BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.106 pertaining to fees for review of public water and sewage system plans and specifications	**PRESIDING OFFICER REPORT**

INTRODUCTION

1. On January 14, 2005, I presided over and conducted the public hearing held in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to take public comment on the above-captioned matter. Notice of the hearing was contained in the 2004 Montana Administrative Register (MAR), Issue No. 24, MAR Notice No. 17-223, published on December 16, 2004, beginning at page 2983. A copy of the notice is attached to this report.

2. Court Reporter Carol Hendrickson of Helena recorded the hearing.

3. At the hearing I identified and summarized the MAR notice, stated that copies of the MAR notice were available in the hearing room, read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7)(a), informed the persons at the hearing of the rulemaking interested persons list and of the opportunity to have their names placed on that list, recited the authority to make the proposed rule amendment, announced the opportunity to present

matters at the hearing or in writing, as stated in the MAR notice, and explained the order of presentation.

4. At the conclusion of the hearing, I announced that the proposed rulemaking was expected to be considered by the Board at its public meeting on April 1, 2005.

SUMMARY OF HEARING

5. Gene Pizzini, Public Water Supply Section, DEQ, made an oral statement and submitted a written statement. The proposed amendment would increase fees for review of plans and specifications for public water and wastewater systems and adopt three new line items. The amendment would affect all owners of public water and sewage systems who wished to modify existing systems or construct new systems. Legislative audits have noted that DEQ does not recover its costs for reviews. Montana Code Annotated 75-6-108(3) requires fees for reviewing public water supply and sewage system plans and specifications to be commensurate with costs. In Fiscal Year 2004, DEQ's review costs exceeded fees by about $113,000. All fees increase under the amendment. The proposed fees are based on a cost of $50 per hour for review and the number of hours required for review. DEQ used historical data to determine the proposed fees. The amendment allows DEQ to recover costs for re-review of plans and specifications that were previously denied. The amendment imposes a fee of $100 for processing deviation requests. DEQ

receives about 75 deviation requests annually and the costs of review have not been recovered in the past. A copy of Mr. Pizzini's written statement is attached to this report.

6. Keith Christie, DEQ staff attorney, made an oral statement and submitted a memorandum with his legal reviews under HB 521 and HB 311 and a Private Property Assessment Act Checklist. These materials are attached to this report. With respect to HB 521, Mr. Christie concluded that the proposed amendment is not more stringent than comparable federal regulations or guidelines that address the same circumstances. Therefore, no further HB 521 analysis is required. With respect to HB 311, the proposed amendment affects the use of private real property. A Private Property Assessment Act Checklist was completed that concluded that the proposed rule amendment does not have taking or damaging implications.

7. No member of the public made a statement at the hearing.

SUMMARY OF WRITTEN COMMENTS

8. Edward P. McHugh, McHugh Mobile Home Park, Helena, submitted a letter about his experiences relating to a well that he had drilled without a permit. He opined that the matter could have been handled in two hours instead of 46 hours. A copy of the letter is attached to this report.

9. Albert Molignoni, Chairman of the Board, County Water & Sewer District of Rocker, submitted a letter stating that the fee increases are not fair and the Board opposes them. A copy of the letter is attached to this report.

10. Lee Griswold of WMW Engineering, PC, Whitefish, submitted a letter questioning the proposed fees and describing the fee schedule as unrealistic. For example, review of a simple small water system would cost $1350 in fees, which is 27 hours of review time at $50 per hour. In his opinion, it should take only an hour or two at most to review such a system. He predicted that more individual wells will be drilled in lieu of paying for a costly review that is required to share a water source. He suggested that privatization of some DEQ services should be explored. A copy of the letter is attached to this report.

11. Firelight Meadows Water & Sewer Co., Big Sky, commented that its systems have been previously approved and requested confirmation that no action was required by it. A copy of the letter is attached to this report.

12. Scott Anderson, Anderson-Montgomery Consulting Engineers, submitted a written statement that is attached. He believes the proposed fees will be a significant financial burden for small systems and are too large in comparison to the service provided. He worked for almost 18 years in the Water

Quality Bureau of DHES and believes the amount of review time for the proposed fees is excessive. Under these fees, the cost of regulatory review will become a significant portion of the total cost to design a public water or sewer system. He suggested that the costs be analyzed and if it is truly this expensive to review public water and sewer plans and specifications, DEQ should consider contracting out the service. He also suggested that DEQ take measures to retain experienced review engineers.

13. Bill Lundgren, President, West Glacier Water Users, submitted an e-mail commenting that the increases are alarming to his small system with 47 hookups, which lacks the scale to recover these costs. A copy of the e-mail is attached to this report.

14. Harvey Fredericksen, Libby, submitted a letter opposing any fee for review of an existing water system.

15. Earle Reimer, Superintendent, Valley Christian School, Missoula, submitted an e-mail opposing the increase in fees and suggesting that services be cut instead. The e-mail suggested reducing the duplicate testing that is required when several wells draw from the same water source. A copy of the e-mail is attached to this report.

PRESIDING OFFICER COMMENTS

16. The Board has jurisdiction to make rules prescribing fees to be assessed by DEQ for the review of plans and specifications for the construction, alteration, or extension of public water supply and sewage systems. The fees must be commensurate with the cost to DEQ of reviewing the plans and specifications. Mont. Code Ann. §§ 75-6-103(2)(b), 75-6-108(3).

17. House Bill 521 (1995) generally provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines, unless the Board makes written findings after public hearing and comment. The proposed rule amendment is not more stringent than a comparable federal regulation or guideline. Therefore written findings are not necessary.

18. House Bill 311 (1995), the Private Property Assessment Act, codified as Mont. Code Ann. §§ 2-10-101 through -105, provides that a state agency must complete a review and impact assessment prior to taking an action with taking or damaging implications. The proposed rule amendment may affect real property. A Private Property Assessment Act Checklist was prepared in this matter. The proposed rule amendment does not have taking or damaging implications. Therefore, no further HB 311 assessment is necessary.

19. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and opportunity for comment, have been followed.

20. The Board may adopt the proposed rule amendment, or reject it, or adopt an amendment with revisions not exceeding the scope of the public notice.

21. Under Mont. Code Ann. § 2-4-305(7), for any acts in the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by June 17, 2005.

DATED this _____ day of February, 2005.

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THOMAS G. BOWE
Presiding Officer

Attachments