Enforcement of the Water Quality and the Public Water Supply Acts

Water Quality Division
Department of Health and Environmental Sciences

This report contains recommendations for improvement to program operations. The areas addressed include:

- Overall enforcement policy and procedures needed.
- Management controls should be strengthened.
- Legislative clarification needed.

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PERFORMANCE AUDITS

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This is our performance audit of the Enforcement of the Water Quality and Public Water Supply Acts which are administered by the Department of Health and Environmental Sciences.

This report contains recommendations for improving the enforcement management process. Responses from the Department of Health and Environmental Sciences are contained at the end of the report.

We wish to express our appreciation to the department and the staff of the Water Quality Division for their cooperation and assistance.

Respectfully submitted,

Scott A. Seacat  
Legislative Auditor
Office of the Legislative Auditor
Performance Audit

Enforcement of the Water Quality and the Public Water Supply Act

Water Quality Division
Department of Health and Environmental Sciences

Members of the audit staff involved in this audit were Angie Grove, Susan Jensen, Jim Nelson, and Kris Wilkinson. Additional information on the audit can be obtained by contacting the Office of the Legislative Auditor at (406) 444-3122.
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Introduction

A performance audit of the Water Quality Division (WQD) within the Department of Health and Environmental Sciences was requested by the Legislative Audit Committee. The WQD manages programs which implement and enforce state and federal laws relating to various water quality programs. Our performance audit work concentrated on the enforcement activities of the WQD.

How Often do Violations Occur?

The first step of our testing in each sampled program file was to determine if the file contained documentation of a potential violation with the Water Quality Act (WQA) or the Public Water Supply Act (PWSA). We found 86 percent of the program files tested included some type of documented violation. Based on our sampling, we estimate at least 2,273 of the 2,822 files within WQD include documentation of a violation with either the WQA or the PWSA.

What Types of Violations are Occurring?

The specific types of violations we noted in our file review covered a wide range of violation issues and different levels of severity. WQD does not have a formal method for establishing risk levels for the different types of violations; therefore, we separated the violations we documented into four different risk categories:

1) potential environmental damage,
2) possible public health concern,
3) a combination of environmental damage and public health concern, and
4) program regulation risk.

Overall, we found 42 percent of the files reviewed indicated a possible environmental risk and 31 percent indicated a potential risk to public health. Program regulatory violations were identified in 24 percent of the files we reviewed.
**Report Summary**

**Is the WQD Effectively Enforcing the Provisions of the WQA and the PWSA?**

Based on our findings, we believe the WQD could improve management controls to carry out the intent of the WQA or the PWSA and be more effective in enforcement. Although initial response appears to be timely, resolution of violations does not always occur within a reasonable amount of time or is not documented at all. The division has no method to track or to follow-up on their recommendations or actions with the regulated party. Based on our audit testing, we do not believe WQD is as effective as it could be in enforcing the provisions of the WQA and the PWSA.

**Enforcement Process Improvement**

Our audit objective was to determine if WQD is enforcing the provisions of the WQA and the PWSA. Basically, we found the division is not consistently enforcing the provisions of these statutes. We believe improvements need to be made to assure overall program compliance is achieved and to develop a strong enforcement and regulatory function.

Several steps need to be taken to improve the enforcement function:

- A formal enforcement policy should be developed to define program direction.
- Administrative rules for critical program areas should be put in place to help implement the enforcement policy.
- Procedures need to be established to ensure consistency between staff.
- Management controls should be strengthened by defining and communicating an effective supervisory and reporting structure, defining the authority of staff, appropriately delegating authority, and implementing a system to direct day-to-day staff activities.
- Management information systems should be developed to document and track critical activities and ensure data accuracy.

The management issues we identified affect enforcement processes and procedures within the division. As a result, we
believe improving these areas would strengthen enforcement activities of WQD.

WQD is responsible for enforcing the WQA on a statewide basis. The policy statement of the WQA requires a comprehensive program for the prevention, abatement, and control of water pollution. We do not believe the WQD is meeting this intent in their current regulation of hard rock mines. To address this concern, the division needs to develop a comprehensive policy for all staff to follow. We believe the WQD should take steps to ensure the WQA is consistently enforced at all hard rock mines and include procedures for on-going program regulation.

Section 75-5-605 (2)(c), MCA, defining prohibited activity under the WQA, states it is unlawful to discharge sewage, industrial wastes, or other wastes into any state waters without a current permit from the division. The division developed section 16.20.1012, ARMs, which outlines specific exclusions from water quality permit requirements. Included in this section of the ARMs are discharges or activities regulated under other programs including those for oil and gas field operations, agricultural irrigation facilities, mining operations subject to operating permits or exploration licenses, and projects reviewed under the provisions of the Major Facility Siting Act Title 75, Chapter 20, MCA.

We question whether the department has statutory authority to grant exclusions to the WQA. The Water Quality Act applies to all sources of possible pollution, and does not outline the authority to grant exclusions. The current rule granting exclusions from the Act appears beyond the authority of the Board of Health and Environmental Sciences or department. If exclusions are to be granted by the Board or department, the legislature should specifically address the issue and set forth the criteria under which exclusions may be granted. The department should seek legislative clarification on its authority to grant exclusions or eliminate the exclusions.
Overall Enforcement Provisions of the Two Acts

The enforcement language within the WQA and the PWSA clearly states that any violation with the statutes requires a civil penalty and a cleanup order. In addition the statutes provide for administrative orders or penalties. Did the legislature intend every single violation be corrected through a cleanup order and a civil penalty? For example, if a municipality did not send in their monthly monitoring data, should an administrative penalty or a civil penalty be enforced? Strict interpretation of the statutes may require this action.

We believe the legislature needs to address the enforcement provisions of these two Acts to clarify the enforcement language. The current statutes do not seem to allow the department the option of using less severe enforcement action to address lesser violations. The department should seek legislation granting it a wider range of enforcement actions needed to address the severity of the violation.

Voluntary Bond Requirements

Section 75-5-405, MCA, authorizes the "voluntary" filing of a performance bond or other surety for reclamation of land disturbed by a water quality permit holder. The intent of this law appears to be to ensure the state has sufficient funds to retain until the permit holder satisfactorily reclaims the site or to actually reclaim a disturbed site. The "voluntary" nature of this statute has not authorized the division to develop this as a permit requirement. We found there has never been a bond filed with WQD.

The department should seek statutory authority to require a performance bond, if necessary, to ensure compliance with the WQA, or eliminate the provision.

Economic Impact of Enforcing Environmental Regulation

The WQA was enacted by the Montana Legislature in 1955 to protect and improve the water quality and potability of water in the state. The PWSA was passed in 1907 to protect public health. These laws prescribe various regulatory and pollution prevention remedies to achieve these goals. Enforcement provisions within
the Acts emphasize protecting the environment and ensuring program compliance.

Currently, there are no statutory criteria or guidelines allowing consideration of economic factors in PWSA enforcement situations and only limited economic considerations in the WQA. Other statutory requirements and legislative policies indicate economic considerations are a part of the regulatory function. Section 90-1-101, MCA, relating to economic development programs, requires consistency and continuity in the adoption and application of environmental rules. We believe this is an area where the legislature could provide guidance and clarify legislative intent.

Inconsistencies and Redundancies within Statutes

Throughout the course of this audit, we noted several inconsistencies and redundancies within the WQA and the PWSA. There have been multiple amendments to the original provisions of the two Acts, as well as additional requirements added. This resulted in inconsistent requirements and repetitive language between the two Acts. Some of the inconsistencies we noted relate to rule-making authority, duplicative requirements, and multiple environmental protection accounts.

The Montana Environmental Policy Act requires consistency in environmental regulation. In addition, economic development statutes (section 90-1-101, MCA), state consistency in environmental rules is essential. We believe the current water quality regulations should be re-visited to ensure consistency and continuity.

The legislature established a mechanism for this type of review. Sections 75-1-301 through 324, MCA, outline the duties and role of the Environmental Quality Council (EQC) staff. We recommend the EQC review the current water quality statutes to ensure consistency and continuity and recommend any necessary changes.
Introduction

A performance audit of the Water Quality Division (WQD) within the Department of Health and Environmental Sciences was requested by the Legislative Audit Committee. The WQD manages programs which implement and enforce state and federal laws relating to various water quality programs. Our performance audit work concentrated on the enforcement activities of the WQD.

Audit Objectives

Our general audit objectives were to:

1. Determine if the division is enforcing provisions of the Water Quality Act (WQA) and the Public Water Supply Act (PWSA).

2. Evaluate the effectiveness of management controls over the enforcement process.

3. Determine if legislation is needed to help define the enforcement mission for the various water quality programs.

Audit Scope and Methodology

Our audit scope included documenting division activities which occurred after a violation of the Acts was identified by division staff. We did not examine division procedures for identifying violations.

To review enforcement activities on a division-wide basis, we examined a statistical sample of files from four division functions: Groundwater, Permits, Public Drinking Water, and Enforcement and Legal Support. We also looked at complaint files. Due to the consistency of our audit findings, we were able to complete our review using less files than originally intended.

The specific areas we reviewed included: complaint inspections, spill and clean-up investigations, violation monitoring and follow-up, and formal enforcement actions. We documented all enforcement activities occurring within the last ten years for each of the files sampled. We documented the type of violation, where the violation occurred, the type of action recommended...
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Introduction

by staff, and the type of action actually taken by the division. We examined the division methods used to resolve violations and assure compliance with water statutes. We documented the length of time WQD staff work with violators. Interviews were conducted with involved staff to clarify file documentation. Specific recommendations were discussed with program managers. Overall findings were discussed with department management.

During our planning work, we identified weaknesses in management controls over enforcement activities. Based on these findings, we examined the documentation of enforcement activities, how this information is tracked, and the reliability of division data. The processes for sharing information between programs and with other state agencies were also reviewed.

The management processes used to direct staff and organize operations were examined. Due to a lack of management information and limited management controls, it was not feasible to complete a comprehensive workload analysis to determine the adequacy of enforcement staffing levels. We did compile general workload data on staff involved in various aspects of the enforcement process. Recorded staff time in some workload categories was compiled.

We coordinated our audit testing with performance audit work conducted at the Hard Rock Bureau at the Department of State Lands. This included a review of water quality files relating to mines.

This audit was conducted in accordance with governmental auditing standards for performance audits.

Audit Scope Limitations

Government auditing standards require the disclosure of any constraints affecting the feasibility of meeting audit objectives. Our ability to meet the prescribed audit objectives was limited due to the constraints of the current management information systems used by the division. The division did not have any formal tracking system for critical activities throughout the
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Introduction

enforcement process. No comprehensive filing systems were in place. As a result, we were unable to determine if all supporting documentation was available. Incomplete management information and weak management controls limited the feasibility of examining the adequacy of enforcement staff levels within the division. These issues are discussed further in Chapter IV.

Compliance

Compliance with statutory enforcement requirements was examined. Audit work focused on those activities associated with Part 6 of the state's Water Quality Act (sections 75-5-601 through 641, MCA) and Part 1 of the Public Water Supply Act (sections 75-6-101 through 75-6-114, MCA). Specific areas of noncompliance are reported in Chapter IV of this report. We did not examine compliance with the federal Clean Water Act or Safe Drinking Water Act.

Issues for Further Study

During the course of this audit we identified several areas within the WQD to be considered for further study.

1. Permitting and Monitoring – Several concerns were noted with the permitting and monitoring functions in the WQD. Inspections are not conducted as a standard practice prior to issuing permits to identify existing conditions of the proposed permit sites. There are no division procedures for terminating permits, monitoring various permit types, or ensuring permit conditions are being met at all permit sites. We noted WQD inconsistencies when regulating the permit programs. For example: feedlots, which are statutorily required to obtain a water quality permit to discharge to state waters, do not submit monitoring data and are not routinely inspected by program staff. Other permittees are required to submit monitoring data on a regular basis and are monitored annually. Program compliance and consistency in permit administration are potential concerns.

2. WQD Approval of Subdivision Development Plans – High staff turnover in the Public Drinking Water Section in the past has resulted in contracting with consultants and other DHES employees to meet statutory time frames. Program oversight and consistency may be difficult to maintain due to the delegated role of county governments in program regulation. Differences on how to address various subdivision cases
occurred repeatedly. Further audit work could concentrate on the methods and procedures used to regulate and approve subdivision plans.

Report Organization

This report is organized in the order we address our audit objectives. First we outline general background information on Water Quality Division operations in Chapter II. Then Chapter III describes the testing we conducted to determine if the WQD is in compliance with enforcement statutes and other general findings of our review. We summarize areas of noncompliance in Chapter IV. Specific steps for strengthening the management system of the WQD are also included in Chapter IV. Hard rock mine issues are discussed in Chapter V. Areas requiring specific legislative consideration are outlined in Chapter VI.
Chapter II
Background

Introduction

The Water Quality Act and the Public Water Supply Act establish various state water quality programs. These statutes cover a broad area and provide a basis for regulatory oversight of state waters and protection of the public. This chapter outlines some of the basic requirements of these Acts and provides a brief description of the administrative structure used to carry out these statutory functions. Specific enforcement provisions in each law are highlighted.

Purpose of the Water Quality Act

The Montana Water Quality Act (WQA) was passed in 1955. The purpose of this Act, outlined in section 75-5-101, MCA, is to:

"(1) conserve water by protecting, maintaining and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses; (2) provide a comprehensive program for the prevention, abatement, and control of water pollution."

Statutory language in this Act outlines the designated administrative agencies, classifications and standards for state waters, permitting requirements, and various enforcement guidelines. This law is the basis for water quality and water pollution control programs in Montana. Unlawful acts are also defined in the Act.

Who is Regulated Under the Water Quality Act?

Broad regulatory requirements have been put in place to protect, maintain, and improve state waters. Any person, activity, organization, etc., affecting state waters is regulated by the WQA. No one is excluded. State waters are defined as "a body of water, irrigation system, or drainage system either surface or underground." Section 75-5-104, MCA, of the Water Quality Act states the law applies to "drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute other the state waters." Section 75-5-401, MCA, establishes guidelines for discharges into state...
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waters to ensure water quality standards are met. Operations such as sewage treatment plants, fish farms, feedlots, water districts, municipalities, construction companies, mines, gas and oil refineries and power plants are regulated under these statutory provisions.

Purpose of the Public Water Supply Act

The second major act affecting state waters and public health is the Public Water Supply Act (PWSA). This law, which was passed in 1907 by the legislature, was established to protect public health by prescribing general regulatory standards for public drinking water. The purpose of this statute, outlined in section 75-6-101, MCA, is to "protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses."

This Act sets general regulatory guidelines for all state waters which are directly or indirectly used by a person for a public water supply system, domestic uses, or as a source of ice. Prohibited acts include: discharging of sewage or waste that will cause pollution to a water source used for domestic use or to a public water supply system; constructing, altering, or extending a public water supply system before plans and specifications are approved; or, operating any public water supply or waste water system that violates established regulatory standards.

Who is Regulated Under the Public Water Supply Act?

A public water supply system is generally defined in section 75-6-102(12), MCA, as:

"a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year."

Any system meeting this definition is subject to the established regulations. Public water supplies for schools, municipalities, trailer courts, grocery stores, campgrounds, motels, restaurants, bars, resorts, highway rest areas, state parks, subdivisions, and
home owner associations are all required to comply with provisions of the Act. There are at least 1,900 regulated public water supply systems in Montana.

Program Enforcement for the Two Acts

Specific enforcement guidelines are outlined in the Water Quality Act and the Public Water Supply Act. Both statutes authorize various enforcement measures for ensuring compliance with water quality regulations. The statutes establish basic steps to ensure program compliance, and then additional measures to follow if a direct violation of the laws occurs. Both statutes prescribe procedures for on-going program monitoring, methods for attaining compliance, and steps to address violation of the statutory provisions.

Statutory enforcement methods outlined in the WQA include cleanup orders, compliance orders, civil actions, administrative penalties, administrative orders, and criminal penalties. Program compliance duties prescribed in the PWSA include investigation of alleged pollution of a water supply system, determination if water quality may endanger public health, assurance that program rules and standards are met, and general enforcement of all provisions of the Act. Formal enforcement procedures provided for in the PWSA include administrative orders, administrative penalties, civil penalties, and criminal penalties.

Other Applicable Statutes

There are other state laws which impact water users. The Sanitation in Subdivisions Act (section 76-4-101, MCA) sets out water quality guidelines to follow for subdivision development. The Montana Agricultural Chemical Ground Water Protection Act (section 80-15-101, MCA) prescribes requirements for pesticides in groundwater. Various wastewater treatment and financial provisions are outlined in the Montana Wastewater Treatment Revolving Fund Act and Water Treatment Plant Operator statutes. The Natural Streambed and Land Preservation Act outlines measures to protect and preserve natural streams, rivers, and lakes of Montana.
Several federal statutes provide for federal participation in, and financial support of, the state's programs to protect and manage the quality of water. Federal laws include the Safe Drinking Water Act and the Clean Water Act.

# Program Administration

The Board of Health and Environmental Sciences has general oversight authority for the WQA and the PWSA. Administrative responsibilities have been assigned to the Department of Health and Environmental Sciences (DHES). In addition to specific procedures outlined in the applicable Acts, the department is authorized to take appropriate enforcement action on its own initiative to "prevent, abate, and control pollution of state waters." To address these responsibilities, the oversight and management duties for both water Acts have been assigned to the Water Quality Division within the Department of Health and Environmental Sciences. The Water Quality Division (WQD) is responsible for implementing and enforcing state and federal water quality laws.

# Water Quality Division

Division staffing grew from 44 full-time equivalent employees (FTE) in fiscal year 1988-89 to 77 FTE in fiscal year 1993-94. This increase in staff was authorized by the legislature in response to increasing federal and state requirements and increasing demand for additional state program involvement. Currently, division staff are organized into seven different units:

- **Enforcement and Legal Support Section** - investigates violations and initiates formal enforcement actions;

- **Permits Section** - processes permit applications and monitors permitted facilities;

- **Groundwater Section** - implements a wellhead protection program and monitors permitted facilities impacting groundwater;

- **Municipal Wastewater Assistance Section** - provides financial and technical assistance to communities for building wastewater treatment facilities;
Public Water Supply Section - monitors approved public water supply and waste water systems, including subdivisions;

Ecosystems Management Section - compiles information on Montana's lakes, streams, and wetlands; administers programs for pollutants from diverse sources, and implements a statewide wetlands protection program; and,

Technical Studies and Support Section - provides support for developing standards and permit limits.

There are program satellite offices in Billings (4 FTE) and Polson (2 FTE). All other staff are based in Helena. The following figure outlines current division organization:

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**Figure 1**

*Water Quality Division Organization Chart (as of August 1994)*

[Diagram of organizational chart]

Source: Compiled by the Office of the Legislative Auditor from DHES records.

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**Enforcement Administration**

The Enforcement and Legal Support Section is responsible for a wide range of duties and general enforcement support for all other sections. There are currently seven full-time employees in this section. The program manager in this section is responsible for coordinating all enforcement activities related to the WQA and the PWSA. Two water quality specialists conduct and coordinate investigations and remediation of all water quality and public water supply complaints. One water quality specialist is responsible for various compliance and enforcement duties related to public water supplies and another specialist provides
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various hydrogeological services for the section. Two attorneys provide legal support for related water issues. There is currently one vacant position in this section.

Current Department Re-Organization

The department is currently in the process of re-organizing various environmental regulatory and support functions. The department divided one division into four separate divisions, changing the Water Quality Bureau to a separate division. Although this re-organization was effective July 1, 1994, the department has not finalized all organizational changes and is still evaluating alternatives that could impact the WQD structure. No division administrator has been hired as of August 1994. An "acting" administrator was appointed in April 1994. The legal support staff currently within the WQD may be moved to the centralized Chief Legal Counsel office. Sections within the current division may also be consolidated or re-defined. Therefore, the organizational structure described in this report may be changing.

Other Involved Groups

The division receives advisory support from several councils and also provides staff support for various committees. The Water Pollution Control Advisory Council, the Legislative Water Policy Committee, and the Water and Wastewater Operator Certification Advisory Council have been statutorily established to provide input on specific water policy issues. WQD staff support is provided to the Wetlands Conservation Council, the Clark Fork Rehabilitation Council, the Drought Advisory Council, the Flathead Basin Commission, Board of Water Well contractors, and the State Groundwater Assessment Steering Committee. In addition, WQD staff work with DHES Food and Consumer Safety Bureau staff on water quality issues for campgrounds and schools.
The Water Quality Division receives funding from several different sources. Funding sources include federal funds, resource indemnity tax (RIT) interest, and program fees. The following figure outlines funding sources for fiscal year 1993-94.

Funding for the Enforcement and Legal Support Section is provided by combining resources from federal grants, program fees, and state funds. The program budget was approximately $380,600 for fiscal year 1993-94.

There are also various division accounts that can be used for enforcement related activities. The WQA has several designated accounts. The Water Quality Rehabilitation Account, outlined in
section 75-5-507, MCA, is a state special revenue fund established for depositing any fines and civil penalties collected for violations of the WQA. The division may spend funds from this account for specific purposes such as responding to emergency water pollution events, or rehabilitating state waters affected by past pollution. A maximum of $20,000 in fines and civil penalties may be deposited in this account in any fiscal year. Fines and civil penalties in excess of this amount must be deposited in the state General Fund. The Water Quality Rehabilitation Account may only have a balance of $100,000. Any excess amount must be deposited in the General Fund. As of July 1, 1994, this account had a balance of $46,253. The total amount deposited into this account during fiscal year 1993-94 was $18,000. This account is discussed further on page 54 of this report.

Administrative penalties collected by the division for violations of the WQA must be deposited in the state General Fund.

All fees collected for issuing water quality permits are deposited in another state special revenue account. This account may only be used to pay the division’s cost in implementing permit program functions. The balance of this account was $305,266 as of July 1, 1994. Deposits into this account totalled $544,640 for fiscal year 1993-94.

The Public Drinking Water Special Revenue account was established to deposit any fees and administrative and civil penalties collected through enforcement actions against public water supply programs. Within this fund there is an operator training account and a public drinking water program account. Funds from these accounts may be used for division expenses for implementing these programs, including costs relating to enforcing the PWSA. The balance of this account was $590,244 as of July 1, 1994. Deposits into this account totalled $547,158 for fiscal year 1993-94.
The following table outlines division expenditures for fiscal years 1992-93 and 1993-94.

<table>
<thead>
<tr>
<th>Source: SBAS Records</th>
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</table>

### Table 1

**Actual Division Expenditures**

**FY 1992-93 and 1993-94**

<table>
<thead>
<tr>
<th>Item</th>
<th>1992-93 Actual</th>
<th>1993-94 Actual</th>
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</thead>
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<tr>
<td>Personal Services</td>
<td>$2,378,584</td>
<td>$2,558,693</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>$1,629,084</td>
<td>$2,446,112</td>
</tr>
<tr>
<td>Equipment</td>
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<td>$63,052</td>
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<tr>
<td>Grants</td>
<td>$150,765</td>
<td>$335,262</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$4,218,866</strong></td>
<td><strong>$5,403,319</strong></td>
</tr>
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</table>
Chapter III
The Current Enforcement Process

Introduction

To evaluate enforcement activities of the WQD, we noted all violations identified by division staff in our sample. Violations were defined as any identified noncompliance with the WQA, PWSA, or applicable Administrative Rules of Montana (ARMs). We conducted file reviews, and we interviewed staff from each applicable section and any other involved department staff. Based on this testing, we formed recommendations to improve WQD's overall enforcement of the WQA and the PWSA. This chapter outlines the testing we performed and summarizes our findings. Specific areas of WQD noncompliance and subsequent recommendations with the Acts are discussed in the next chapter.

What Types of Files Did We Review?

We reviewed the activities and program files of five functions within the division involved with enforcement duties: Groundwater, Complaints, Permits, Public Drinking Water, and Enforcement and Legal Support. The program files may contain field inspection reports, water sampling data, permits, activity reports, monitoring data, correspondence, and legal documents. We reviewed a total of 169 files. Files were randomly selected and reviewed so projections could be made to the entire population. Based on this methodology, we tested a wide range of the regulated community. The following table illustrates the type and number of files from each function included in our sample.
Chapter III
The Current Enforcement Process

Table 2

<table>
<thead>
<tr>
<th>Types of Files Reviewed</th>
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<tbody>
<tr>
<td>Public Drinking</td>
</tr>
<tr>
<td>Water Files(50)*</td>
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<tr>
<td>Schools</td>
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<tr>
<td>Reot Areas</td>
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<tr>
<td>Subdivisions</td>
</tr>
<tr>
<td>Campgrounds</td>
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<tr>
<td>Businesses</td>
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</table>

* - total number of files reviewed
Source: Compiled by Office of the Legislative Auditor

What is a Violation?

During our file review, we found WQD staff documented violations when noncompliance with the WQA, the PWSA, or applicable ARMs was noted. The documented violations had a wide range of severity. Examples of violations included:

-- Failure to submit required monitoring reports and/or water samples at the appropriate intervals. Without proper monitoring data, pollution may not be detected as early as possible.

-- Water sample(s) exceed allowable standards.

-- Failure to submit or not comply with an established compliance plan/schedule. For instance, not utilizing storm water management practices as outlined in a compliance plan could result in erosion of sediment into a stream.

-- Operating with an expired permit or without a permit could result in a non-regulated discharge to a stream or groundwater. We found examples of dairy wastes dumped into an area that impacted nearby waters.

-- Construction of a sewer system or public water supply without review and approval by the department.
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-- Improper maintenance of a public water/sewer system. Files included cases where systems failed and inadvertently discharged to state rivers.

-- Operating a public water/sewer system without a certified operator.

-- Not posting/informing the public of a drinking water violation.

-- Spill of a substance which may contaminate state waters. One example in the files described a spill of potatoes into a stream due to a highway traffic accident.

How are Violations Identified?

Based on our program file review, we found a violation can originate from many different areas. Violations of the WQA and the PWSA are identified by division staff through division monitoring, public complaints received either by mail or phone, or referrals from other agencies. We found some violations are called in by the violators themselves to seek guidance or to comply with permit conditions. We found 64 percent of the violations documented in WQD files were identified through WQD permit monitoring and 18 percent were identified through complaints received by the division. The remaining violations were identified through referrals.

How Often Do Violations Occur?

The first step of our testing in each sampled program file was to determine if the file contained documentation of a potential violation with the WQA or the PWSA. We found 86 percent of the program files tested included some type of documented violation. Based on our sampling, we estimate at least 2,273 of the 2,822 files within WQD include documentation of a violation with either the WQA or the PWSA.
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What Types of Violations are Occurring?

The specific types of violations we noted in our file review covered a wide range of violation issues and different levels of severity. WQD does not have a formal method for establishing risk levels for the different types of violations; therefore, we separated the violations we documented into four different risk categories:

1) potential environmental damage,
2) possible public health concern,
3) a combination of environmental damage and public health concern, and
4) program regulation risk.

These risk categories were developed based on the legislative policy statements of the two Acts and input from division staff. The environmental and public health risk categories are generally outlined in the policy statements of the two Acts. The program regulation risk is a category based on the enforcement language of the statutes and the need to ensure those regulated follow established program standards. For instance, the law states it is unlawful to violate any permit provisions (section 75-5-605, MCA). Therefore, a permit violation, such as not submitting a monitoring report, may not have a significant public health risk or cause direct damage to the environment, but to ensure on-going program compliance and consistency between all regulated parties, program compliance should be enforced. Also program compliance risks could escalate and create a potential environmental or public health risk.

Overall, we found 42 percent of the files reviewed indicated a possible environmental risk and 31 percent indicated a potential risk to public health. Program regulatory violations were identified in 24 percent of the files we reviewed. The following figure illustrates our estimate of the number of files containing violation documentation categorized by type of potential risk.
In general, we found the identified violations covered a broad range of compliance concerns and different levels of severity. Some cases appeared to have minimal consequences. For example, we noted a complaint investigation to determine the impact Oryctolagus cuniculus (rabbit) manure had on ground water in a neighbor’s backyard. Other noted violations were of significant concern for both the potential impact on the environment and public health. For example, documents indicated a discharge of mercury to state waters in a location that could potentially contaminate public drinking water wells in the area.

What Happens After a Violation is Identified?

Although the division does not have a defined enforcement process, we did identify some general procedures followed after a violation is identified. Violations are not all immediately sent to the Enforcement and Legal Support Section for enforcement action. There are basically two different levels of enforcement conducted by WQD staff: program compliance and formal
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The Current Enforcement Process

enforcement requirements which include compliance activities outlined in the laws.

<table>
<thead>
<tr>
<th>Program Compliance Duties</th>
</tr>
</thead>
</table>

Staff within each section are responsible for ensuring compliance with various statutory requirements of their applicable programs. Of the 137 files with violations, 101 of the files were addressed at this level. Program compliance duties include writing compliance letters, conducting meetings with involved parties, sampling water, reviewing monitoring data, and/or requesting a compliance plan. We found any one of these steps can be the first action taken by staff. In 54 percent of the cases reviewed, we found letters are the initial division response to a potential violation.

We found the division’s initial response to identified violations is generally conducted in a timely manner. The initial response occurs primarily at the program level and some type of division action is usually taken within the first month after a violation has been identified. Forty-four of the 101 program compliance files had an initial response the same day the violation was brought to the attention of WQD staff. The following figure illustrates the initial response time frames we documented for the 101 files addressed at the program compliance level.
How Do Program Staff Proceed After Initial Contact with Violators?

We found program staff are not taking formal action without first trying to informally obtain program compliance. Initially program staff usually recommend some form of corrective action, such as a request that a permit be obtained, a compliance plan be submitted, or activities cease. In over 90 percent of the cases reviewed in the Permits Section and the Public Drinking Water Section, staff first address the violation by asking for compliance by the violator.

Our file review documented variances between staff and between division sections on the procedures followed after the initial letter is sent. We found some staff work informally with violators for a long period of time while other staff establish time frames for corrective action. In some sections, staff send compliance letters over a period of years; in other sections staff
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refer cases for formal enforcement action after one inspection or one letter. These various procedures result in a wide range of time periods to get some type of corrective action taken to bring about resolution of the problem. The following figure illustrates the length of time Permit, Groundwater and Complaint staff work with program violators.

A majority of PWSA cases also contained multiple violations and program staff worked with violators for a long period of time. The following figure illustrates the time frames we documented for Public Water Supply Section staff when working to correct violations.
We were unable to document the time period for 16 cases reviewed due to limited file information.

The next step of the program compliance process can be to refer the violation for formal enforcement action. Cases may be referred when compliance is not achieved or the violator was not willing to work with program staff.

Formal enforcement duties for the various water quality programs have been assigned to the Enforcement and Legal Support Section within the division. Currently this section is responsible for investigating reported violations and initiating appropriate formal enforcement actions to remedy documented violations. The first step generally taken by staff to begin the formal enforcement process is to complete a violation report. Program staff normally summarize basic data on each violation, such as a
history and description of the violation, applicable statutes and administrative rules, and names and addresses of violators. Staff can recommend a specific type of enforcement action that could be initiated and additional corrective actions needed. Copies of supporting documentation may be provided. A completed violation report usually is submitted to legal staff, the division administrator, and then the director for review. Although this is not a formally adopted procedure for the division, 86 percent of the formal enforcement files we reviewed had a violation form included in file documentation. In some cases, we found legal enforcement action was pursued without any completed or approved violation form.

Formal enforcement action can involve the Board of Health and Environmental Sciences or the department issuing compliance or administrative orders to violators. If compliance is still not achieved or the violation is not addressed, then the department can pursue legal action.

How are Violations Resolved?

Final resolution of violations is achieved in several different ways. To determine the final resolution of cases, we tracked all documented activities conducted within each section to determine if compliance was achieved or if some other additional corrective action was pursued. We documented case resolution as compliance was achieved, a civil case was completed, compliance plans were submitted, or penalties were collected. The following figure illustrates the type of documented resolution we identified for the 137 violations we reviewed.
Overall, we found about 49 percent of the total cases we reviewed did not contain documentation indicating the case was resolved or action was taken by the WQD.

**How Long Do Division Staff Work to Resolve Violations?**

We found the enforcement process can take several years. The following figure illustrates the time frames we documented that program staff are working toward resolving or obtaining a complete resolution for documented violations.
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We documented several different factors affecting the timeliness to resolve violations. In some cases, we found additional documentation was needed to strengthen the WQD position. In one file, a worker strike at the regulated industry delayed the enforcement process. Another factor affecting timeliness is the lack of any division tracking systems to identify when staff follow-up is needed or information requested from the violator is due. (Management control issues are further discussed in Chapter IV.) Other factors which can extend time periods needed to resolve cases are legal procedures and management involvement. We found the director was involved in 67 percent and the division administrator involved in 81 percent of the formal enforcement cases. This involvement is required to obtain approval of the action taken and to notify management of any pending legal action.
What is enforcement? According to Webster’s Dictionary enforcement is defined as “to carry out effectively.” Based on our findings, we believe the WQD could improve management controls to effectively carry out the intent of the WQA and the PWSA. Although initial response appears to be timely, resolution of violations does not always occur within a reasonable amount of time or is not documented at all. The division has no formal method to track or to follow-up on its recommendations or actions with the regulated party. The following sections outlines our recommendations to improve the enforcement process.

The WQA, section 75-5-616, MCA, states “The department shall take such actions as are authorized or required under sections 75-5-612 through 75-5-615, to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted.” Based on our audit testing, we do not believe the division is consistently complying with this requirement. Overall, we found no documentation noting the division followed up on 49 percent of the violations documented. Staff said they are not sure in most cases if compliance has been achieved.

During our file review we found examples within the ten year period covered by our audit where the provisions of the statutes were not followed or used. The following are specific examples:

-- The division is not issuing "cleanup orders" to all persons identified dumping, spilling, or depositing materials that will potentially pollute state waters as required in section 75-5-601, MCA.

-- Enforcement actions are not being pursued on all prohibited activities outlined in section 75-5-605, MCA. We found documented violations, but enforcement activity had not been pursued in each case. Although we estimate 2,273 files have some type of violation documented, we counted 186 referred cases documented in formal enforcement files since 1980 for an average of 13 cases per year. Cases which were not referred for formal enforcement action included a
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discharge to a state river by a construction company on a highway construction project, municipalities not reporting their discharges from waste treatment plants, and industries discharging in streams not designated in their permit.

-- Administrative penalties described in section 75-5-611, MCA, are not being used.

-- Any person who violates the WQA "shall be subject to a civil penalty not to exceed $25,000 per violation." Each day constitutes a separate violation. We found the division does not have a system set up to calculate penalty amounts and staff indicated they are not clear when a penalty should be assessed or how to establish the penalty amount.

The PWSA, section 75-6-104(a), MCA, states "The department shall enforce and administer the provisions of this part." Overall we found 64 percent of the public water supply files reviewed had no documented action taken after the initial WQD response. This does not project a strong commitment to ensure compliance with water quality requirements. Specific noncompliance with this statute is evident in the following examples:

-- As with the WQA, we found WQD does not consistently take action for the prohibited activities outlined in the PWSA. We identified six subdivision developments which had not submitted construction plans prior to building or operating the planned water or sewer systems. One subdivision began construction in December 1990 and continued through January 1992. The division sent 17 letters and made phone calls to the violator, but we were unable to document any corrective action taken. We also reviewed documentation of municipalities discharging sewage to state waters without any enforcement action taken for these actions.

-- Section 75-6-109, MCA, requires the department conduct administrative enforcement duties to ensure program compliance. We found the WQD developed several activities to address program violations with the PWSA. Health advisories are issued to public water supplies when a level of violation occurred which requires public water users be put on notice. Boil orders are issued when the violation is at a level that could cause health risks to users. We identified public water supplies which had health advisories or boil orders issued but there was no documented evidence these division orders were
followed or the violation was corrected. One public water supply, a restaurant and motel, was issued a boil order in September 1989 which was lifted in November 1989. But due to repeated violations, another boil order was issued in November 1991. A WQD complaint investigator visited this facility in August 1993 and found the order had apparently never been posted. We found one other example where WQD staff verified a health advisory had not been posted for over a year.

-- Administrative penalties have also not been utilized to address some of the more straight forward program compliance issues. We found 21 cases with repeated minor violations for which administrative penalties may have addressed the compliance concern prior to the need for formal enforcement action.

-- According to section 75-6-114, MCA, a person who violates this law or rule issued under this law is subject to a civil penalty not to exceed $10,000. We found this law is not followed or consistently applied to all violators. The division does not have any criteria concerning when a civil penalty should be sought or when one should not be applied. In most cases where civil penalties were recommended or received by the division, evidence of noncompliance had been noted for multiple years.

Because there is no defined enforcement process to be followed, there can be substantial time delays or cases "slipping through the cracks." We documented these problems repeatedly during our file review. The following table is one example of a file we reviewed.
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Is the WQD Effectively Enforcing the Provisions of the WQA and the PWSA?

Table 3
Example of Repeated Violations with No Documentation of Division Action

<table>
<thead>
<tr>
<th>Year</th>
<th>Compliance Schedule Violation</th>
<th>Discharge Of Sewage</th>
<th>Report Violation</th>
<th>Standards Exceeded</th>
<th>Lagoon Leak</th>
<th>Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>X</td>
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Source: Compiled by the Office of the Legislative Auditor from department records.

Even though repeated violations and different types of violations were noted, there was no formal enforcement action taken by the division. This case poses several potential risks. Due to the discharges to a state stream there is potential environmental damage. Several program regulation risks are evident due to not submitting monitoring data and exceeding permit standards. A potential health risk could result from the discharges and seeps to a state stream.
Chapter IV
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Enforcement Process Improvement

Our audit objective was to determine if WQD is enforcing the provisions of the WQA and the PWSA. Basically, we found the division is not consistently enforcing the provisions of these statutes. We believe improvements need to be made to assure overall program compliance is achieved and to develop a strong enforcement and regulatory function.

Several steps need to be taken to improve the enforcement function:

> A formal enforcement policy should be developed.
> Administrative rules should be put in place.
> Procedures need to be established.
> Stronger management controls should be implemented.
> Management information systems should be developed.

A Formal Enforcement Policy is Needed

Even though the WQD has several regulatory programs authorized within its organization, we found no established enforcement policy to provide a clear directive to staff and the regulated parties. During interviews with all levels of department staff, we found staff were unclear about the enforcement role of the division. For example, staff were not sure when a case should be referred for formal enforcement. Without a clear enforcement policy, management staff are defining the division's role each time a separate case is addressed. Based on our observations, file reviews, and interviews with the regulated community it appears this lack of direction has resulted in a completely reactionary program for the last ten years. This general philosophy was evident in all sections of the division. It appears the division waits for an issue to become a serious problem or have increased public concern before addressing the issue.

The general philosophy projected by WQD is that enforcement is not a priority. We found staff generally do not perceive their primary program role as enforcement. In reviewing activity reports for staff we found the amount of time devoted to
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Is the WQD Effectively Enforcing the Provisions of the WQA and the PWSA?

Enforcement activities is minimal for most program staff. The following figure illustrates the percent of time devoted to enforcement activities by program staff during calendar years 1992 and 1993.

![Figure 9](image)

Both the WQA and the PWSA outline specific enforcement procedures. In addition to those specific requirements, the Acts allow the division to initiate on its own appropriate enforcement action. We believe one of the first steps in developing an effective enforcement function is to establish a formal policy developing a clear direction for the various water quality enforcement programs. Section 2-15-112, MCA, outlines the
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duties and powers of department directors. The first two functions described are:

"(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;
(b) establish the policy to be followed by the department and employees; . . ."

Clear and defined program direction has not been provided for the WQD. We believe the director's office should take the lead in strengthening the enforcement policy of the WQD.

Recommendation #1

We recommend the department clarify, communicate, and implement a formal enforcement policy for WQD staff to follow.

Critical Areas Still Lack Administrative Rules

Section 2-4-201, MCA, mandates each state agency adopt rules setting forth the nature and requirements of all formal and informal procedures. In addition, section 75-5-201, MCA, states the Board of Health and Environmental Sciences shall adopt rules to administer the WQA.

We found several statutory and procedural areas relating to water quality programs which do not have administrative rules developed. As part of our audit work we reviewed department lists compiled by legal staff in 1992, 1993, and 1994 which identify program rules which should be developed. Of the 15 rules outlined on these lists, we found only four rules were adopted by the division. Based on this testing, we identified the following areas which are important to developing a regulatory function and which are lacking administrative rules:
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-- discharge of waste from vehicles
-- administrative penalties for both Acts
-- wellhead protection
-- enforcement procedures
-- water rehabilitation account procedures
-- agricultural chemical groundwater guidelines
-- campground and trailer court requirements
-- local water quality district procedures
-- penalties for falsifying statements
-- health advisory and boil orders procedures

State agencies are required by section 2-4-314 (1), MCA, to biennially review their rules to determine if any new rule should be adopted or any existing rules should be modified or repealed. Interviews with the department's chief legal counsel indicated the division has no process to identify statutes, or critical division processes or procedures which require rule development. In addition, the division has no process to determine rule-making priorities and no process to ensure rules are developed in a timely manner. Establishment of rules is the department's basis for implementing the Act. Since the department has not implemented administrative rules it is not fulfilling its responsibilities as required under the Act. To improve the enforcement function of the division, the department needs to establish a process to set rule-making priorities and ensure rules are developed in a timely manner. The Board of Health and Environmental Sciences also needs to adopt rules in critical program areas to help implement the enforcement policy.
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Recommendation #2

We recommend:

A. The department establish a process to set rule-making priorities; and

B. The Board of Health and Environmental Sciences adopt rules in critical program areas to help implement the enforcement policy.

Formal Enforcement Procedures Should be Established

Enforcement procedures are needed to help ensure staff consistency in enforcing provisions of the Acts. Staff frustration with the lack of any formal system has resulted in some staff developing their own procedures or forms to use. Generally, we found these procedures were not shared with other staff and/or were not approved by section supervisors. In some cases, we found supervisors were unaware staff had developed these procedures. In other cases, we found forms or procedures developed by section supervisors that were never utilized by staff. We found WQD staff had developed some type of form or procedure for the following areas:

-- Enforcement Case Screening Form
-- Complaint Priority Criteria
-- Public Water Supply Case Criteria
-- Spill Protocols
-- Complaint Protocols
-- Discharge Permit Process Checklist

Because there is no defined process or established enforcement procedures, staff are in the position of "re-inventing" their plan of action for every case. Even though professional judgment is an important element of the enforcement process, specific guidelines and established procedures would strengthen
management's control over program operations and help assure continuity of services. These established procedures are even more essential in light of the increases and changes in staffing noted in the next section.

Recommendation #3

We recommend the department develop formal enforcement procedures for WQD staff to help ensure consistency in enforcing the provisions of the WQA and the PWSA.

Division Management

In order for management to adequately and effectively control program operations, it needs to clarify supervisory responsibilities and better direct program activities and staff. Currently there is a lack of effective management controls.

This lack of effective management controls is further compounded by the growth in FTE levels. Over 30 staff members have been added in five years, with the number of program staff increasing from 44.25 in fiscal year 1988-89 to 77.4 in fiscal year 1993-94. In the past, there were 30 to 40 staff members who could informally communicate with each other and keep in touch with program activities more readily. With 77 FTE, this informal management process is not effective.

Supervisory Responsibilities and Delegated Authority

This lack of direction has impacted program operations for the past ten years, but has been magnified in the past year. The past bureau chief retired in December 1993. His position has since been changed to division administrator. An "acting" administrator was appointed in April 1994, but as of August 1994 a permanent administrator has not been hired. This has contributed to confusion and limited decision-making by current staff due to a perceived lack of authority or unwillingness to take responsibility.
Chapter IV
Is the WQD Effectively Enforcing the Provisions of the WQA and the PWSA?

We identified two areas where management could address some of the perceived indecision within the division:

1. Formally clarify and communicate supervisory responsibilities - The failure to clarify organization roles has created friction, inefficiencies, and uncertainty over the role of staff members who are on the management team. The functions of the various section supervisors are not clear. This has resulted in limited supervision and confusion over the handling of various water quality issues. For example, we found Billings regional office staff are not clear on who they report to or what their role is with the other division sections. The clearer the line of authority from top management to staff, the more effective decision making and communication will be for the organization.

2. Appropriately delegate authority - Appropriate delegation of authority and the responsibility for action are critical organization decisions. In some cases management decisions are totally centralized in the director's office. This affects the timeliness and responsiveness of division actions. In other cases, program decisions are totally decentralized which impacts division consistency and ability to meet program goals. We observed staff issuing division "policy" statements in letters or inspection reports and negotiating compliance requirements with various industry, county, or federal staff in cases where those policy decisions may be more appropriately determined at a higher organizational level. Appropriate delegation of authority is essential to efficient and effective enforcement. The department should define the authority of staff and delegate decision-making to the lowest appropriate level.

To work properly, staff and management roles must be well understood by all involved staff. The current management system has affected the timeliness of division decisions, weakened program effectiveness, and ultimately impacted program compliance.

Directing Program Activities and Staff

In addition to the lack of direction for overall enforcement activities we were unable to identify any formal system used to direct day-to-day staff activities. There are no formal policies and procedures to ensure staff actions are consistent or follow
some type of standard division practice. We found limited evidence of supervisory approval during our file reviews.

Based on our observations, it appears staff work independently and establish their own priorities. Staff interviews indicate some staff are confused as to what their specific duties are or how to document program activities. Staff were also not sure who directly supervises their activities or what activities require supervisory approval. For example, WQD legal staff indicated confusion over who assigns their workload or establishes their priorities. Department chief legal counsel may request WQD attorneys work on a pending litigation case, but the Enforcement Section supervisor may also request work on permit enforcement. No clear priorities or criteria for ranking these cases has been developed.

It appears priorities have not been adequately communicated to staff. Staff spend much of their time reacting to issues that appear on their desks or they receive over the phone rather than focusing on program priorities.

Clearly defined roles become even more critical when staff turnover occurs and new staff are being trained. We found limited evidence steps are taken to define roles or orientate new staff to mitigate the impact on division operations. We noted an environmental specialist left in November 1993. No one has reviewed his files or followed up on any of his cases as of July 1994. Workload is not re-assigned or inventoried to ensure any type of continuity or timeliness.

Summary

The management issues we identified affect enforcement processes and procedures within the division. As a result, we believe improving these areas would strengthen enforcement activities of WQD. We recommend the department take steps to strengthen the management controls of the WQD to ensure the enforcement process is improved.
Chapter IV
Is the WQD Effectively Enforcing the Provisions of the WQA and the PWSA?

Recommendation #4

We recommend the department strengthen the management controls of WQD by:

1. Defining and communicating formal reporting and supervisory relationships;

2. Defining the authority of staff and delegating the authority to the appropriate level; and

3. Implementing a system to direct day-to-day staff activities.

Management Information and Documentation

With proper, timely and adequate information the division can improve its enforcement function. As outlined in Chapter 1, there were several areas where we were unable to conduct comprehensive audit testing due to data limitations. We found there are no management information reports generated or utilized by management staff. In numerous cases program documentation was incomplete or inaccurate. The following sections discuss areas where additional management information would be useful.

Activity Logs

We were unable to identify any type of activity logs for several of the division's more critical activities. For example, there is no complete list of complaints received or investigated by program staff. We found instances where WQD activity logs were incomplete or inaccurate. We found some permittees not included on the division permit list and no written reports or documentation for inspections listed in activity logs.
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Location of WQD Information

We identified concerns relating to the documentation of day-to-day division activities. Because there is no formal method for documenting information between sections, we found up to eight different files maintained in different sections or by different staff for one water quality case. We found separate files are maintained by most staff members, in addition to central files for permittees, public water supplies, and formal enforcement actions. Legal information can be maintained in the central legal unit in the director’s office, in the formal enforcement file, or in individual attorney’s files. We found information scattered between all these locations. With the current filing system, there is no method for cross-referencing between the various existing files or to know the total number of files in existence.

Incomplete Information

In addition, we identified incomplete or misplaced files. File documentation often refers to past letters or phone calls or meetings that occurred in the past but there is often no formal documentation of these events in the files. We were unable to locate files for past permit holders. In other instances, case or permit documentation has been "filed" on staff desks. Reports were on supervisors' desks or placed in files. There are some supervisors' desks buried with program information. As a result, it is not clear how staff determine what has occurred at a particular site. For instance, we cannot tell how staff determine if there were past violations, if additional follow-up is needed, if compliance plans were submitted as requested or when inspections have taken place. We found 14 of 17 violation reports completed by program staff were submitted to the enforcement supervisor in calendar year 1993, but they were not submitted for management approval.

Documentation inconsistencies were also noted during our file reviews both between staff in one section and also between the various division sections. Some staff are writing detailed and timely inspection reports and clearly documenting their activities. Other staff had not written inspection reports a year after the inspection was conducted. Because of the large number of program priorities established by the various sections and
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increasing staff size, it is no longer feasible to informally track activities.

Overall Need for Management Information

A basic management control is to generate and review activity reports to determine program status. The division also has been in litigation situations which require clear and complete documentation of all department decisions and activities. The WQD should set up a management information system to document and track critical activities.

Recommendation #5

We recommend the department set up a management information system to document and track critical division activities.

Program Resources

Management information is essential in determining the appropriate level of enforcement program resources. During our audit, we examined the need for additional staff and resources to enforce this program. We concentrated our review on the enforcement functions within the division and the staff devoted to those related duties. However, we found limited workload data. In some cases, workload data was non-existent. Therefore, we were unable to evaluate the staffing needs of the WQD.

Despite the lack of management information, we believe the division could improve their efficiency by strengthening the management controls as discussed in this chapter. Several improvements could impact the level of program resources needed by the division. Clear policies and procedures and stronger management controls over staff activities would better ensure efficient use of staff time.
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Conclusion: Unable to Evaluate Staffing Needs

Due to the lack of management information and lack of strong management controls, we were unable to specifically evaluate staffing needs of the WQD at this time.
Chapter V
How Effectively is WQA Currently Enforced at Mines?

Introduction
Throughout the course of this audit, we identified several areas where WQA enforcement provisions are not being consistently applied. Most of those areas could be improved by formalizing the enforcement process and strengthening management controls. We found one area in particular where specific concerns have been raised that may not be addressed by other recommendations outlined in this report. We identified several specific concerns with WQA enforcement at hard rock mines.

How Effectively is WQA Currently Enforced at Mines?
Currently there is environmental regulation authority over hard rock mines for both the WQD and the Hard Rock Bureau at Department of State Lands if there is a potential impact on state waters. The Hard Rock Bureau is statutorily responsible for regulation of hard rock mining operations throughout the state. This includes permitting duties, monitoring operations, and oversight of reclamation methods. Based on our review of files, interviews with staff at both departments, and interviews with the regulated community, we identified several concerns relating to enforcement of the WQA at hard rock mines. Examples of the problems include:

-- Lack of commitment and compliance with an existing written agreement between the Hard Rock Bureau and WQD. The two agencies have a written agreement outlining specific responsibilities for coordinating regulations at the mines, but we identified several examples where this agreement was not followed. Both agencies are required to communicate any noted violations or noncompliance to the other agency. However, during our file review, we did not find copies of Hard Rock Bureau inspection reports or other correspondence indicating formal communications of bureau findings. During our performance audit at Hard Rock Bureau, we also did not find copies of WQD inspection reports in the hard rock mine files.

-- Lack of WQD follow-up to water quality violations noted by either Hard Rock Bureau staff or WQD staff. We documented certain mines' refusals to apply for permits, not submitting monitoring data, etc. One mine has not submitted monitoring data within required time frames.
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-- Lack of internal mechanisms within the WQD to coordinate monitoring and enforcement actions which impact the mining industry.

What has been the Effect of these Problems?
Several effects resulting from these problems were noted throughout the course of this audit. Mining officials throughout Montana indicated confusion and frustration with the current WQA oversight process being used. Hard Rock Bureau and WQD staff also indicated frustration with the coordination process. In addition, we documented examples where WQA violations occur at mines and WQD staff do not actively pursue enforcement to address these areas. Water pollution in the form of increasing mercury levels was noted at a mine by Hard Rock staff and in turn referred to WQD for enforcement action. WQD did not take any enforcement action. Water discharges from hard rock mines have occurred without permits from the WQD.

What has Caused these Problems?
We believe these problems occur due to the limited emphasis at the WQD on assuring a coordinated approach to regulating mines which impact state waters. This is illustrated in several ways. When water quality violations are identified at hard rock mines, Hard Rock Bureau staff may refer those problems back to the agency with statutory enforcement in this area, WQD. At that point, WQD has usually not been involved with operations at the mine site since the Hard Rock operating permit was issued or has not compiled complete documentation on the problems occurring because of the limited number of WQD inspections. This repeatedly places WQD in the position of investigating and approving systems or discharges at hard rock mines after discharge occurs. For example, one mine constructed a water treatment plant without the division's prior approval of the construction plans, as required in sections 75-5-605(2) and 75-6-112(4), MCA. This problem occurred at a time when formal WQD enforcement actions were being pursued by another WQD section against the same mine. We found WQD enforcement occurs more at mines as a result of a complaint investigation rather than on-going mine monitoring.
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How can WQA Enforcement become more Effective at Mines?

WQD is responsible for enforcing the WQA on a statewide basis. The policy statement of the WQA requires a comprehensive program for the prevention, abatement, and control of water pollution. We do not believe the WQD enforcement process is comprehensive in regulating of hard rock mines. To address this concern, the division needs to develop a comprehensive policy and procedures for all staff to follow. This policy should address the need for improved coordination within the division and with other agencies. We believe the WQD should take steps to ensure the WQA is consistently enforced at all hard rock mines and include procedures for on-going program regulation.

Recommendation #6

We recommend the department establish a policy and procedures to ensure a comprehensive and consistent enforcement of the WQA at hard rock mines.
Introduction

Our third audit objective was to determine if the legislature could clarify enforcement provisions for the various water quality programs. Throughout the course of this audit, we identified several areas the legislature could consider for potential statutory changes or clarification. This chapter discusses those issues.

Exclusions From Permit Requirements

Section 75-5-605 (2)(c), MCA, defining prohibited activity under the WQA, states it is unlawful to discharge sewage, industrial wastes, or other wastes into any state waters without a current permit from the division. State waters are statutorily defined as "a body of water...either surface or underground." The division developed section 16.20.1012, ARM, which outlines specific groundwater exclusions from water quality permit requirements. Included in this section of the ARMs are discharges or activities regulated under other programs including those for oil and gas field operations, agricultural irrigation facilities, mining operations subject to operating permits or exploration licenses, and projects reviewed under the provisions of the Major Facility Siting Act Title 75, Chapter 20, MCA. All of these activities have the potential of discharging wastes into state waters and the division has documented discharges or pollution from many of these same sources.

We question whether the department has statutory authority to grant exclusions to the WQA. Department legal staff also informally indicated these exclusions may be illegal. Interviews with program staff indicated these rules were developed to address potential coordination problems with other regulatory agencies and attempt to curb WQD workload.

In addition, there are several inconsistencies with these exclusions. It is unclear why these exclusions are directed at groundwater only; if surface water is affected then water quality permits are required. Language in the ARMs states that although excluded from permit requirements, the division may
require the submission of monitoring data if an excluded source is causing or likely to cause a violation of the standards. What the division can do with this data or what enforcement action is required in these types of situations is not defined. We noted cases where the division is obtaining monitoring data from unpermitted sources to review the impact on groundwater. The Water Quality Act applies to all sources of possible pollution and does not give the Board of Health and Environmental Sciences or department the authority to grant exclusions. The current rule granting exclusions from the Act appears beyond the statutory authority of the Board or department. However, the statement of intent in Chapter 507, Laws of 1993, relating to the authority of DHES to collect fees, provides in part:

"In addition, the legislature anticipates that fees will be assessed to applicants or permittees under other statutory authorities for which an exclusion from a water quality permit requirement is provided by rule." (emphasis added)

It would appear the legislature has at least acknowledged the existence of the exclusions granted by the rule. This apparent acknowledgement in a statement of intent does not allow the department the authority to grant exclusions. If exclusions are to be granted by the Board or department, the legislature should specifically address the issue and set forth the criteria under which exclusions may be granted. The department should seek legislative clarification on their authority to grant exclusions or eliminate the exclusions.
Chapter VI
Legislative Changes Could Clarify Enforcement Provisions of the Two Acts?

Recommendation #7
We recommend the department:

A. Seek legislative clarification on their authority to grant WQA exclusions, or
B. Eliminate the exclusions currently outlined in the ARMs.

Overall Enforcement Provisions of the Two Acts

The enforcement language within the WQA and the PWSA clearly states that any violation of the statutes requires a civil penalty and a cleanup order. In addition the statutes provide for administrative orders or penalties. Did the legislature intend every single violation be corrected through a cleanup order and a civil penalty? For example, if a municipality did not send in their monthly monitoring data, should a civil penalty be enforced? Strict interpretation of the statutes may require this action.

Division officials informally interpreted the law to mean a progressive means of enforcement to use as noncompliance escalates or initial enforcement efforts are ignored. Extreme cases of noncompliance can result in first using the most severe action authorized by the statutes.

We believe the legislature needs to address the enforcement provisions of these two Acts to clarify the enforcement language. The current statutes do not appear to allow the department the option of using less severe enforcement action to address lesser violations. For example, the department may wish to address a minor permit violation by accessing administrative penalties rather than the required civil penalty. The department should seek legislation granting it a wider range of enforcement actions needed to address the severity of the violation.
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Legislative Changes Could Clarify
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Recommendation #8

We recommend the department seek legislation granting
the department a wider range of enforcement actions under
the WQA and the PWSA.

Voluntary Bond Requirement

Section 75-5-405, MCA, authorizes the "voluntary" filing of a
performance bond or other surety for reclamation of land
disturbed by a water quality permit holder. The intent of this
law appears to be to ensure the state has sufficient funds to
retain until the permit holder satisfactorily reclaims the site or to
actually reclaim a disturbed site. The "voluntary" nature of this
statute has not authorized the division to develop this as a permit
requirement. We found there has never been a bond filed with
WQD.

Section 75-5-401, MCA, allows the Board of Health and
Environmental Sciences to adopt administrative rules for the
establishment of criteria and procedures governing the filing and
releasing of bonds. However, rules developed for this area
would not serve any purpose unless bonds or surety are actually
filed with the division.

Currently, it is unclear whether the department believes perfor-
mance bonds are an effective means to protect state waters as
required in the current statutes. We identified several examples
of major industrial and agricultural operations which could have
significant long-term impact to state waters if operations are
closed. For example, a cheese factory currently has a waste
impoundment near a public road. This facility could close down
and leave the state facing possible cleanup costs to reclaim
waters impacted in the area.
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The department is charged with regulating the quality of state waters. If the department believes a performance bond or surety requirement are necessary to meet this intent, the department should be in the position to decide whether a regulated party should provide a performance bond. Other environmental regulation statutes require the filing of performance bonds. For instance, the Montana mine and reclamation statutes require performance bonds (section 82-4-338, MCA) and include conditions for determining the needed bond amounts. The department should seek statutory authority to require a performance bond if necessary to ensure compliance with the WQA or eliminate the authorization for bonds.

Recommendation #9

We recommend the department seek statutory clarification to either:

A. Require a performance bond requirement, if necessary, to ensure compliance with WQA, or

B. Eliminate the voluntary bond authorization.

Economic Impact of Enforcing Environmental Regulation

The WQA was enacted by the Montana Legislature in 1955 to protect and improve the water quality and potability of water in the state. The PWSA was passed in 1907 to protect public health. These laws prescribe various regulatory and pollution prevention remedies to achieve these goals. Enforcement provisions within the Acts emphasize protecting the environment and ensuring program compliance. Enforcement language in each statute discusses the need for administrative penalties, civil fines, and criminal penalties up to $25,000 per day for violations of the Acts. However, the economic impacts of enforcing these Acts is only addressed in the civil fine statute of WQA.
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We documented several examples during our file reviews where fines recommended by staff did not appear to reflect the "economics" of the cases. For instance, in one case staff recommended civil penalties of $11 million dollars for a farming operation for unauthorized discharges to a state stream for over a year. This penalty did not appear to correspond with the economic viability of the violator and was not approved by management for formal enforcement action. In contrast, we found another case where there was $5,000 in penalties collected against a major industrial operation for a similar type of violation.

The division has repeatedly been in the situation of trying to enforce the strict provisions of the WQA but also take into account the economic factors that impact these situations. For example, enforcing provisions of the PWSA with large fines may have a significant financial impact on a small Montana municipality which may serve only 25 families.

We examined other portions of the WQA and found economic impact and degrees of pollution are used when considering water quality permits. The statutory criteria for authorizing degradation of state waters in the WQA considers the quantity and strength of the pollutant, the length of time the degradation will occur, and the type of pollutant. The statutory language indicates specific economic considerations are required at the start of a project, but there is no such requirement if there are violations after the project starts. Section 75-2-401, MCA, of the Clean Air Act of Montana includes requirements for determining the penalty amounts for violations of that Act, including considerations for the violator's ability to pay, and the economic benefit of the documented noncompliance.

Currently, there are no statutory criteria or guidelines allowing consideration of economic factors for PWSA enforcement situations and only limited economic considerations are outlined in the enforcement provisions of the WQA. Other statutory requirements and legislative policies indicate economic considerations are a part of regulation. Section 90-1-101, MCA,
relating to economic development programs, requires consistency and continuity in the adoption and application of environmental rules. We believe this is an area where the legislature could provide guidance and clarify legislative intent.

**Recommendation #10**

We recommend the department seek legislative clarification of the use of economic considerations in enforcing the Water Quality and Public Water Supply Acts.

**Inconsistencies and Redundancies Within Statutes**

Throughout the course of this audit, we noted several redundancies and inconsistencies within the WQA and the PWSA. The WQA was passed in 1955 and the PWSA was passed in 1907. Since that time there have been multiple amendments to the original provisions, as well as additional requirements added. This resulted in inconsistent requirements and repetitive language between the two Acts. Some of these include:

-- Rule-making authority is scattered throughout the statutes. Even though the WQA has a standard clause granting overall rule-making authority to the Board of Health and Environmental Sciences, there are several other sections which grant rule-making authority for specific areas. For example, section 75-5-401, MCA, states the board shall adopt rules governing permits and then outlines a provision that the board may also adopt rules governing reclamation of disturbed sites. Section 75-5-501, MCA, authorizes rule development for the use of matching funds by local governments for construction of water pollution control facilities. Other sections within the WQA which specify rule-making authority include sections 75-5-106, 75-5-301, 75-5-303, and 75-5-516, MCA. In addition to the rule-making authority in the WQA, we identified three different sections granting rule-making authority within the PWSA. Department staff indicated they focus on areas specifically
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requiring rule development. This may create confusion when establishing rule-making priorities.

--- Several sections in the two Acts appear to have requirements that are duplicative or lack cross-referencing. For example, the PWSA and WQA do not refer to corresponding statutes in the other Act. The PWSA outlines specific duties in regards to sewage disposal but language in the WQA also sets requirements for sewage disposal. Non-degradation provisions in the WQA impact sewage disposal systems for subdivisions and home owners but there is no reference to these requirements in the PWSA which requires department approval of these systems.

--- There are at least four different accounts available for environmental protection purposes; the Environmental Contingency Grant Program, the Comprehensive Environmental Response, Compensation, and Liability (CERCLA) account, the Environmental Quality Protection Fund, and the Water Quality Rehabilitation Account. The Water Quality Rehabilitation Account, established in 1991, is designated for a specific aspect of environmental protection. The other accounts appear to have broad language that would allow long-term and emergency water protection. Legislative intent within the statute establishing the Water Rehabilitation account appears conflicting. Broad authority and purposes are prescribed in the law, but on the other hand account restrictions appear to significantly limit the type of activity that can be funded from this account. Expenditures from this account were $420 in fiscal year 1991-92 and $6,357 in fiscal year 1992-93.

--- Other areas of inconsistency we discussed in previous sections of this report include various enforcement provisions, bonding requirements, and economic considerations.

The Montana Environmental Policy Act requires consistency in environmental regulation. In addition, economic development statutes (section 90-1-101, MCA), state consistency in environmental rules is essential. We believe the current water quality regulations should be re-visited to ensure consistency and continuity.

The legislature established a mechanism for this type of review. Sections 75-1-301 through 324, MCA, outline the duties and role
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of the Environmental Quality Council staff. Council staff have the authority and duty to study and research issues relating to environmental quality. In addition, council staff are authorized to consult with and assist legislators to clarify deficiencies or conflicts with environmental legislation.

We recommend the Environmental Quality Council review the current water quality statutes to ensure consistency and continuity and recommend any necessary changes.

Recommendation #11

We recommend the Environmental Quality Council review the current water quality statutes to ensure consistency and continuity and recommend any necessary changes.
September 20, 1994

Scott A. Seacat  
Legislative Auditor  
Office of the Legislative Auditor  
State Capitol  
Helena, Montana  59620-1705

Dear Mr. Seacat,

By this letter, I am transmitting the department’s formal response to your Program Performance Audit findings and recommendations on the subject of the enforcement of the Water Quality Act and the Public Water Supply Act within the Water Quality Division.

Of the 11 recommendations made within the audit, we have responded to recommendations #1 through #10, including a response to recommendation #2B which was a recommendation that required a response from the Board of Health and Environmental Sciences. Since recommendation #11 was directed at the Environmental Quality Council, we are presuming that they will separately respond to that recommendation.

I would like to personally thank your office and the audit staff that spent countless hours on this audit project. Their findings and subsequent recommendations have provided a valuable service and insight into some of the problematic areas of this department’s environmental regulatory responsibility.

I will be available, along with appropriate staff from my office and the Water Quality Division, for the scheduled combined meeting of the Legislative Audit Committee with the Environmental Quality Council on Friday, September 30, 1994.

Sincerely,

[Signature]
Bob Robinson  
Director  
Department of Health and Environmental Sciences

Encl:

cc:  Steve Pilcher, Acting Administrator  
Water Quality Division
RECOMMENDATION #1

WE RECOMMEND THE DEPARTMENT CLARIFY, COMMUNICATE, AND IMPLEMENT A FORMAL ENFORCEMENT POLICY FOR WQD STAFF TO FOLLOW.

Response: The Department concurs with this recommendation. The director’s office appointed a task force consisting of Water Quality Division staff along with a member of the Air Quality Division enforcement staff and a member of the Environmental Remediation Division to begin this process on August 23, 1994. That group has completed a draft Interim Enforcement Procedure/Policy that is currently being refined to provide a systematic and predictable process for enforcement response under the two acts. The interim policy will be adopted for use within the Water Quality Division within the next 30 days. This document is being prepared in such a manner that it will have general transferability to all other organizational divisions of the department. Within the next 3 months it will be implemented throughout the Department.

RECOMMENDATION #2

WE RECOMMEND:
A. THE DEPARTMENT ESTABLISH A PROCESS TO SET RULE-MAKING PRIORITIES; AND
B. THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES ADOPT RULES IN CRITICAL PROGRAM AREAS TO HELP IMPLEMENT THE ENFORCEMENT POLICY.

Response: A. The Department concurs with this recommendation. The Department will develop both a policy and a procedure for dealing with priority setting for rule-making. In addition, the department will establish a monitoring system in order to supervise agency progress in completing and then implementing rule-making. This process will be implemented no later than October 15, 1994. However, in response to an explicit suggestion contained in the body of the audit report but not specifically in the audit recommendations, the Department, pursuant to its authority in 75-5-211, MCA, will conduct an analysis of each of the subject areas listed to determine the need for promulgation of rules or adoption of other internal operating procedures to ensure clarity, consistency and effectiveness in enforcement in each of the program areas. This analysis will be completed by November 30, 1994. If statutory authority in addition to Section 2-4-201, MCA, is required to promulgate these rules, this will be requested in the 1995 legislative session. It should be noted that the Department has drafted and is in the process of promulgating
rules pertaining to administrative penalties under the Water Quality Act and the Public Water Supply Act, and pertaining to campgrounds and trailer courts. The Department has identified a need to clarify its authority legislatively to protect water sources through wellhead protection. The Department has identified a need for promulgation of administrative rules concerning standards for pesticides in groundwater. The interim enforcement policy mentioned in Response #1 will be used to establish rule-making priorities.

B. The Board of Health and Environmental Sciences was consulted on this specific recommendation at their meeting of September 16, 1994. The Board directed us to respond that they concur with this recommendation, but since they do not have the capability to evaluate the need for rule-making in areas that are not specifically required by statute, they would entertain recommendations from the Department for amending or improving upon their rule-making posture after the Department has completed its evaluation referenced in #2A.

RECOMMENDATION #3

WE RECOMMEND THE DEPARTMENT DEVELOP FORMAL ENFORCEMENT PROCEDURES FOR WQD STAFF TO HELP ENSURE CONSISTENCY IN ENFORCING THE PROVISIONS OF THE WQA AND THE PWSA.

Response: The Department concurs with this recommendation. As previously mentioned, the agency has already drafted an interim enforcement procedure/policy document. The procedural part of our effort will recognize and utilize the procedures currently in existence in both the drinking water and waste discharge permit programs and will improve upon them if necessary.

RECOMMENDATION #4

WE RECOMMEND THE DEPARTMENT STRENGTHEN THE MANAGEMENT CONTROLS OF THE WQD BY:
1. DEFINING AND COMMUNICATING FORMAL REPORTING AND SUPERVISORY RELATIONSHIPS;
2. DEFINING THE AUTHORITY OF STAFF AND DELEGATING THE AUTHORITY TO THE APPROPRIATE LEVEL; AND
3. IMPLEMENTING A SYSTEM TO DIRECT DAY-TO-DAY STAFF ACTIVITIES

Response: The Department generally concurs with this recommendation. The Water Quality Division was part of a major reorganization of the Department that became effective on July 1, 1994. The replacement of the previous Environmental Sciences Division with four new divisions was intended, in part, to provide more direct management controls. The Water Quality Division is one of the four new environmental regulatory divisions. No further organizational changes will be made until a permanent division administrator is selected. Completion of the organizational review will address these recommendations.

RECOMMENDATION #5
WE RECOMMEND THE DEPARTMENT SET UP A MANAGEMENT INFORMATION SYSTEM TO DOCUMENT AND TRACK CRITICAL DIVISION ACTIVITIES

Response: The Department concurs with this recommendation. In June of this year, the Water Quality Division sent two administrative support staff members to a multi-day training session on files and records management. The division will be implementing a central filing system. A draft outline of the filing system has been developed and is currently under review by division managers. In addition, copies of all enforcement logs and other enforcement tracking systems are being reviewed in an attempt to consolidate the same into one common system that will track alleged violations from the original complaint through final resolution.

RECOMMENDATION #6

WE RECOMMEND THE DEPARTMENT ESTABLISH A POLICY AND PROCEDURES TO ENSURE A COMPREHENSIVE AND CONSISTENT ENFORCEMENT OF THE WQA AT HARD ROCK MINES.

Response: The Department concurs with this recommendation. Comprehensive and consistent enforcement should apply to all violations and not just those involving hard rock mines. We will initiate a review of the current Memorandum of Understanding that exists between the DHES and the Montana Department of State Lands.

RECOMMENDATION #7

WE RECOMMEND THE DEPARTMENT:
A. SEEK LEGISLATIVE CLARIFICATION ON THEIR AUTHORITY TO GRANT WQA EXCLUSIONS, OR
B. ELIMINATE THE EXCLUSIONS CURRENTLY OUTLINED IN THE ARMS.

Response: The Department concurs with recommendation #7B and will therefore initiate rule modification to eliminate those exclusions currently outlined in the ARMs for those activities not subject to direct DHES permitting or approval. The Department intends to notice these rule changes by at least December 31, 1994. The elimination of these exclusions will result in a significant increase in the number of facilities requiring permits, and accordingly will impact the workload of the WQD and its need for staff resources to deal with this problem. Examples of facilities that are currently excluded from permitting requirements are hard rock mining operations, some facets of oil and gas field operations, and activities regulated under the federal underground injection control program.

RECOMMENDATION #8

WE RECOMMEND THE DEPARTMENT SEEK LEGISLATION GRANTING THE DEPARTMENT A WIDER RANGE OF ENFORCEMENT ACTIONS UNDER THE WQA AND PWSA.
Response: The Department partially concurs with this recommendation. While this has never been a problem in over twenty years of enforcing the two acts, we will consider seeking legislation providing clarification of the legislative intent for enforcement response. We do not feel that a wider range of enforcement actions is necessary but clarification of enforcement discretion using current enforcement tools would be valuable.

RECOMMENDATION #9

WE RECOMMEND THE DEPARTMENT SEEK STATUTORY CLARIFICATION TO EITHER:
A. REQUIRE A PERFORMANCE BOND REQUIREMENT, IF NECESSARY, TO ENSURE COMPLIANCE WITH WQA, OR
B. ELIMINATE THE VOLUNTARY BOND AUTHORIZATION.

Response: The Department generally agrees with the recommendation and will seek statutory clarification to require performance bonds, when necessary, to ensure compliance with the WQA. We agree that such authority would be helpful but during legislative consideration of the voluntary bond provisions there was considerable legislative opposition to making performance bonds a general requirement under the WQA.

RECOMMENDATION #10

WE RECOMMEND THE DEPARTMENT SEEK LEGISLATIVE CLARIFICATION OF THE USE OF ECONOMIC CONSIDERATIONS IN ENFORCING THE WATER QUALITY ACT AND PUBLIC WATER SUPPLY ACTS.

Response: The Department partially concurs with this recommendation. The Water Quality Act, in section 75-5-631 (4), provides for economic consideration when seeking penalties. We will seek similar clarification for Montana’s Laws Regarding Public Water Supplies.
September 16, 1994

Mr. Scott Seacat  
Legislative Auditor  
State Capitol  
Helena, MT 59620

Dear Scott:

The Environmental Quality Council (EQC) staff has received one copy of the Written Response Draft of the Performance Audit Report on Enforcement of the Water Quality and Public Water Supply Acts. You have asked me to respond to Recommendation #11 in the report, which concerns the Environmental Quality Council. As you know, the EQC will meet in joint session with the Legislative Audit Committee September 30 to review and discuss the report. A formal response by the members of the EQC will not be made until that time. This letter constitutes a preliminary staff response to Recommendation #11.

Recommendation #11 states: "We recommend the Environmental Quality Council review the current water quality statutes to ensure consistency and continuity and recommend any necessary changes." As the Draft Report notes, this recommendation does fall within the statutory responsibilities of the Environmental Quality Council staff as set forth in 75-1-301 through 324, MCA. The Environmental Quality Council has recently begun laying the groundwork for a comprehensive study of enforcement of and compliance with Montana's environmental regulatory statutes. The EQC has recognized that in a time of increasing mandates and increasingly limited state resources, a review of state policies concerning enforcement and compliance with environmental statutes is warranted. The review of current water quality statutes that the Report recommends could certainly dovetail with the EQC's enforcement/compliance study.
The EQC will discuss this recommendation, as well as other findings in the Report, on September 30. The EQC will formalize its response at that time.

Thank you for the opportunity to respond to the Report.

Sincerely yours,

Deborah B. Schmidt
Executive Director

cc: EQC members