

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.36.326 and 17.36.327 pertaining to )	PROPOSED AMENDMENT
sewage systems: operation and )	
maintenance, ownership, easements, )	(SUBDIVISIONS/ON-SITE
and agreements; and sewage systems: )	SUBSURFACE WASTEWATER
existing systems )	TREATMENT)

TO: All Concerned Persons

1. On July 23, 2014, at 1:00 p.m., the Department of Environmental Quality will hold a public hearing in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The 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., July 7, 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:

17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS AND EASEMENTS (1) The applicant shall demonstrate that all public, and multiple-user, ~~and shared~~ sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department. If required by Department Circulars DEQ-2 or DEQ-4, the operation and maintenance manual must meet the requirements of that circular.

~~(2) For public and multiple-user systems, a homeowners' association, county sewer district, or other administrative entity, with the power to charge appropriate fees, must be established as part of the operation and maintenance plan required by department Circular DEQ-4. Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA.~~

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

~~(3) (4) For public, multiple-user, and shared systems, easements~~ Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. ~~Easements must be in a form acceptable to the department filed with the~~

county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be:

(a) in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.

~~(4)~~ (5) Users of multiple-user and shared sewage systems must have an agreement that identifies the rights of each user. ~~Shared u~~User agreements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments add to and change the word order in the title of the rule. This is necessary for the rule title to identify all of the subjects addressed in the rule and to show the order in which they are addressed.

The proposed amendments to ARM 17.36.326(1) exclude shared sewage systems from the requirement to provide an operation and maintenance manual. It is not necessary to have a written manual for shared (two-user) systems. This amendment is also necessary to be consistent with the corresponding requirements for water supply systems in ARM 17.36.334(1). The proposed amendments also add a reference to DEQ-2 and DEQ-4. This is necessary to inform subdivision applicants about additional requirements that may be applicable to some systems as provided in the circulars.

The proposed amendments to ARM 17.36.326(2) revise the ownership requirements for public sewage systems. The amendments are necessary to conform to the statutory requirements in 75-6-126, MCA. The existing rule allows unincorporated associations to own a public sewage system, which is contrary to the statute. Conversely, the statute allows individuals to own a public sewage system, which is not allowed by the current rule. The proposed amendments move the ownership requirements for multiple-user systems to a new ARM 17.36.326(3).

Proposed new ARM 17.36.326(3) restates the ownership provisions for multiple-user sewage systems currently found in ARM 17.36.326(2), but gives the reviewing authority discretion whether to require the creation of an ownership entity such as a homeowners' association, county district, or other entity. It is not necessary to create an ownership entity in every case, e.g., if a multiple-user system is owned by a single individual.

The proposed amendments to renumbered ARM 17.36.326(4) delete the list of specific sewage systems that may be required to have easements. Because the rule applies to all types of systems, it is not necessary to specifically list each type. The amendments also clarify that easements may be required if needed to allow adequate operation and maintenance of the system or to comply with the provisions in statute that allow mixing zones to cross subdivision boundaries through easements. The proposed amendments also require that easements be in the form of a written easement signed by the grantor or, if the same person owns both parcels, require that the easement be shown on the plat or certificate of survey for the subdivision. This amendment is necessary to ensure the easement is valid and effective.

The proposed amendments to renumbered ARM 17.36.326(5) add multiple-

user systems to the types of systems required to have agreements that show the rights of each user. The current rule requires agreements only for shared systems. It is necessary to have user agreements for multiple-user systems to ensure that responsibilities for system operation and maintenance are clearly identified.

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 supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

~~(4)~~ (2) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information, together with fees as provided in ARM 17.36.802:

(a) through (c) remain the same.

~~(2)~~ (3) Unless a waiver is approved by the department pursuant to ARM 17.36.601, the drainfields and sand mounds for existing systems must be located at least 100 feet from wells. The lot size requirements in ARM 17.36.340 apply to parcels with existing sewage systems, except that the setbacks in ARM 17.36.323 may be waived for existing sewage systems pursuant to ARM 17.36.601.

(3) remains the same, but is renumbered (4).

~~(4)~~ (5) Existing cesspools, and pit privies, ~~and holding tanks~~ must be replaced by a system approved under this subchapter. Holding tanks may be allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

**REASON:** The proposed amendments to ARM 17.36.327 add a new (1) to clarify that the provisions of renumbered (2) through (5) apply only to existing non-public sewage systems in subdivisions. The amendments clarify that the requirements applicable to existing public sewage systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to existing public and non-public sewage systems in proposed subdivisions.

The proposed amendments to ARM 17.36.327(1), which is renumbered as (2), clarify that fees apply for review of existing sewage systems. This is not a substantive change, but is necessary to identify all requirements that apply to existing systems.

The proposed amendments to (2), which is renumbered (3), refer to ARM 17.36.340. With the amendments to ARM 17.36.340 proposed in MAR Notice No. 17-358, this would make existing sewage systems subject to all of the setbacks in

ARM 17.36.323, not just the setbacks for drainfields and sand mounds. Compliance with these setback requirements is necessary to protect public health and the environment. The proposed amendments retain the existing setback waiver provision and add the waivers in ARM 17.36.601. These waivers ensure that setbacks are required only when necessary to protect public health and the environment.

The proposed amendments to ARM 17.36.327(4), renumbered as (5), allow holding tanks to be used if allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). ARM 17.36.321(3)(g)(ii) is a new provision proposed in MAR Notice No. 17-359 that allows the department to allow holding tanks by waiver in a situation where a system has failed and there is no other alternative available. The reference in this rule to the holding tank waiver is necessary to identify provisions applicable to existing systems.

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 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](mailto:ejohnson@mt.gov), no later than 5:00 p.m., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Nicol, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

6. The department 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, 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](mailto:ejohnson@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

8. 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:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, June 16, 2014.