

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.38.101 and 17.38.106 pertaining to )	PROPOSED AMENDMENT
plans for public water supply or )	
wastewater system and fees )	(PUBLIC WATER AND SEWAGE
)	SYSTEMS)

TO: All Concerned Persons

1. On August 30, 2007, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., August 20, 2007, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) "Applicant" means a person who submits plans and specifications for approval pursuant to this rule:

(b) "Main" means any line providing water or sewer to multiple service connections:

(c) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for a period of at least any 60 or more days in a calendar year. Public sewage systems are further categorized as follows:

(i) "Community sewage system" means a public sewage system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents: or

(ii) "Non-community sewage system" means any public sewage system which is not a community sewage system:

(d) "Service connection" means a line that provides water or sewer service to one building or living unit:

(e) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point:

(f) "Subsurface sewage treatment system" means the method of sewage treatment in which the effluent is applied below the soil surface;

(g) "Wastewater" means sewage, industrial waste, other wastes, or any combination thereof;

(h) "Wastewater system" means a public sewage system or other system that collects, transports, treats, or disposes of industrial wastes;

(i) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA; and

(j) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year. Public water supply systems are further categorized as follows:

(i) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents; or

(ii) "Non-community water system" means a public water supply system that is not a community water system.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or wastewater system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) the design report, plans, and specifications for community water systems must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in department Circular DEQ-1, "Montana Department of Environmental Quality Standards for Water Works;"

(b) the design report, plans, and specifications for non-community water systems must be prepared in accordance with the format and criteria set forth in department Circular DEQ-3, "Montana Department of Environmental Quality Standards for Small Water Systems." The department or a delegated division of local government may require the plans and specifications for such a system to be prepared by a professional engineer when the complexity of the proposed system warrants such engineering (e.g., systems using gravity storage, pressure booster/reduction stations). The department or a delegated division of local government will require the plans and specifications for such a system to be prepared by a professional engineer when treatment processes and equipment, subject to review under department Circular DEQ-1, "Montana Department of Environmental Quality Standards for Water Works," is are proposed. The

department or a delegated division of local government may allow standard plans and specifications previously approved by the department to be used for such a system in place of those prepared by a professional engineer on a case-by-case basis;

(c) the design report, plans, and specifications for all wastewater systems, except public subsurface sewage treatment systems, must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in department Circular DEQ-2, "Montana Department of Environmental Quality Design Standards for Wastewater Facilities," ~~1999 edition~~. The design report, plans, and specifications for a wastewater system must also be designed to protect public health and ensure compliance with the Montana Water Quality Act, Title 75, chapter 5, MCA, and rules adopted under the Act, including ARM Title 17, chapter 30, subchapter 7;

(d) the board adopts and incorporates by reference ARM 17.36.320 through 17.36.325, and 17.36.327, ~~and 17.36.345~~. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325, and 17.36.327, ~~and 17.36.345~~ and in accordance with the format and criteria set forth in department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems;"

(e) the design report, plans, and specifications for water extensions or replacements ~~which~~ that meet the criteria in "Water Main Certified Checklist" may be submitted under that abbreviated process;

(f) the design report, plans, and specifications for sewer extensions or replacements ~~which~~ that meet the criteria in "Sewer Main Certified Checklist" may be submitted under that abbreviated process;

~~(g) The department may grant a deviation from the standards referenced in (4)(a) through (f) when the applicant has demonstrated to the satisfaction of the department that strict adherence to the standards of this rule is not necessary to protect public health and the quality of state waters. Deviations from the standards may only be granted by the department.~~ the design report, plans, and specifications for new community water supply wells that meet the criteria specified in the "Community Water Supply Well Expedited Review checklist" may be submitted under that abbreviated process;

~~(h) The applicant must identify to the satisfaction of the department or a delegated division of local government that a legal entity exists that is responsible for the ownership, maintenance, operation and perpetuation of the public water supply system or wastewater system. If a change of ownership occurs, the new owner of the public water supply system shall notify the department, in writing, within 30 days after the change of ownership occurs.~~ the design report, plans, and specifications for new non-community water supply wells that meet the criteria specified in the "Non-community Water Supply Well Expedited Review Checklist" may be submitted under that abbreviated process; and

(i) the department may grant a deviation from the standards referenced in (4)(a) through (f) when the applicant has demonstrated to the satisfaction of the department that strict adherence to the standards of this rule is not necessary to protect public health and the quality of state waters. Deviations from the standards may be granted only by the department.

(5) through (7) remain the same.

(8) The department or a delegated division of local government shall issue written approval for a public water supply system or wastewater system if it determines that the design report, plans, and specifications are complete and the applicant has complied with all provisions of this rule. The approval may be conditional as follows:

(a) the department's approval of a public water supply system may set forth conditions of approval which may include, but shall not be limited to, those specifying limits on quantities available for irrigation and fire flows, limited storage, standby power sources, and peak flows; or

(b) the department's approval of a wastewater system may set forth conditions of approval which may include, but shall not be limited to, expected performance characteristics and performance limitations such as operations, staffing, financing, wastewater loads, standby power, and access.

(9) through (15) remain the same.

(16) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (d) remain the same.

(e) Department of Environmental Quality Water Main Certified Checklist, ~~2006~~ 2007 edition, which sets forth minimum criteria and design standards for water main extensions and replacements;

(f) Department of Environmental Quality Sewer Main Certified Checklist, ~~2006~~ 2007 edition, which sets forth minimum criteria and design standards for sewer main extensions and replacements; ~~and~~

~~(g) 40 CFR 141.5, which sets forth siting requirements for public water supply components.~~ Department of Environmental Quality Community Water Supply Well Expedited Review Checklist, 2007 edition, which sets forth minimum criteria and design standards for new community water supply wells;

(h) Department of Environmental Quality Non-community Water Supply Well Expedited Review Checklist, 2007 edition, which sets forth minimum criteria and design standards for new non-community water supply wells; and

(i) 40 CFR 141.5, which sets forth siting requirements for public water supply components.

(17) remains the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The department is proposing these amendments to update existing rules regarding public water supplies by making the rules consistent with the Montana Public Water Supply laws, 75-6-101, et seq., MCA, by modifying existing rules for clarification purposes, and by adopting new fees or modifying existing fees. These proposed amendments are necessary to allow the department to meet legislative intent, streamline department processes, and to clarify the rules of compliance for the regulated community. The amendments to the punctuation in ARM 17.38.101 are proposed to make the rule conform to format standards of the

Secretary of State's office.

The proposed amendment to ARM 17.38.101(3)(c) is necessary for clarification purposes and to conform the definition to 75-6-102(15), MCA. The current definition for a "public sewage system" creates confusion within the regulated community as to what is a public sewage system. Presently, members of the regulated community confuse the term, "... for a period of at least 60 days ..." to mean a period of consecutive days. This language was removed from other definitions in previous rule amendments, but was left in this definition. The proposed amendment is intended to clarify the requirement for the regulated community.

The proposed amendment to ARM 17.38.101(4)(d) will delete an unnecessary reference. The deleted reference is to a rule that adopts various department circulars. These circulars are already adopted in this rule.

The proposed amendments to ARM 17.38.101(4)(g), (h), and proposed new (i) are necessary for clarification of numbering and to adopt a checklist process for the abbreviated review of community and non-community wells. The proposed amendments will allow for a significant reduction in the amount of time for the applicant's completion of engineering plans and specifications. Previous language for (g) is moved and renumbered as new (i). Previous language for (h) is proposed to be deleted because it is inconsistent with the statutory provisions of 75-6-126, MCA.

The proposed amendments to ARM 17.38.101(16)(e) and (f) are necessary to adopt the 2007 edition of the Water Main Certified Checklist and the Sewer Main Certified Checklist, respectively. The 2007 editions remove language that indicates that a complete department review is not being completed and replace the specific dollar amount for review fee with the fee structure found in ARM 17.38.106.

The proposed amendments to ARM 17.38.101(16)(g), (h), and proposed new (i) are necessary for clarification of line item numbering and the adoption by reference of the new expedited checklists for review of community and non-community water supply wells. The proposed amendments to (16) will significantly reduce the amount of time for the applicant's completion of engineering plans and specifications and for the department's review of those plans and specifications. Previous language for (g) is moved and renumbered as new (i).

17.38.106 FEES (1) remains the same.

~~(2) Fees for review of plans and specifications are based on (2)(a) through (e) and (3). Department review will not be initiated until fees calculated under (2)(a) through (e) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full.~~ The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or sub-parts listed in these citations. ~~Department review will not be initiated until fees calculated under this rule have been received by the department.~~

(a) The fee schedule for designs requiring review for compliance with department Circular DEQ-1 is set forth in Schedule I, as follows:

#### SCHEDULE I

##### Policies

ultra violet disinfection .....	\$ 400
point-of-use/point-of-entry treatment .....	\$ 200
<u>Section 1.0 Engineering report .....</u>	<u>\$ 200</u>
Section 3.1 Surface water	
quality and quantity .....	\$ 200
structures .....	\$ 100
Section 3.2 Ground water .....	\$ 600
Section 4.1 Clarification	
standard clarification .....	\$ 500
solid contact units.....	\$ 1,000
Section 4.2 Filtration	
rapid rate.....	\$ 1,250
pressure filtration.....	\$ 950
diatomaceous earth.....	\$ 950
slow sand .....	\$ 950
direct filtration.....	\$ 950
biologically active filtration.....	\$ 950
membrane filtration .....	\$ 600
micro and ultra filtration.....	\$ 600
bag and cartridge filtration.....	\$ 300
Section 4.3 Disinfection .....	\$ 400
Section 4.4 Softening.....	\$ 500
Section 4.5 Aeration	
natural draft .....	\$ 200
forced draft.....	\$ 200
spray/pressure .....	\$ 200
packed tower.....	\$ 500
Section 4.6 Iron and manganese .....	\$ 200
Section 4.7 Fluoridation .....	\$ 300
Section 4.8 Stabilization.....	\$ 300
Section 4.9 Taste and odor control .....	\$ 400
Section 4.10 Microscreening.....	\$ 200
Section 4.11 Ion exchange .....	\$ 500
Section 4.12 Adsorptive media .....	\$ 500
Chapter 5 Chemical application .....	\$ 700
Chapter 6 Pumping facilities .....	\$ 700
Section 7.1 Plant storage.....	\$ 500
Section 7.2 Hydropneumatic tanks .....	\$ 200
Section 7.3 Distribution storage .....	\$ 500
Section 7.4 Cisterns.....	\$ 200
Chapter 8 Distribution system	
< 1320 lineal feet with standard specs .....	\$ 150
< 1320 lineal feet without standard specs .....	\$ 450
> 1320 lineal feet with standard specs .....	\$ 300
> 1320 lineal feet without standard specs .....	\$ 600
Main extension certified checklist.....	\$ 100
per lot fee .....	\$ 30

<u>non-standard specifications</u> .....	\$ 300
<u>transmission distribution (per lineal foot)</u> .....	\$ 0.10
Chapter 9 Waste disposal .....	\$ 250
Appendix A	
new systems .....	\$ 200
modifications .....	\$ 100

(b) The fee schedule for designs requiring review for compliance with department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans,	
engineering reports (minor) .....	\$ 300 <del>200</del>
comprehensive facility plan (major) .....	\$ 1,000
Chapter 30 Design of sewers	
< 1320 lineal feet with standard specs .....	\$ 150
< 1320 lineal feet without standard specs .....	\$ 450
> 1320 lineal feet with standard specs .....	\$ 300
> 1320 lineal feet without standard specs .....	\$ 600
Sewer extension certified checklist .....	\$ 100
<u>per lot fee</u> .....	\$ 30
<u>non-standard specifications</u> .....	\$ 300
<u>collection system (per lineal foot)</u> .....	\$ 0.10
Chapter 40 Sewage pumping station	
<u>force mains (per lineal foot)</u> .....	\$ 0.10
1000 gpm or less .....	\$ 400
greater than 1000 gpm .....	\$ 800
Chapter 60 Screening grit removal	
screening devices and comminutors .....	\$ 300
grit removal .....	\$ 300
flow equalization .....	\$ 500
Chapter 70 Settling .....	\$ 800
Chapter 80 Sludge handling .....	\$ 1,600
Chapter 90 Biological treatment .....	\$ 2,400
nonaerated treatment ponds .....	\$ 800
aerated treatment ponds .....	\$ 1,400
Chapter 100 Disinfection .....	\$ 500
Appendices A, B, C <sub>1</sub> & D (per design) .....	\$ 700

~~(c) The fee schedule for designs requiring review for compliance with department Circular DEQ-4 is as specified in the fee schedule in ARM 17.36.802 for wastewater disposal systems.~~

(d) (c) The fee schedule for designs requiring review for compliance with department Circular DEQ-3 is set forth in Schedule III, as follows:

SCHEDULE III

Section 3.2 Ground water .....	\$ 600
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Chapter 6 Pump facilities .....	\$ 250
Chapter 7 Finished storage/hydropneumatic tanks.....	\$ 200
Chapter 8 Distribution system.....	\$ 300

(d) The fee schedule for designs requiring review for compliance with department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 7 Septic Tanks .....	\$ 100
Chapters 8, 10, 11, 12, 13 Absorption Trenches .....	\$ 100
Chapter 9 Dosing System.....	\$ 100
Chapter 14 Elevated Sand Mounds .....	\$ 100
Chapters 15, 16, 17 Filters.....	\$ 200
Chapters 17, 18 ETA and ET Systems .....	\$ 200
Chapter 20 Aerobic Treatment.....	\$ 200
Chapter 21 Chemical Nutrient-Reduction Systems.....	\$ 50
Chapter 24, 25, 26, 27 Holding Tanks, Pit Privy, Seepage Pits .....	\$ 100
Appendix D .....	\$ 200
Non-degradation Review .....	\$ 200

(e) The fee schedule for the review of plans and specifications not covered by a specific department design standard, but within one of the following categories, is set forth in Schedule IV as follows:

SCHEDULE IV

Spring box and collection lateral .....	\$ 250
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(3) Fees for review of plans and specifications not covered under (2), are established by the department based on a charge of ~~\$50~~ 60 per hour multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications will be determined by the review engineer and documented with time sheets. ~~The maximum fee for the review of plans and specifications specified under this section is \$500.~~

(4) The fee for review of plans and specifications previously denied, for staff time over two hours, is ~~\$50~~ 60 per hour, assessed in half-hour increments, multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications must be determined by the review engineer and documented with time sheets. ~~The maximum fee for each review of denied plans and specifications is \$500.~~

(5) The fee for review of deviations is ~~\$100~~ 200 per deviation.

(6) and (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The Legislature requires that the department collect fees for engineering review that are commensurate with the costs of those reviews. Section



75-6-108(1), MCA. In 2005, the board modified the review fees to address legislative audits that found that fees were not recovering review costs. However, in 2007 the department incurred a shortage of approximately \$150,000 based on approximately 420 applications. The fee changes proposed in these rules would allow the department to collect approximately \$150,000 more in fees for 420 applications in a year. Although the department cannot predict the number of applications that it will receive next year, the proposed fees are intended to correct the discrepancy between review fees and review costs.

The proposed amendment to ARM 17.38.106(2) is necessary to clarify that all applicable engineering review fees must be paid before a final approval will be issued. This clarification will ensure that the department collects fees for all review work done.

The proposed amendments to ARM 17.38.106(2)(a) and (b) are necessary to adjust the fee table so that the department is able to collect fees commensurate with the costs of those engineering reviews. The amendments include removal of existing fees and line items, addition of new fees for new line items, and modification of existing line item fees.

The proposed amendments to ARM 17.38.106(2)(c) and the new (d) are necessary to clarify review fees and to add new line items charged under DEQ-4. These proposed amendments are intended to adjust the required fees to more closely match the actual costs associated with engineering review work.

The proposed amendments to ARM 17.38.106(3) and (4) are necessary in order to recover costs associated with engineering review. The present language allowing a "maximum" fee is contrary to the legislative requirement to recover commensurate costs.

The proposed amendment to ARM 17.38.106(5) is necessary to collect fees commensurate with the cost of engineering review for deviations.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., September 6, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation;

hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, July 30, 2007.