

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.36.101, 17.36.103, 17.36.106,)	
17.36.112, 17.36.323, 17.36.326,)	(SUBDIVISIONS/ON-SITE
17.36.327, 17.36.334, 17.36.802, and)	SUBSURFACE WASTEWATER
17.36.804 pertaining to definitions,)	TREATMENT)
application--contents, review)	
procedures--applicable rules, re-review)	
of previously approved facilities:)	
procedures, setbacks, sewage systems:)	
agreements and easements, existing)	
systems, water supply systems:)	
operation and maintenance, ownership,)	
easements, and agreements, fee)	
schedules, and disposition of fees)	

TO: All Concerned Persons

1. On December 24, 2015, the Department of Environmental Quality published MAR Notice No. 17-380, pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2192 of the 2015 Montana Administrative Register, Issue No. 24.

2. The department has amended ARM 17.36.101, 17.36.103, 17.36.106, 17.36.112, 17.36.323, 17.36.334, and 17.36.804 exactly as proposed and has amended ARM 17.36.326, 17.36.327, and 17.36.802 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS (1) through (4)(b) remain as proposed.

(5) Users of multiple-user and shared sewage systems must have an agreement that identifies the rights and responsibilities of each user. ~~The user agreement must be signed by all users when the lots are sold.~~ When a lot is sold, the new owner shall sign the user agreement. User agreements must be in a form acceptable to the department.

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. Public ~~water~~ sewage supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) through (5) remain as proposed.

17.36.802 FEE SCHEDULES (1) through (1)(c)(ii) remain as proposed.

(iii) new ~~gravity-dosed, siphon-dosed, or pressure-dosed~~ dosed system,

elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:

(A) through (d)(viii) remain as proposed.

3. The department has thoroughly considered the eight comments received. A summary of the comments received and the department's eight responses are as follows:

COMMENT NO. 1: A commenter supported the amendment to ARM 17.36.103(1)(s) requiring proof of a water right or exempt well status before a subdivision application can be approved.

RESPONSE: This comment requires no response.

COMMENT NO. 2: In ARM 17.36.326(5) and 17.36.327, the department should strike the word "sewage" and replace it with "wastewater." Wastewater is a more current term.

RESPONSE: The department uses the term "sewage" in ARM 17.36.326(5) to maintain consistency throughout chapter 36. Additionally, the term "sewage" is specifically used in 76-4-104, MCA, and the department is required to adopt rules for sewage treatment and disposal. Furthermore, ARM 17.36.101(52) states that "sewage" is synonymous with "wastewater" for purposes of chapter 36, so those terms may be used interchangeably. The suggested change has not been made.

COMMENT NO. 3: ARM 17.36.326(5) requires all owners to sign or re-sign the user agreement every time a lot is sold. We think the intent is for new owners to sign upon buying a lot.

RESPONSE: The intent of ARM 17.36.326(5) is to ensure that there is a signature of every user on a user agreement. The department has deleted the proposed sentence and substituted a sentence that clearly accomplishes that intent.

COMMENT NO. 4: In ARM 17.36.326(5), the department should add the word "responsibilities" after "rights"; it would be helpful.

RESPONSE: The department agrees that it may be helpful to add the word "responsibilities" after "rights" in ARM 17.36.326(5). The suggested change has been made.

COMMENT NO. 5: The department should require user agreements to be recorded with the final plat or certificate of survey. User agreements should run with the land and be binding on the owner, the owner's heirs, successors and assigns.

RESPONSE: User agreements for shared systems are contracts between the participants, and those participants should be allowed to modify their contracts as necessary. Requiring the initial user agreement to run with the land would disallow modifications. The suggested change has not been made.

COMMENT NO. 6: The second line in ARM 17.36.327(1) refers to public "water" systems. This statement is either in the wrong place or is meant to be about public "wastewater" systems.

RESPONSE: The department agrees that the reference to public "water" supply systems is confusing. In response to this comment, the department has replaced the word "water" with "sewage" so that this section will be clearer and also be consistent with ARM 17.38.101(1)(e).

COMMENT NO. 7: The fee in ARM 17.36.802(1)(c)(iii) should be clarified by inserting the word "system" after gravity-dosed, siphon-dosed, and pressure-dosed. Alternatively, the department could replace all three terms with "dosed system" because the definition of "dosed system" in Department Circular DEQ-4 covers all three types of systems.

RESPONSE: The department agrees that the definition of "dosed system" in Department Circular DEQ-4 includes gravity-dosed, siphon-dosed, and pressure-dosed systems. Accordingly, the department has removed the references to gravity-dosed, siphon-dosed, and pressure-dosed systems in ARM 17.36.802(1)(c)(iii) and replaced those terms with "dosed system."

COMMENT NO. 8: The department should raise the local reimbursement of the lot fee to \$50.00. The current compensation of \$25.00 does not come close to covering the county's costs of going to the site to investigate specific conditions. This site visit is essential for evaluating whether a subdivision proposal is realistic and complete. The reimbursed amount has not changed since 2002, even though DEQ has increased the lot fee a number of times since then.

RESPONSE: The department did not propose changes to reimbursement fees with this rulemaking. Such a change requires public input. Accordingly, the requested change is beyond the scope of this rulemaking. The department will consider raising the local reimbursement fee in a future rulemaking. The suggested change has not been made.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Tom Livers
TOM LIVERS, Director

Certified to the Secretary of State, April 11, 2016.