 facilities. The decline of 51 facilities in three years can largely be attributed to the closure of UST facilities that did not meet the 1998 upgrade requirements. Approximately 118 of the 1,515 UST facilities are not currently operating and are for the most part under some form of enforcement order or in enforcement development.

Compliance Assistance and Education

In response to changes made to the law in 1999, the program undertook extensive outreach efforts. The program sent nine direct mailings to facilities, sent six newsletters and conducted comprehensive telephone outreach twice. Each non-compliant facility was sent a compliance plan outlining its deficiencies and explaining what corrective action was required. All compliant facilities received Operating Permits and Operating Tags.

Additional assistance was provided to UST owners through presentations at conferences and meetings of the Petroleum Tank Release Compensation Board. The Bureau also continues to distribute owner/operator manuals and information brochures to all tank owners or operators as requested.

Complaints and Noncompliances

Violations are discovered primarily through the compliance inspection process, but may also be identified during upgrade activities, through complaints and as a result of petroleum release investigation.

The first-round of compliance inspections resulted in the following:

- 1,397 inspections identified 2,456 violations at 892 facilities (64%) that would preclude the issuance of an Operating Permit.

- 20 facilities were referred to enforcement for failure to get a compliance inspection before January 1, 2002.
- 246 facilities had violations that did not preclude the issuance of an Operating Permit.
- 95% of all inspected facilities were in operational compliance by April 1, 2003.
- 3% (40 inspected facilities) were referred to enforcement for failure to correct violations in a timely fashion.
- 2% (26 inspected facilities) were in temporary closure status.

The program expects that compliance inspections will continue to identify significant numbers of violations, but anticipate that most owners and operators will be able to correct them before their current operating permits expire. The administrative rules require owners to obtain an inspection at least 90 days before their operating permit expires. The program is sending reminder letters to them six months in advance of the expiration date. If owners and operators wait to have the inspection performed too late, many will be unable to correct any violations before their permit expires.

Program Response to Complaints and Noncompliances

Compliance inspectors are expected to debrief the owner or manager at the end of a compliance inspection, identifying violations and corrective action. The department reviewed all inspection reports and sent letters to the UST owners explaining the violations and requiring correction within a specified period of time. Because this was the first round of inspections under the new operating permit scheme and the volume of violations first identified, owners and operators were given over a year to correct the violations discovered through their inspection. In coming years owners and operators will have to have their tanks inspected and any violations corrected before their operating permit expires.

Formal enforcement

During the reporting period, the Enforcement Division managed a total of 124 enforcement cases; 14 of the cases were ongoing from the prior year and 110 were new cases. One hundred fourteen of the 128 cases were administrative, 8 were judicial and 2 were referred to EPA for enforcement actions. 40 of the 124 cases are currently in development; 38 have been closed; 31 are still active under an administrative order; four cases are in litigation in district courts, 10 cases were withdrawn or vacated and two referred.

The department settled 56 enforcement cases during the reporting period for penalties in the amount of $152,943. The average administrative settlement penalty for the 53 cases that were settled was $517. The average civil settlement penalty for the three cases was $41,839. In addition, the department collected stipulated penalties in the amount of $3,500, primarily for violators' failures to comply with requirements set forth in Administrative Orders on Consent.

Trends/Benefits to Environment

The requirement that each UST obtain a passing inspection of its tanks and possess an operating permit has proven to be a major factor in driving up compliance rates for UST facilities in Montana. Although program resources and budget have been severely strained, the section's efforts have increased compliance from 46% at the time of initial inspection to over 95% on the March 31, 2003 deadline. In the end, only 20 facilities were sent to enforcement for a failure to obtain an inspection and only 40 of 1398 inspected facilities were sent to enforcement for the failure to correct violations identified in their inspection reports.

While the operating permit requirement is a very good compliance tool, the private sector inspection has eliminated much of the department's one-on–one contact with owners at their facilities. While inspectors can do the inspection role for the program, economic factors make it difficult for them to perform the education function so helpful to increasing compliance. If program staff could conduct additional one-on-one training there would be a significant increase in compliance at the initial inspection phase.

In 1998 all UST facilities had to acquire equipment that was technically better at preventing releases of fuels into the environment. That alone will not significantly reduce releases. Program efforts in the areas of compliance assistance and education have been helpful in improving Montana's rate of compliance. However, the fifth round of inspections showed that unless the program can work more directly with the operators of UST facilities it may be difficult or impossible to improve or maintain. While over 95% of UST were permitted after having been given over a year to correct violations, unless compliance at the time of initial inspection increases, improving overall operation and maintenance of the tanks will not occur

The initial compliance trend will not improve unless program staff is able to get out and across Montana to work directly with owners and operators. Given the geographic size of the state and the small number of staff, it is impossible to complete office tasks and perform the necessary compliance assistance and education efforts that would improve compliance.

The large number of enforcement actions taken under the Underground Storage Tank Act reflects the size of the regulated community. While a significant number of enforcement cases were brought during FY2001-2003, additional cases would have been brought had the program sufficient resources to develop them. If the program could hire an attorney for a two-year commitment it could clear out its backlog of cases.

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

Description of Statute and Program

The Environmental Services Section (ESS) operates the state's leak prevention program for underground storage tanks. The program's goal is the prevention and early detection of leaks from underground storage tanks in order to prevent or minimize soil and groundwater contamination. It achieves this by ensuring proper installation and modification of underground storage tanks (UST) through its installation permitting program, and training and licensing both inspectors and installers of UST systems.

Description of Regulated Community

The regulated community for the program includes underground storage tank systems, installers, removers and inspectors. The program licenses 107 UST installers, removers and corrosion protection experts and 38 compliance inspectors. The program issued 929 permits to install, modify, or close UST systems during FY 2001-2003.

Compliance Assistance and Education

The program trained and tested 18 UST compliance inspectors during the spring of 2001. It also conducted six UST contractor refresher courses and six inspector refresher courses in this time period. Each of these twelve sessions presented the opportunity for open dialogue between the program and its stakeholders.

Complaints and Noncompliances

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

Formal enforcement

The leak prevention program forwarded one case involving violations of this act during the reporting period. The case was prosecuted in District Court against a Helena tank installer who had misrepresented his activities at a number of underground storage tank facilities. The installer went in bankruptcy during the proceedings and the department agreed to settle the case for a $12,000 penalty that the violator is paying in installments.

Trends/Benefits to Environment

We anticipate a decrease in the number of permits issued because the recently completed first-round of compliance inspections should have identified most of the non-compliant equipment for which permits were subsequently issued.

Montana Underground Storage Tank Act, 75-11-501, MCA

Leaking Underground Storage Tanks

Description of Statute and Program

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

Size and Description of Regulated Community

The regulated community includes any person who owns or operates an underground or petroleum storage tank system, and who has been identified as having a suspected or confirmed release of a petroleum product or hazardous substance. The universe of owners and operators consists of federal, state and local governments, schools, hospitals, railroads, service stations, utilities, convenience stores, farms, and other industrial and commercial enterprises. A total of 4,064 releases have been confirmed since the inception of the program in 1988 through June 30, 2003. A total of 247 releases were confirmed since July 1, 2000.

Compliance Assistance and Education

By the time a release has been identified, some level of pollution/contamination to soil and/or groundwater has already occurred. The program focuses its efforts at ensuring compliance by identifying the environmental harm, and compelling corrective action to mitigate the risks to public health, safety and the environment.

If the tank owner is/was in compliance with the UST program laws and rules when the release was discovered, the Petroleum Tank Release Compensation Board (PTRCB) is authorized to reimburse a portion of the eligible leak investigation, remediation and third-party damage costs. The first $35,000 in costs is split with the tank owner. In general, the program has not needed to take strong enforcement measures to achieve compliance with the corrective action requirements, due to the availability of the PTRCF and the rules for access to the fund. State law requires UST sites to remain in compliance with cleanup requirements in order to remain eligible for funding from the PTRCF.

Compliance assistance efforts include site visits and meetings with responsible parties and their consultants, which may include visits and meetings with individuals from the PTRCB staff, local health officials and fire officials. The program's project managers keep the responsible parties informed as to their continuing obligations as they work through the investigation and cleanup processes. The program also provides cleanup technology articles to the division's MUST News publication that targets UST owners and operators, and

other parties interested in UST compliance. The program also participates in the Petroleum Tank Release Compensation Board's recurring meetings with environmental consultants to discuss cleanup and reimbursement procedures and policy.

Complaints and Noncompliances

Noncompliance with this program includes owners and operators ignoring or refusing to implement regulatory and statutory requirements to investigate and clean up petroleum releases in a timely manner

The department has issued a total of 41 notices of violation for corrective action provisions of the Underground Storage Tank Act between 1989 and 2003. Although second-request letters showed a marked increase in 2001, the department achieved compliance predominantly through informal enforcement tools, as only 2 to 7 notices of violation were issued annually. The peak of second-request letters sent to uncooperative owners and operators in 2000 and 2001 coincides with a surge of underground storage tanks that were removed in response to 1998 and 1999 upgrade and removal deadlines.

Enforcement has not been necessary at the majority of the 4,064 releases in Montana. Notices of violation issued by the program were necessary at only 1.0% of the known releases. This overall compliance is credited to the availability of PTRCF funding, ability for the state to take unilateral corrective actions through the LUST Trust funding, and the collaborative approach taken by program case managers.

Program Response to Non-compliances

The program uses a number of informal "enforcement tools" to encourage owners and operators to comply with corrective action requirements. These informal enforcement tools include warning letters, personal meetings, informal violation letters, and the option of using the LUST Trust designation in cases of recalcitrance.

In most instances, the program first utilizes an escalating enforcement strategy designed to use the least resource-intensive enforcement activities. Initial efforts focus on informal enforcement actions, such as warning letters, informal notices of violation, requests for additional information or corrective action plan submittal, staff field visits or follow-up telephone calls in order to achieve voluntary compliance. Cases are referred to the Enforcement Division for more resource-intensive actions, such as formal Notices of Violation and Order, judicial actions, etc. only when a lower level of enforcement action fails to achieve the desired response.

The program may issue up to three letters notifying responsible parties of incomplete work or non-compliance prior to initiating formal enforcement actions. When a deadline from a department request letter is missed, the program will

send a ‘second request’ letter with a new deadline. If that deadline is missed, the program will send a ‘third request’ letter with a final deadline. Continued non-compliance typically results in issuance of a notice of violation. Throughout these written exchanges, program project managers conduct informal conversations and assistance visits to try and ascertain why an owner or operator is not complying, and to try and facilitate compliance. During the reporting period, the program has issued 91 second-request letters, 36 third-request letters, and 13 NOVs.

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

LUST Trust Program

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

In the event that an UST owner/operator cannot afford cleanup or, refuses to conduct cleanup, the program may take unilateral state investigation and remediation action utilizing LUST Trust funds. These actions are funded 90% by a federal grant, which is matched by 10% in state monies. Costs incurred by the department for these actions are recoverable from solvent responsible parties. The agency utilizes these provisions to encourage responsible parties to conduct their own investigations and cleanups. Legal enforcement against insolvent or bankrupted responsible parties is not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs.

CECRA, 75-10-701, MCA

Description of Statute and Program
The Site Response Section utilizes the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and the Environmental Quality Protection Fund (EQPF) to investigate and cleanup hazardous substances at sites not addressed by federal Superfund. Historical waste disposal activities at these sites caused contamination of air, surface water, groundwater, sediments, and/or soils with hazardous or deleterious substances.

Description of Regulated Community
Under CECRA, sites are ranked based on potential risks to human health and the environment. Because staff and financial resources are not sufficient to address the 208 listed sites in Montana, CECRA activities focus primarily on maximum and high priority sites. The program has consent decrees or administrative orders at 12 CECRA sites, but current resources only allow SRS to address 10 sites and ensure compliance. Shortfalls in the Resource Indemnification Trust income have resulted in shortfalls in the amount of funding the EQPF receives, preventing the program from being fully staffed. There are currently 45 maximum and high priority sites on the CECRA Priority List; however, 20 of those sites are not being actively addressed by the program or another agency. Low and medium priority sites and sites not on the CECRA Priority List are often addressed through the Voluntary Cleanup and Redevelopment Act (VCRA).

Currently there are 208 listed CECRA sites; however, this list may not be comprehensive since new sites may be discovered at anytime. The portion of the population in compliance cannot be calculated for this law.

Compliance Assistance and Education
Montana law provides several opportunities for potentially liable parties (PLP'S) to clean up contaminated sites under CECRA without enforcement activities. VCRA allows for voluntary clean up of sites or portions of sites so the property can be redeveloped without the use of notices and orders. VCRA is appropriate where cleanups can be accomplished in less than 5 years. The Controlled Allocation and Liability Act provides for liability allocation where PLPs can complete cleanups and seek reimbursement of cleanup costs from the Orphan Share Fund for costs allocated to bankrupt or defunct persons. Other provisions of CECRA allow noticed PLPs to conduct proper and expeditious voluntary cleanup at their sites before the program issues orders.

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

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

The department received eight complaints regarding remedial activities at current or potential CECRA Sites. The Enforcement Division resolved two complaints as follow-up investigation determined the subject property or activity that resulted in the filing of the complaint was not yet deemed a CECRA site. The remaining six were referred to the Department's Remediation Division for appropriate follow-up action and/or investigation.

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

Formal enforcement
In fiscal year 2001, the department noticed potentially liable persons at one Controlled Allocation and Liability Act site, amended one administrative order on consent and settled one cost recovery case. In fiscal year 2002, the department amended one administrative unilateral order and collected stipulated penalties at one site. In fiscal year 2003, the department issued one unilateral administrative order, amended two administrative orders on consent, settled one cost recovery, and initiated one cost recovery action.

The PLP and the department settled on a stipulated penalty of $21,500 for the violation. As required by §75-10-704(4), MCA, the amount was deposited into EQPF.

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