

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.36.345 and 17.38.101 pertaining to)	PROPOSED AMENDMENT
adoption by reference and plans for)	
public water supply or public sewage)	(WATER QUALITY)
system)	(SUBDIVISIONS/ON-SITE
)	SUBSURFACE WASTEWATER
)	TREATMENT)
)	(PUBLIC WATER AND SEWAGE
)	SYSTEMS REQUIREMENTS)

TO: All Concerned Persons

1. On March 7, 2014, at 1:30 p.m., the Board of Environmental Review and the Department of Environmental Quality 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 and department 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 Elois Johnson, Paralegal, no later than 5:00 p.m., February 27, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.345 ADOPTION BY REFERENCE (1) 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) Department Circular DEQ-1, "Standards for Water Works," ~~2006~~ 2014 edition;
- (b) remains the same.
- (c) Department Circular DEQ-3, "Standards for Small Water Systems," ~~2006~~ 2014 edition;
- (d) through (f) remain the same.
- (g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;
- (g) remains the same, but is renumbered (h).
- (i) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;

(h) through (k) remain the same, but are renumbered (j) through (m).
(2) remains the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to (1)(a) updates the adoption by reference of Department Circular DEQ-1, "Standards for Water Works," and Department Circular DEQ-3, "Standards for Small Water Systems," to the 2014 editions. The proposed amendments to these circulars are necessary to make the design standards consistent with current industry standards contained in the Recommended Standards for Water Works, which are commonly referred to as the 10 States Standards. The 10 States Standards have been developed by the states and provinces in the Great Lakes and upper Mississippi Rivers regions to ensure the safety of drinking water. They are used by those states and provinces to apply consistent engineering standards across those regions. They are also used by a number of other states across the country, including Montana. The 10 States Standards are periodically updated to incorporate changes in technology and drinking water protection practices. The board and department do not adopt the 10 States Standards by reference. However, they do adopt, via Department Circulars DEQ-1 and DEQ-3, language similar to a significant portion of language found in the 10 States Standards. Use of these standards, or language similar to these standards, protects potable water, reduces the costs associated with the preparation of plans and specifications, and increases consumer confidence in the safety of the system. DEQ-1 and DEQ-3 are currently based on the 2003 edition of the 10 States Standards. The 10 States Standards were updated in 2007 and 2012. The board and department are proposing to modify DEQ-1 and DEQ-3 to incorporate the 2007 and 2012 changes, to make the circular consistent with recent changes to water well requirements adopted by the Board of Water Well Contractors, to make the circular consistent with recent changes to Water Use Act rules adopted by the Department of Natural Resources and Conservation, to remove requirements that are beyond the the board and department's authority, and to make style and grammar changes for readability. A more detailed summary of the major changes to these circulars is available as indicated in section 4 of this notice.

The proposed new Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," would set standards for the development of springs to serve public water supply systems. The proposed standards are necessary to ensure that a spring that is developed to supply water for a public system is capable of producing a safe supply of water. In addition to jeopardizing public health, incorrectly developed spring sources can be very expensive to fix. The board and department have not adopted standards for the use of springs as a public water supply source. However, they have adopted Department Circular DEQ-11, Montana Standards for Development of Springs for Individual and Shared Non-Public Systems. Proposed DEQ-10 adapts the DEQ-10 standards to public systems.

The proposed new Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," would set standards for the

construction and maintenance of cisterns in public water supply systems. Incorrectly installed or maintained cisterns have a significant potential to create public health and regulatory issues. The proposed standards are necessary to ensure that a noncommunity public water supply system using cisterns has an adequate and safe supply of water. The board and department have not adopted standards for the use of cisterns within a noncommunity public water supply system. However, they have adopted Department Circular DEQ-17, Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-Public Systems. Cisterns used for noncommunity public systems are similar to cisterns used for private systems, and proposed DEQ-16 generally adapts the DEQ-17 standards to noncommunity public systems.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (3)(n)(ii) remain the same.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or public sewage 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 public sewage 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) remains the same.

(b) the design report, plans, and specifications for noncommunity water systems must be prepared in accordance with the format and criteria set forth in ~~d~~Department Circular DEQ-3, "~~Montana Department of Environmental Quality Standards for Small Water Systems.~~"

(i) 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).

(ii) Except as provided in (iii), ~~The~~ 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:

(A) treatment processes and equipment, system components subject to review under ~~d~~Department Circular DEQ-1, "~~Montana Department of Environmental Quality Standards for Water Works,~~" are proposed;:

(B) chlorination subject to review under Department Circular DEQ-3, "Standards for Small Water Systems," is proposed; or

(C) springs subject to review under Department Circular DEQ-10, "Standards for the Development of Springs to Serve Public Water Supply Systems" are proposed.

(iii) 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) through (5) remain the same.

(6) Plans and specifications for a project that would violate the approval of a public water supply system, public wastewater system, or that would cause a significant deficiency, as defined in ARM 17.38.104(1), will ~~may~~ not be approved by the reviewing authority.

(7) through (8)(c) remain the same.

(9) Except as provided in ~~(10)~~ (11)(b), unless the applicant has completed the construction, alteration, or extension of a public water supply or public sewage system within three years after the department or a delegated unit of local government has issued its written approval, the approval is void and a design report, plans, and specifications must be resubmitted as required by (4) with the appropriate fees specified in this subchapter. ~~The department may grant a completion deadline extension if the applicant requests an extension in writing and demonstrates adequate justification to the department.~~

(a) If the relevant design standards and administrative rules have not changed since the original approval was issued, the department may, at its discretion, reapprove the project using the following abbreviated process:

(i) The original design report, plans, and specifications must be resubmitted as required by (4).

(ii) The engineer or firm that originally submitted the project must, in writing, grant permission for the department to re-review the plan set, and state that the conditions surrounding the original submission have not changed.

(iii) The review fee will be established by the hourly rate designated in ARM 17.38.106(3) multiplied by the time required to review the plans and specifications.

(10) Continuously active public water supply systems that have never submitted plans and specifications for department review are not required to submit plans and specifications unless specifically required by the department. All public water supply systems that are inactive for three or more years must submit a design report, plans, and specifications, as required by (4) with the appropriate fees specified in this subchapter, for approval prior to reactivation. Previously approved systems that have been inactive for three or more years may, at the department's discretion, use the abbreviated review process described in (9)(a).

~~(10)~~ (11) As provided in 75-6-131, MCA, the following requirements apply to regional public water supply systems for which a final engineering report has been approved by the United States Bureau of Reclamation. These requirements are in addition to the other requirements in this chapter, except where a rule specifically provides otherwise:

(a) and (b) remain the same.

(c) Except as provided in (4) and ~~(10)~~ (11)(b), the approval of a regional water system's standard construction contract documents and provisions for amendments to those documents remains in effect for the construction period of the project as contained in the final engineering report approved by the United States Bureau of Reclamation.

(11) remains the same, but is renumbered (12).

~~(12)~~ (13) A person may not commence or continue the operation of a public

water supply or public sewage system, or any portion of such system, prior to certifying by letter to the department or a delegated division of local government that the system, or portion of the system constructed, altered, or extended to that date, was completed in substantial accordance with plans and specifications approved by the department and there are no deviations from the design standards of the applicable circulars other than those previously approved by the department pursuant to ARM 17.38.101. For a system or any portion of a system designed by a professional engineer, ~~the~~ an engineer shall sign and submit the certification letter to the department or a delegated division of local government.

~~(13)~~ (14) Within 90 days after the completion of construction, alteration, or extension of a public water supply or public sewage system, or any portion of such system, a complete set of certified "as-built" drawings must be signed and submitted to the department or a delegated division of local government. The department may require that the "as-built" submittal be accompanied by an operation and maintenance manual. For a system or any portion of a system designed by a professional engineer, ~~the~~ an engineer shall sign and submit the certified "as-built" drawings to the department or a delegated division of local government.

(14) through (18)(b) remain the same, but are renumbered (15) through (19)(b).

~~(19)~~ (20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department of ~~Environmental Quality~~ Circular DEQ-1, ~~2006~~ 2014 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water supply systems;

(b) remains the same.

(c) Department of ~~Environmental Quality~~ Circular DEQ-3, ~~2006~~ 2014 edition, which sets forth minimum design standards for small water systems;

(d) remains the same.

(e) Department of ~~Environmental Quality~~ Water Main Certified Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for water main extensions and replacements;

(f) Department of ~~Environmental Quality~~ Sewer Main Certified Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for sewer main extensions and replacements;

(g) Department of ~~Environmental Quality~~ Community Water Supply Well Expedited Review Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for new community water supply wells;

(h) Department of ~~Environmental Quality~~ Noncommunity Water Supply Well Expedited Review Checklist, ~~2007~~ 2014 edition, which sets forth minimum criteria and design standards for new noncommunity water supply wells; ~~and~~

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

(j) Department Circular DEQ-10, 2014 edition, which sets forth the standards for development of springs to serve public water supply systems; and

(k) Department Circular DEQ-16, 2014 edition, which sets forth standards for cisterns to serve noncommunity public water supply systems.

~~(20)~~ (21) A copy of any of the documents adopted under ~~(19)~~ (20) may be obtained from viewed at the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA

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

REASON: ARM 17.38.101(4)(b) is being amended to correct the titles of Department Circular DEQ-1 and Department Circular DEQ-3. This amendment has no significant impact and is housekeeping in nature only.

The other proposed amendments modify a requirement to employ a professional engineer to prepare plans and specifications for department review of a noncommunity system. The proposed amendments are necessary because all systems must submit plans and specifications for review against department design standards. The minimum standards for drinking water are described in two separate documents, Department Circular DEQ-1 and Department Circular DEQ-3. The minimum design standards are based on risks associated with exposure and the complexity of treatment. Community systems must submit under Department Circular DEQ-1 and must use a professional engineer. Noncommunity systems may submit under Department Circular DEQ-3 and are required to use a professional engineer only when directed by the department. Because of the complexities involved, the department currently requires an engineer for systems using chlorination or springs. Inserting a requirement to use a professional engineer upfront would avoid the return and resubmittal of plans and specifications that were originally submitted without the use of a professional engineer.

The proposed amendment to (6) provides clarification. The proposed amendment is necessary to clarify that the department may not approve plans and specifications that would create a violation of a previously issued approval, whether for a water system or a wastewater system, or that would create a significant deficiency.

The proposed amendments to (9) are intended to clarify the rule and to make the rule consistent with the statute. The proposed amendments are necessary because the current rule, which allows for an extension for non-completed facilities, is in conflict with the law. The law states that a system that has not completed construction within three years "must" resubmit those unconstructed portions of the facility for re-review. No authority exists for a department extension.

The proposed addition of (9)(a) is intended to create a potentially abbreviated review process for those facilities that did not complete construction within the three-year window. The proposed addition is necessary to ensure that newly constructed facilities meet the current design standards, but will also allow for a reduced cost approach when the standards used in the original review have not been significantly modified.

The proposed addition of (10) would set out the department's approval process for existing systems that have not previously been required to undergo department review and approval. The proposed addition provides that existing systems that have never received department review and approval may be subject to that requirement. In its enforcement discretion, the department does not routinely

require systems that were in existence prior to the requirement for submittal of plans and specifications to submit those documents for department review and approval. Satisfactory routine monitoring reports submitted by these operating systems are used in place of the review to determine if the system is capable of producing a safe supply of water. Those systems with unsatisfactory results, or those systems that have discontinued operations for more than three years, are required to submit plans and specifications for department review. Proposed (10) lays out that process.

The proposed changes in (12) and (13) clarify that "an" engineer must submit required documents as opposed to "the" design engineer exclusively. The proposed change is necessary to resolve issues in which the design engineer is unable or unwilling to submit the required documents. The non-design engineer will be bound by the engineering code of ethics and licensure requirements to ensure the appropriate use of their stamp on a project that they may have acquired after the project was initiated.

The additional proposed change in (13) clarifies that deviations from the approved plans and specifications during construction may not violate a design standard. The proposed change is necessary to allow engineers the ability to resolve construction issues encountered during construction, but makes it clear that those changes may not violate a design standard unless the department has approved the deviation.

The proposed amendments to (20)(a) and (c) simply incorporate by reference into the public water supply rules the new versions of DEQ-1 and DEQ-3. The proposed amendments to (20)(e), (g), and (h) simply incorporate into the public water supply updated checklists that reflect the amendments made to DEQ-1 and DEQ-3. The proposed amendments to (20)(f) simply incorporate by reference into the public water supply rules an updated checklist that reflects changes made to DEQ-2 in 2012. The proposed new (20)(i) and (k) simply incorporate by reference into the public water supply rules the new DEQ-10 and DEQ-16.

4. The proposed new and amended circulars and checklists may be viewed at and copied from the department's web site at <http://deq.mt.gov/wqinfo/pws/PlanReviewEngineer.mcp>. Also, copies may be obtained by contacting Leata English at Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by phone at (406) 444-4224; or by e-mail at LEnglish@mt.gov.

5. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., March 13, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. 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.

7. The board and department maintain 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, e-mail, 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Tracy Stone-Manning
TRACY STONE-MANNING, Director

Certified to the Secretary of State, February 3, 2014.