



June 9, 2020

Duane Murray
P.O. Box 63
Malta, MT 59538

CERTIFIED MAIL # 7019 0160 0000 5831 2672

**Re: Notice of Violation and Administrative Compliance and Penalty Order
(Docket No. SUB-18-01; ES #36-93-L1-78; FID 2568)**

Dear Mr. Murray:

The Department of Environmental Quality is issuing the enclosed Notice of Violation and Administrative Compliance and Penalty Order (Order) to you. The Order addresses violations of the Montana Sanitation in Subdivisions Act that have occurred on your property located at Lot Five of the South Hills Subdivision (Lot 5). The enclosed Order explains the violations and compliance requirements.

The Order requires you to complete corrective actions to return the Property to compliance. According to the Order, you are required to complete corrective actions:

1. Either comply with the conditions of the original COSA or submit an application to rewrite the COSA by August 8, 2020.
2. Pay to DEQ an administrative penalty of \$6000 by August 8, 2020
3. If you choose to submit a COSA rewrite application, respond to all deficiency letters within 30 days from the date of the deficiency letter.

Please refer to Section III of the Order for a full description of the required corrective actions. Pursuant to Section 76-4-108, MCA, you are entitled to a hearing before the Board of Environmental Review if a written request is submitted to the Board no later than 30 days after service of the Order, by July 9, 2020. Section IV of the Order explains the request procedure and hearing process. If there are any questions, please contact me at the telephone number listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Thomas", is written over a light blue horizontal line.

Margarite Juarez Thomas
Environmental Enforcement Specialist
(406) 755-8956
email: mjuarezthomas@mt.gov

Enclosures

cc: Aaron Pettis/ Kevin Smith/ Matt Waite, DEQ
Mike Rinaldi, Phillips County Sanitarian

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE SANITATION IN
SUBDIVISIONS ACT BY DUANE MURRAY AT
THE SOUTH HILLS SUBDIVISION LOT FIVE,
ES#36-93-L1-78, MALTA, PHILLIPS COUNTY,
MONTANA (FID 2568)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE
AND PENALTY ORDER

Docket No. SUB 20-1

Pursuant to the authority of Section 76-4-108(1) and Section 75-6-109(1), Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to Duane Murray (Murray) of the following Findings of Fact and Conclusions of Law with respect to violations of the Sanitation in Subdivisions Act (Sanitation Act) (Title 76, chapter 4, part 1, MCA) and the administrative rules implementing the Sanitation Act (Administrative Rules of Montana (ARM) Title 17, chapter 36, sub-chapters 1 through 6) and adopted under the Sanitation Act.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department hereby makes the following Findings of Fact and Conclusions of Law:

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.
2. The Department administers the Sanitation Act and the administrative rules adopted under the Sanitation Act.
3. Murray owns lot five of the South Hills Subdivision (Lot 5) addressed as 1568 United States Highway 191 South, near Malta in Phillips County. Lot 5 is located in Section 19, Township 30N, Range 30W.
4. Development on Lot 5 is authorized by a certificate of subdivision plat approval issued on December 17, 1993, under tracking number ES#36-93-L1-78 ("the COSA").

1 5. At the time the COSA was issued, the rules that applied to Lot 5 were listed in
2 the ARM effective September 30, 1992. These are referred to as Chapter 16, Sub-Chapters 1,
3 3 and 6 ARM in the COSA. The applicable definitions were listed in ARM 16.16.101(1992).

4 6. The COSA requires that there be no departure from the rules in place at the time
5 of approval.

6 7. The COSA requires commercial development on Lot 5 to be served by an
7 individual water system and an individual sewage treatment system.

8 8. An “individual water system” for purposes of the COSA is “any domestic water
9 system which is not a public or multiple family system.” ARM 16.16.101(7) (1992). A
10 “public water supply system” is a “system for the provision of water for human consumption
11 from any community well, water hauler for cisterns, water bottling plan, water dispenser or
12 other water that is designed to serve ten or more living units for at least 60 days out of the
13 calendar year or 25 or more persons at least 60 days out of the calendar year.” ARM
14 16.16.101(20) (1992). A “multiple family water supply system” means a “non-public water
15 supply system designed to provide water for human consumption to serve three through nine
16 living units [, and the] total people served may not exceed 24.” ARM 16.16.101(15) (1992).

17 9. Therefore, the COSA prohibits any water system on Lot 5 that serves more than
18 two living units.

19 10. An “individual sewage system” for purposes of the COSA is “any sewage
20 system which is not a public or multiple family system.” ARM 16.16.101(8) (1992). The
21 same population thresholds for public and multiple family water systems apply to sewage
22 systems as well. ARM 16.16.101(14), 16.16.101(19) (1992).

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1 11. Therefore, the COSA prohibits any sewage system on Lot 5 that serves more
2 than two living units.

3 ***Operation of unapproved subdivision***

4 12. Section 76-4-102(22), MCA, defines a subdivision as a division of land or land so
5 divided that creates one or more parcels containing less than 20 acres, exclusive of public
6 roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or
7 otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse,
8 or any area, regardless of size, that provides permanent multiple space for recreational camping
9 vehicles or mobile homes.

10 13. Section 76-4-130, MCA, states that a person may not construct or use a facility
11 that deviates from the COSA until the Department has approved the deviation.

12 14. The development on Lot 5 consists of a multi-unit motel with an apartment; three
13 rental cabins; six RV spaces; and one residential cabin.

14 15. A single water supply system serves all of the development described in
15 Paragraph 14.

16 16. Three separate sewage systems serve Lot 5: one that serves the multi-unit motel
17 with an apartment (“Sewage System 1”); a second one that serves the three rental cabins
18 (“Sewage System 2”), and a third that serves the six RV spaces and residential cabin (“Sewage
19 System 3”).

20 17. The three rental cabins, the residential cabin, and the apartment in the motel are
21 each “living units” within the meaning of ARM 16.16.101(9) (1992) because they can house one
22 family under one roof.

23 18. The single water supply system serving Lot 5 is therefore connected to five living
24 units, making it a “multiple family water supply system” within the meaning of ARM

1 16.16.101(15) (1992). The water supply system also meets the definition of a multiple-user water
2 supply system currently listed in ARM 17.36.101(34).

3 19. Sewage System 1, which serves the multi-unit motel with apartment, is therefore
4 connected to one living unit, making it an “individual sewage system” within the meaning of
5 ARM 16.16.101(8) (1992).

6 20. Sewage System 2, which serves the three rental cabins, is therefore connected to
7 three living units, making it a “multiple family sewage system” within the meaning of ARM
8 16.16.101(14) (1992). System 2 also meets the definition of a multi-user wastewater system
9 currently listed in ARM 17.36.101(34).

10 21. Sewage System 3, which serves the six RV spaces and residential cabin, serves one
11 living unit, making it an “individual sewage system” within the meaning of ARM 16.16.101(8)
12 (1992).

13 22. By using a multiple family water supply system, Murray has deviated and
14 continues to deviate from the requirement in the COSA that Lot 5 be served by an individual
15 water supply system.

16 23. By using three separate sewage systems, Murray has deviated and continues to
17 deviate from the requirement in the COSA that Lot 5 be served by an individual sewage system.

18 24. By using a multiple family sewage system for Sewage System 2, Murray has
19 deviated and continues to deviate from the requirement in the COSA that Lot 5 be served by an
20 individual sewage system.

21 25. Lot 5 also deviates from the COSA because the placement of multiple permanent
22 spaces for recreational camping vehicles creates a new subdivision as defined in 76-4-102(22),
23 MCA. The existing COSA and the lot layout do not indicate designated recreational camping
24 vehicle spaces.

1 26. None of the deviations described in Paragraphs 14 through 25 have been approved
2 by the Department.

3 27. The Department has verified that these deviations occurred.

4 28. Therefore, Murray has violated Section 76-4-130, MCA, by using a facility that
5 deviates from the certificate of subdivision approval without Department review and approval for
6 each of the deviations described in Paragraphs 14 through 25.

7 29. In an attempt to correct the violations, Murray submitted an application for a
8 COSA rewrite to the Department. The Department reviewed the file (EQ# 14-1905) six times and
9 issued six deficiency letters based on additional information provided by Murray or consultants
10 employed by Murray. The deficiency letters were dated: May 27, 2014, July 8, 2014, January 12,
11 2015, March 3, 2015, June 19, 2015 and January 28, 2016.

12 30. On October 21, 2016, the Department notified Murray of the violation and
13 requested plans for review that address the deficiency items listed in the January 28, 2016
14 deficiency letter to be completed by November 26, 2016.

15 31. On August 8, 2019, the Department sent Murray a Consent Order proposal which
16 offered Murray a reduced penalty and requested a compliance plan for corrective action.

17 32. On August 12, 2019, the Department received an email response from Murray,
18 stating that he would not sign the Consent Order as written. The email did not propose specific
19 changes regarding the Consent Order.

20 33. On August 22, 2019, the Department responded to Murray's email with additional
21 explanation and a request for specific changes to the Consent Order to facilitate settlement.
22 Murray did not respond to the Department's email.

23 34. On January 24, 2020, the Department sent an email outlining acceptable
24 compliance options to Murray.

1 35. On January 29, 2020, Murray responded with an email stating that he disagreed
2 with the Department's position that the COSA prohibits more than one sewage system on Lot 5.

3 36. On June 4, 2020, the Department received an email from Murray stating that the
4 unapproved RV park had been closed, not listing any additional compliance actions.

5 ***Administrative penalty***

6 37. Pursuant to Section 76-4-109(a), MCA, the Department may assess an
7 administrative penalty of up to \$250 for each day of violation.

8 38. The Department calculated an administrative penalty in the amount of \$6,000 for
9 the violation alleged in Paragraph 28. *See* Section 75-1-1001, MCA, and ARM 17.4.301 through
10 17.4.308. The enclosed Penalty Calculation Worksheet is incorporated by reference into this
11 Order.

12 **III. ADMINISTRATIVE ORDER**

13 This Notice of Violation and Administrative Compliance and Penalty Order (Order) is issued to
14 Murray pursuant to the authority vested in the State of Montana, acting by and through the
15 Department under the Sanitation Act, Section 76-4-101 et seq., MCA. Based on the foregoing
16 Findings of Fact and Conclusions of Law and the authority cited above, the Department hereby
17 ORDERS Murray to take the following actions to comply with the Sanitation Act within the
18 timeframes specified in this Order:

19 ***Corrective actions***

20 39. Unless option b below is completed, Murray and his agents will disclose to any
21 potential buyers that only the facilities serving the multi-unit motel building have approval from the
22 Department.

23 40. Within 30 days of the effective date of this Consent Order, Murray shall provide the
24 Department with his decision in writing to either:

- a. Revert to the conditions of the COSA as described in paragraph 41; or
- b. Rewrite the COSA as described in paragraph 42.

41. Murray will send his written decision to:

Margarite Thomas
Department Enforcement Program
P.O. Box 200901
Helena, MT 59620-0901
MJuarezThomas@mt.gov

42. If Murray chooses to comply with the conditions of the existing COSA (ES#36-93-L1-78), within 60 days of the effective date of this Order, Murray shall remove all RVs from Lot 5 and physically disconnect and cap the water and sewer connections to the cabins and RV spaces on Lot 5 and submit documentation of completion to the Department. The documentation may be an inspection by Department staff, the Phillips County Sanitarian or photographs taken by Murray that clearly show completion of the corrective actions.

43. If Murray chooses to comply with the Sanitation Act by obtaining a COSA rewrite, in accordance with Section 76-4-129, MCA, he will also:

- a. Within 60 days from the Effective date of this Order, submit a complete application for a COSA rewrite to the Department.
- b. Diligently pursue obtaining a COSA rewrite by providing an adequate response to each deficiency listed in any deficiency letters within 30 days of the date of the deficiency letter.
- c. Complete construction in accordance with the approved COSA within 90 days of receiving a COSA rewrite from the Department. This may include local septic permitting.
- d. Within 90 days of completion of construction, submit any required certification and as-built drawings.

1 44. All documents and submittals specified in paragraphs 41 and 42 shall be sent to:

2 Matthew Waite, PE
3 Engineering Bureau
4 Montana Department of Environmental Quality
5 1371 Rintop Drive
6 Billings, MT 59105-9702

7 45. Murray is assessed a penalty of \$6,000 for the violation described in paragraph
8 28 of this Order. Murray shall pay the administrative penalty of \$6,000 within 60 days of the
9 date of this Order. To pay by credit or debit card, please contact the Enforcement Program at
10 406-444-0379. To pay by check or money order, make payable to the "Montana Department of
11 Environmental Quality" and send to the address listed in paragraph 40.

12 46. Corrective action deadlines listed in this Order are enforceable
13 requirements. No corrective action deadline required by this Order may be extended unless
14 Murray demonstrates good cause for the reason and the length of the delay and DEQ has
15 approved the request for extension in writing. To demonstrate good cause, Murray shall:

16 a. Notify DEQ of any anticipated delay within 10 business days after Murray
17 becomes aware, or should have become aware, of the reason for the delay; and

18 b. Demonstrate that the reason and length of the anticipated delay are beyond
19 Murray's control; and

20 c. That Murray has taken all reasonable efforts to avoid the anticipated delay.

21 47. The Department may approve, disapprove, or modify the request for extension
22 and will notify Murray of its decision in writing. Modification of any particular deadline will
23 not affect any other deadline under this Order unless expressly authorized in writing by the
24 Department.

48. Failure to take the required corrective actions and pay the assessed penalty by
the specified deadlines, as ordered herein, constitutes a violation of Title 76, chapter 4, part 1,

1 MCA, and may result in the Department seeking a court order assessing civil penalties of up to
2 \$1,000 per day of violation pursuant to Section 76-4-109, MCA.

3 49. None of the requirements in this Order are intended to relieve Murray from
4 complying with all applicable state, federal, and local statutes, rules, ordinances, orders, and
5 permit conditions.

6 50. The Department may take any additional enforcement action against Murray,
7 including the right to seek injunctive relief, civil penalties, and other available relief, for any
8 violation of, or failure or refusal to comply with, this Order.

9 IV. NOTICE OF APPEAL RIGHTS

10 51. Murray may appeal this Order under Section 76-4-108, MCA, by filing a
11 written request for a hearing before the Montana Board of Environmental Review no later than
12 30 days after service of this Order. Any request for a hearing must be in writing and sent to:

13 Board Secretary
14 Board of Environmental Review
15 P.O. Box 200901
16 Helena, MT 59620-0901

17 52. Hearings are conducted as provided in the Montana Administrative Procedure
18 Act, Title 2, chapter 4, part 6, MCA. Hearings are normally conducted in a manner similar to
19 court proceedings, with witnesses being sworn and subject to cross-examination. Proceedings
20 prior to the hearing may include formal discovery procedures, including interrogatories,
21 requests for production of documents, and depositions. You have the right to be represented by
22 an attorney in all proceedings. *See* ARM 1.3.231(1).

23 53. If a hearing is not requested within 30 days after receipt of this Order, the
24 opportunity for a contested case appeal is waived.

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54. This Order becomes effective on the date of service. Service by mail is complete on the date of mailing.

IT IS SO ORDERED:

DATED this 9th day of June 2020.

STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAD W. ANDERSON
Enforcement Program Manager

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**Department of Environmental Quality - Enforcement Program
Penalty Calculation Worksheet**

Responsible Party Name:	Duane Murray (Murray) at Lot 5 of the South Hills Subdivision
FID:	2568
Statute:	Sanitation in Subdivisions Act (SSA)
Maximum Penalty Authority:	\$250.00
Date:	6/3/2020
Name of Employee Calculating Penalty:	Margarite Juarez Thomas

Penalty Calculation #1

Description of Violation:

Murray violated Section 76-4-130, MCA, by deviating from the certificate of subdivision approval (COSA) approved under ES# 36-93-LI-78 for Lot 5 without DEQ review and approval. Specifically, the South Hill Subdivision COSA dated December 17, 1993, and issued under approval number ES# 36-93-LI-78, states Lot 5 may be used for a commercial development served by an individual onsite water system and individual onsite sewage treatment system. Commercial development on Lot 5 is currently served by an unapproved multiple family water system and an unapproved multiple family sewage system. There are also unapproved permanent multiple spaces for RVs on Lot 5. The Department has not approved these deviations from the COSA.

I. BASE PENALTY

Nature

Explanation:

A COSA is required for subdivisions in order to protect human health and the environment. An unapproved deviation of a COSA has the potential to harm human health and the environment.

Potential to Harm Human Health or the Environment	x
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:

According to ARM 17.4.303(5)(a), construction or operation without approval from DEQ is a violation with major gravity because of the potential to harm human health and the environment. An unapproved deviation from the COSA could potentially harm human health and the environment since the deviations were made without regard for, or under the review of, Montana's subdivision review standards. Therefore, this violation has a major gravity.

Extent Explanation:

According to ARM 17.4.302(3), the extent of a violation means the violator's degree of deviation from the applicable statute, rule or permit. Subdivision review under the SSA considers the water and wastewater systems designed for proposed subdivisions. The use of an individual well as a multi-user well and the use of a multi-user onsite sewage system and the use of an RV park with permanent multiple spaces without review and approval by DEQ is a major deviation from the COSA.

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: 0.85

Impact to Administration

Gravity

Major	Moderate	Minor

0.50	0.40	0.30	Gravity Factor:	
BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):				\$212.50

II. ADJUSTED BASE PENALTY**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
Murray exhibited moderate culpability by deviating from the COSA. As the owner of Lot 5, Murray should be aware of the requirements of the COSA. Additionally, DEQ notified Murray in writing of the violation and Murray still failed to comply. The county sanitarian notified Murray of the violation as well. Murray is in control of the circumstances that caused the violation. The Department is adding 20% to the base penalty.	
Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$42.50

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:	
Murray did not promptly report the violation to DEQ or voluntarily disclose facts related to the violation. However, Murray did hire an engineer and make submittals to DEQ. DEQ will reduce the Base Penalty by 5% for Good Faith and Cooperation.	
Good Faith & Coop. Percent:	0.05
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$10.63

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:	
DEQ is not aware of any amounts voluntarily expended by Murray above and beyond what is required to correct the violation and/or its impact; therefore, no reduction is being allowed.	
AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$212.50
Circumstances	\$42.50
Good Faith & Cooperation	-\$10.63
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$244.38

III. DAYS OF VIOLATION

Explanation:	
DEQ issued a violation letter to Murray on October 21, 2016. Murray remains in violation through June 3, 2020, the date of this penalty calculation. DEQ has chosen to collapse the total number of days of violation in the last two years into one day of violation per month. DEQ is calculating a penalty based on 24 days of violation.	
Number of Days:	24
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$5,865.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:	
Not applicable.	
OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00

V. ECONOMIC BENEFIT

Explanation:	
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Plans and specifications for review of a COSA must be submitted to DEQ. Murray did submit plans and specifications and paid the cost of review fees. Murray paid a professional engineer to make six submittals to DEQ. Murray delayed the cost of retaining the services of a professional engineer to complete the subdivision review. Because more than one year has lapsed since the application was reviewed by the Department, Murray may be required to re-pay the review fees. To calculate the economic benefit for retaining an engineer to design and submit adequate plans and specifications and necessary as-built drawings and certification, DEQ estimated 100 hours at \$100 per hour for a qualified professional engineer. This calculation does not include any construction costs. The economic benefit would be due to interest earnings on the delayed costs. Calculating the economic benefit considers the costs delayed by Murray during the two years prior to the date of this penalty calculation, June 3, 2020.

Using the following formula, the DEQ calculated an economic benefit of \$524.00 Economic

Benefit = [Time of Delay (years) * (Delayed Cost x Interest Gain)]

Time of Delay= 24 months of delay/ 12 months in a year = 2 years Delayed

Cost = \$(100*100) =10000


Interest Rate =1.28% (Source: US Treasury 52 week bank discount rate)

Calculation: 2 * (10000*0.0017) = 256 (rounded to the nearest dollar)

Murray gained an economic benefit of \$256 as a result of the violation.

ECONOMIC BENEFIT REALIZED: **\$256.00**

**Department of Environmental Quality - Enforcement Program
Penalty Calculation Summary**

Responsible Party Name:	Duane Murray (Murray) at Lot 5 of the South Hills Subdivision		
FID:	2568		
Statute:	Sanitation in Subdivisions Act (SSA)		
Maximum Penalty Authority:			\$250.00
Date:	6/3/2020		
Signature of Employee Calculating Penalty:	Margarite Juarez Thomas		

Penalty #1

I. Base Penalty (Maximum Penalty Authority x Matrix Factor)

Maximum Penalty Authority:	\$250.00
Percent Harm - Gravity and Extent:	0.85
Percent Impact - Gravity:	0.00
Base Penalty:	\$212.50

II. Adjusted Base Penalty

Base Penalty:	\$212.50
Circumstances:	\$42.50
Good Faith and Cooperation:	-\$10.63
Amount Voluntarily Expended:	\$0.00
Adjusted Base Penalty:	\$244.38

III. Days of Violation or

Number of Occurrences	24
Total Adjusted Penalty:	\$5,865.00

\$5,865.00

IV. Other Matters as Justice

May Require	\$0.00
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V. Economic Benefit

\$256.00

\$256.00

VI. History*

Subtotal(s) \$6,000.00

\$0.00

\$6,000.00

Total calculated penalty: \$6,000.00

*Murray does not have a prior history of violations of the Sanitation in Subdivisions Act (SSA) documented in either an administrative order, judicial order, or judgment within the last three years.