

ENVIRONMENTAL QUALITY

CHAPTER 36

SUBDIVISIONS/ON-SITE
SUBSURFACE WASTEWATER TREATMENT

Subchapter 9

On-Site Subsurface Wastewater Treatment Systems

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17.36.901 SCOPE (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 1992 MAR p. 2148, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2003 MAR p. 222, Eff. 2/14/03.)

17.36.902 GENERAL REQUIREMENTS (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 1992 MAR p. 2148, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 3398, Eff. 12/8/00; REP, 2003 MAR p. 222, Eff. 2/14/03.)

17.36.903 DEFINITIONS (REPEALED) (History: 75-5-201, MCA; IMP, Sec. 75-5-305, MCA; NEW, 1992 MAR p. 2148, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 3398, Eff. 12/8/00; REP, 2003 MAR p. 222, Eff. 2/14/03.)

Rules 17.36.904 through 17.36.906 reserved

17.36.907 TECHNICAL REQUIREMENTS (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 1992 MAR p. 2148, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 3398, Eff. 12/8/00; REP, 2003 MAR p. 222, Eff. 2/14/03.)

Rule 17.36.908 reserved

17.36.909 VARIANCE APPEALS TO THE DEPARTMENT (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 1992 MAR p. 2148, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2003 MAR p. 222, Eff. 2/14/03.)

17.36.910 LOCAL VARIANCES (REPEALED) (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 1992 MAR p. 2148, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2003 MAR p. 222, Eff. 2/14/03.)

17.36.911 SCOPE (1) These rules are intended to protect the public health, safety, and welfare by setting forth minimum standards for the construction, alteration, repair, extension, and use of wastewater treatment systems within the state.

(2) Under 50-2-116, MCA, local boards of health must adopt regulations no less stringent than this subchapter 9 for wastewater treatment systems for private and public buildings and facilities. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2009 MAR p. 1786, Eff. 10/16/09.)

17.36.912 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Absorption bed" means an absorption system that consists of excavations greater than three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(2) "Absorption trench" means an absorption system that consists of excavations less than or equal to three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(3) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.

(4) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

(5) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(6) "Department" means the Montana Department of Environmental Quality.

(7) "Drainage way" means a course or channel along which storm water moves in draining an area.

(8) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in Department Circular DEQ-4, DEQ-2, or this subchapter.

(9) "Failed system" means a wastewater treatment and/or disposal system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of ARM 17.36.914.

(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(12) "Ground water observation well" means a well installed for the purpose of measuring the depth from the natural ground surface to the seasonally high ground water.

(13) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM 17.36.919.

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 240 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial unit. The term does not include a public sewage system as defined in 75-6-102, MCA.

(16) "Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.

(17) "Living unit" means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. For example, a duplex is considered two living units.

(18) "Multiple-user wastewater system" means a wastewater system that serves or is intended to serve more than two living units or commercial units or a combination, but which is not a public sewage system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

(19) "Municipal" means pertaining to an incorporated city or town.

(20) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

(21) "Piped water supply" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(22) "Pit privy" means a pit that receives undiluted, non-water-carried toilet wastes.

(23) "Replacement system" means a wastewater treatment system proposed to replace a failed, failing, or contaminating system.

(24) "Reviewing authority" means a local board of health or local health officer, as those terms are defined in 50-2-101, MCA, or their designees.

(25) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

(26) "Seasonally high ground water" means the depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

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(27) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(28) "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(29) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial units or a combination of both. The term does not include a public sewage system as defined in 75-6-102, MCA.

(30) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(31) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(32) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method in Appendix B, Department Circular DEQ-4.

(33) "Subsurface wastewater treatment system" means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(34) "Variance" means the grant, pursuant to ARM 17.36.922, by the reviewing authority of an exception to the minimum requirements set out in this subchapter or Department Circular DEQ-4.

(35) "Wastewater" means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term includes, but is not limited to, the following:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(36) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circular DEQ-4. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 1824, Eff. 8/8/14.)

17.36.913 GENERAL REQUIREMENTS (1) No person may construct, alter, extend, or utilize a wastewater treatment or disposal system that may:

- (a) contaminate any actual or potential drinking water supply;
- (b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
- (c) cause a public health hazard by being accessible to persons or animals;
- (d) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter;
- (e) pollute or contaminate state waters, in violation of 75-5-605, MCA;
- (f) degrade state waters unless authorized pursuant to 75-5-303, MCA; or
- (g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03.)

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) Except as provided in ARM 17.36.916, all wastewater treatment systems must be designed and constructed in accordance with the applicable requirements in ARM 17.36.913 and in Department Circular DEQ-4.

(2) Department Circular DEQ-4, 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) Wastewater treatment systems must be located to maximize the vertical separation distance from the bottom of the absorption trench to the seasonally high ground water level, bedrock, or other limiting layer, but under no circumstances may this vertical separation be less than four feet of natural soil.

(4) A replacement area or replacement plan must be provided for each new or expanded wastewater treatment system. Replacement areas and plans must comply with the requirements of this subchapter.

(5) A site evaluation must be performed for each wastewater treatment system. As determined by the reviewing authority, the site evaluation may include the following:

(a) soil descriptions for proposed wastewater treatment systems. Soil descriptions must be based on data obtained from test holes within 25 feet of each wastewater treatment location. Test holes must be at least eight feet in depth unless a limiting layer precludes digging to eight feet;

(b) percolation test results within the boundaries of the proposed wastewater treatment system; and

(c) if the applicant or the reviewing authority has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the system, the applicant must provide data to demonstrate that the minimum separation distance required by (3) between the absorption trench bottom and the seasonally high ground water level can be maintained. The reviewing authority may require the applicant to install ground water observation wells to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation wells through the seasonally high ground water period. Measurement must occur for a long enough period of time to detect a peak and a sustained decline in the ground water level.

(6) If a department-approved public collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed system, and the owner or managing entity of the public collection and treatment system approves the connection, wastewater must be discharged to the public system. For purposes of this rule:

(a) a public system is not "readily available" if there is evidence demonstrating that connection to the system is physically or economically impractical, or that easements cannot be obtained; and

(b) a connection is "economically impractical" if the cost of connection to the public system equals or exceeds three times the cost of installation of an approvable system on the site.

(7) Wastewater treatment systems, except for sealed components that are designed, constructed, and tested as set out in ARM 17.36.918, may not be located in drainage ways. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2013 MAR p. 2081, Eff. 11/15/13; AMD, 2016 MAR p. 1008, Eff. 6/4/16.)

Rule 17.36.915 reserved

17.36.916 ABSORPTION BEDS, HOLDING TANKS, SEEPAGE PITS, PIT
PRIVIES, CESSPOOLS - TECHNICAL REQUIREMENTS AND PROHIBITIONS

(1) The wastewater treatment systems described in (3) through (7) may be allowed only if the reviewing authority determines that:

(a) site constraints prevent the applicant from constructing any system described in Department Circular DEQ-4;

(b) all off-site treatment alternatives have been considered and are infeasible;

(c) the requirements of ARM 17.36.913 are met; and

(d) all other requirements in this subchapter applicable to the proposed system are met.

(2) Applications for permits for wastewater treatment systems described in (3) through (7) must include a demonstration that no other alternatives to wastewater disposal are feasible.

(3) Absorption beds may be used for replacement systems only and may not be constructed in unstabilized fill. Absorption beds must also meet the design and construction requirements in Department Circular DEQ-4.

(4) Seepage pits may be used for replacement systems only, and only when no other means of treatment and disposal is available.

(a) Seepage pits must have a minimum vertical separation of 25 feet between the bottom of the pit and ground water.

(b) Permit applications for seepage pits must include plans for the proposed pit. Seepage pits must meet the design and construction requirements in Department Circular DEQ-4.

(5) Holding tank systems may be approved only if the facility to be served is for seasonal use.

(a) For purposes of this rule "seasonal use" means use for not more than a total of four months (120 days) during any calendar year. Permit applications for holding tanks must show that the property use conforms to the "seasonal use" limitation or that a variance has been granted.

(b) Holding tanks must meet the design and construction requirements in Department Circular DEQ-4.

(c) Permit applications for holding tanks must include plans for the proposed holding tank system. The plans must include the following information:

(i) the method for monitoring tank levels;

(ii) the method for waterproofing the tank;

(iii) a maintenance plan, which must include annual water tightness testing and periodic pumping by a licensed septic tank pumper; and

(iv) the method for tank stabilization if seasonal high ground water is expected to be within 12 inches of tank's base.

(6) Sealed pit privy systems may be approved only if the facility to be served does not have a piped water supply, and the facility is a seasonal-use recreational site.

(a) Permit applications for sealed pit privies must include plans for the proposed sealed pit. Sealed pit privy systems must meet the design and construction requirements in Department Circular DEQ-4.

(7) Unsealed pit privies may be approved only for seasonal use in remote locations that are not accessible to septic tank pumpers.

(8) New construction or alteration of cesspools is prohibited. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09.)

Rule 17.36.917 reserved

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS

(1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1
SETBACK DISTANCES
(in feet)

From	To Sealed components (1) and other components (2)	To Absorption systems (3)
Public or multiple-user drinking water wells/springs	100	100
Individual and shared drinking water supply	50	100
Other wells (4)	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (5)	25
Slopes > 35 percent (6)	10 (5)	25
Property boundaries (7)	10	10
Subsurface drains	10	10
Water mains (8)	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10
Surface water, springs	50	100
Floodplains	--Sealed components - no setbacks (1) Other components - 100 (2)	100

- (1) Sealed components include holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Holding tanks and sealed pit privies must be located at least ten feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.
- (2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7.
- (3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8 subject to the limitations in ARM 17.36.916.
- (4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.
- (5) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.
- (6) Down-gradient of the sealed component, other component, or drainfield/sand mound.
- (7) Easements may be used to satisfy the setback to property boundaries.
- (8) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(3) If the floodplain has not been designated and its level relative to a wastewater system is in question, the applicant shall submit evidence adequate to allow the reviewing authority to establish the location of the floodplain.

(4) Sealed components of wastewater treatment systems, if located within a 100-year floodplain, must be designed and constructed to prevent surface water and ground water inundation, and pump lines must be pressure tested prior to use. Pipes must have a pressure rating of at least two times the operating pressure or pump shutoff pressure, whichever is greater. Pipes must be tested at 1 1/2 times the operating pressure or pump shutoff pressure, whichever is greater, or must be tested as specified by the manufacturer.

(5) The setbacks in this rule are not applicable to gray water irrigation systems that meet the requirements of ARM 17.36.919. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 1824, Eff. 8/8/14.)

17.36.919 GRAY WATER REUSE (1) Except as provided in (2) and (3), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this subchapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without a permit under this subchapter, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this subchapter and applicable department circulars.

(2) Gray water may be used for irrigation as provided in (3). If a gray water irrigation system meets all of the requirements in (3), the system is not subject to the requirements of ARM 17.36.914, 17.36.916, and 17.36.918.

(3) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must obtain a permit under this subchapter;

(b) gray water irrigation must be subsurface, using a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in 75-5-326, MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located in a floodplain, as defined in 76-5-103, MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum vertical separation of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.912;

(e) gray water irrigation may not occur within:

(i) 100 feet of wells;

(ii) 100 feet of surface water;

(iii) 100 feet of a flood plain; or

(iv) two feet of a property line;

(f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;

(g) if required under Title 76, chapter 4, MCA, and implementing rules, a gray water irrigation system must obtain subdivision approval from the department.

(4) Soil descriptions must be provided for each proposed gray water irrigation system. Soils must be described in accordance with Appendix B of Department Circular DEQ-4.

(5) Gray water irrigation systems with a design flow greater than or equal to 2,500 gallons per day must be designed by a professional engineer.

(6) The reviewing authority may require user agreements for systems that serve more than one user. The reviewing authority may require easements for systems that cross property lines. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2009 MAR p. 1786, Eff. 10/16/09.)

17.36.920 PERMITS (1) The reviewing authority shall administer a permit system for the construction, alteration, repair, and extension of wastewater treatment and disposal systems.

(2) Permit applications must:

(a) identify the owner of the system, location of the system, and type of system to be installed;

(b) provide a justification for the type of system proposed;

(c) include a drawing of the lot layout with legend and scale; and

(d) show separation distances for the features indicated in ARM 17.36.918.

(3) The reviewing authority shall maintain records of all permits.

(4) For permits for new or increased sources, the reviewing authority shall show on the permit the method used for the non-significance determination made pursuant to ARM Title 17, chapter 30, subchapter 7.

(5) For permits issued for replacement of wastewater treatment systems that do not meet minimum standards for subdivisions as set out in ARM Title 17, chapter 36, subchapter 3, the reviewing authority shall notify the owner that the design may limit the ability of the owner to subdivide the property. (History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03.)

Rule 17.36.921 reserved

17.36.922 LOCAL VARIANCES (1) As provided in this rule, a local board of health, as defined in 50-2-101, MCA, may grant variances from the requirements in this subchapter and in Department Circular DEQ-4, except for requirements established by statute.

(2) The local board of health may grant a variance from a requirement only if it finds that all the following criteria are met:

(a) granting the variance will not:

(i) contaminate any actual or potential drinking water supply;

(ii) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;

(iii) cause a public health hazard by being accessible to persons or animals;

(iv) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter except for the rule that the variance is requested from;

(v) pollute or contaminate state waters, in violation of 75-5-605, MCA;

(vi) degrade state waters unless authorized pursuant to 75-5-303, MCA; or

(vii) cause a nuisance due to odor, unsightly appearance, or other aesthetic consideration;

(b) compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;

(c) the variance is necessary to address extraordinary conditions that the applicant could not reasonably have prevented;

(d) no alternatives that comply with the requirement are reasonably feasible; and

(e) the variance requested is not more than the minimum needed to address the extraordinary conditions.

(3) The local board of health's decision regarding a variance of a requirement in this subchapter or in Department Circular DEQ-4 may be appealed to the department pursuant to ARM 17.36.924. (History: 75-5-201, 75-5-305, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2005 MAR p. 86, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2011 MAR p. 1548, Eff. 8/12/11.)

Rule 17.36.923 reserved

17.36.924 VARIANCE APPEALS TO THE DEPARTMENT (1) Upon receiving an appeal of a local board of health's variance decision under 75-5-305, MCA, the department shall determine within 30 days whether the appeal meets the requirements of (2) and notify the appellant in writing of its determination.

(2) The appeal to the department must be in writing and must provide the following information:

- (a) the name of the appellant;
- (b) the local government entity or entities that made the decision on the application for variance at the local level;
- (c) a summary explanation of the project or development for which the variance is requested;
- (d) a summary explanation of the variance that is sought;
- (e) a statement of the law or ordinance at issue in the matter; and
- (f) copies of all applications and supporting materials submitted to the local board of health, and of any written decisions issued by the local board of health.

(3) If the appeal does not fulfill the requirements of (2), the department shall state in its notice to the appellant the deficiencies that must be addressed in a resubmittal. The department shall also notify the appellant in writing when its submittal meets the requirements of (2).

(4) If the appeal fulfills the requirements of (2), the department shall proceed to review the local variance decision under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(5) As provided in 2-4-612, MCA, the common law and statutory rules of evidence apply in department proceedings to review local board variance decisions. The parties may provide evidence and testimony to the department in addition to that presented to the local board.

(6) In evaluating the local board variance decision, the department shall apply the variance criteria in ARM 17.36.922(2), and may not consider local variance criteria. The department may substitute its judgment for that of the local board as to the interpretation and application of the variance criteria in ARM 17.36.922(2). However, the department shall be bound by the local board's interpretation of other local board rules in effect at the time of the local board's decision.

(7) Challenges to the applicability or validity of a rule of the local board are outside the scope of department review. Variance requests that do not seek to go below a state minimum standard are also outside the scope of department review. If a variance is requested from a local requirement that is more stringent than the requirements in this subchapter, the department may review the local board's decision only if the variance, if granted, would also require a variance from the requirements in this subchapter.

(8) The department shall issue a formal decision, including findings of fact and conclusions of law, within 30 days after the hearing process is completed. (History: 75-5-201, 75-5-305, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2011 MAR p. 1548, Eff. 8/12/11.)

Subchapter 10 reserved

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