

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.36.101, 17.36.103, 17.36.106, )	PROPOSED AMENDMENT
17.36.112, 17.36.323, 17.36.326, )	
17.36.327, 17.36.334, 17.36.802, and )	(SUBDIVISIONS/ON-SITE
17.36.804 pertaining to definitions, )	SUBSURFACE WASTEWATER
application--contents, review )	TREATMENT)
procedures--applicable rules, re-review )	
of previously approved facilities: )	
procedures, setbacks, sewage systems: )	
agreements and easements, existing )	
systems, water supply systems: )	
operation and maintenance, ownership, )	
easements, and agreements, fee )	
schedules, and disposition of fees )	

TO: All Concerned Persons

1. On January 15, 2016, at 9:00 a.m., 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 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., January 5, 2016, 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](mailto:ejohnson@mt.gov).

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

17.36.101 DEFINITIONS For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) through (64) remain the same.

(65) "Tract" is synonymous with "lot" or "parcel" for the purposes of this chapter.

(65) through (71) remain the same, but are renumbered (66) through (72).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment adds the definition of "tract," a term

synonymous with "lot" and "parcel." The amendment is necessary to provide terminology consistent with the Sanitation in Subdivisions Act, which uses the term "parcel."

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

- (a) through (i)(ii) remain the same.
- (iii) direction and percentage of slope across the treatment area or a contour map with a ~~minimum~~ contour interval of at least two feet; and
- (iv) through (q) remain the same.
- (r) a copy of applicable supporting legal documents, ~~including documents relating to easements, covenants, water rights, water user agreements, and establishment of homeowners' associations and local districts;~~
- (s) except for connections to existing public systems addressed under ARM 17.36.328(2)(b)(iv), if the proposed water supply is from wells or springs, a letter from the Department of Natural Resources and Conservation stating that the water supply, either:
  - ~~(i) a letter from the Department of Natural Resources and Conservation stating that the water supply is exempt from water rights permitting requirements; or~~
  - (ii) ~~proof of~~ has a water right, as defined in 85-2-422, MCA.
  - (t) through (v) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to (1)(a)(iii) deletes the term "minimum" in the provision requiring that slope maps for sewage treatment areas use a "minimum contour interval of two feet." The term "minimum" is confusing because it can be interpreted to allow contour intervals of greater than two feet (e.g., ten feet). The amendment clarifies that at least a two-foot contour interval is required.

The proposed amendment to (1)(r) deletes the list of required legal documents to be submitted to the reviewing authority to require all documents and agreements relating to the application to be included with the application.

The proposed amendments to (1)(s) require applicants to provide information to the department about the status of the water rights for any proposed water supply using wells or springs. Except for connections to existing public water supply systems, which are addressed under ARM 17.36.328(2)(b)(iv), the amendment would require the applicant to provide a letter from the Montana Department of Natural Resources and Conservation (DNRC) stating that the proposed subdivision water supply is exempt from DNRC permitting requirements or a letter from DNRC stating that the existing water right is adequate for the proposed use. The amendment is necessary to allow the department to better assess the dependability of a proposed subdivision water supply and to help prevent the development of a subdivision when water is not legally available for use or where the proposed development is not legally allowable with the existing water right.

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1) The procedures for review of subdivision applications by the reviewing authority are as follows:

(a) remains the same.

(b) If a local department or board of health has been certified as the reviewing authority pursuant to 76-4-104, MCA, the local reviewing authority shall, within ~~50~~ 45 days after receipt of a subdivision application, review the application and forward the application to the department together with a recommended action for approval, conditional approval, or denial. The department shall take final action on the application within ten days after receiving the recommendation of the local reviewing authority, but not later than the time remaining in the 55-day or 120-day period set out in (1)(a).

(i) remains the same.

(c) If an application is incomplete, the reviewing authority shall deny the application, setting forth, in writing, the deficiencies to the applicant ~~or~~ and the applicant's representative. If the additional information is submitted within 30 days after the date of the denial letter, the reviewing authority shall review the resubmitted application within 30 days after receipt. If the review is conducted by a local department or board of health that is certified under 76-4-104, MCA, the department shall make a final decision on the resubmitted application within ten days after the local reviewing authority completes its review. If the additional information is not submitted within 30 days after the date of the denial letter, the review time frames in (a) and (b) apply.

(2) through (4) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to ARM 17.36.106(1)(b), which sets the time frame for review of a subdivision application by a local reviewing authority, replaces 50 days with 45 days. The statutory review period for local reviewing authorities is 45 days. Section 76-4-104(7), MCA. The amendment is necessary to conform the rule to the statute.

The proposed amendment to ARM 17.36.106(1)(c) requires the reviewing authority, when there are deficiencies in an application, to notify both the applicant and the applicant's representative. The current rule could be interpreted as allowing notification to either the applicant or the representative. The amendment is necessary to ensure that both parties are informed of application deficiencies.

17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1) This rule applies to amendments "(rewrites") of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, ~~or~~ sewage, or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:

(a) through (8) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

**REASON:** The proposed amendment clarifies that "rewrites" are synonymous with "amendments" for the purposes of this rule.

**17.36.323 SETBACKS** (1) Minimum setback distances, in feet, shown in Table 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

TABLE 2  
SETBACK DISTANCES  
(in feet)

From	To Drinking Water Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/Soil Absorption Systems (3)
Public or multiple-user drinking water wells/springs	-	100 (4)	100
Individual and shared drinking water wells	-	50 (4)	100
Other wells (5)	-	50 (4)	100 (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (6)	25
Slopes > 35 percent (7)	-	10 (6)	25
Property boundaries	10 (8)	10 (8)	10 (8)
Subsurface drains	-	10	10
Water mains	-	10 (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundation walls	-	10	10
Surface water (10), springs	100 (4) (11) (12)	50 (4) (11)	100 (4) (11) (13)

Floodplains	10 <u>(4)</u> (11)	- Sealed components - no setbacks (1) Other components - 100 (2) <u>(4)</u> (11)	100 (11) <u>(14)</u>
Mixing zones	100 (4)	-	-
Storm water ponds and ditches (15)	25 <u>(4)</u> (16)	10 <u>(4)</u>	25 <u>(4)</u>

(1) Sealed components include holding tanks, sealed pit privies, ~~and the components addressed in Department Circular DEQ-4, Chapters 4 and 5 raw wastewater pumping stations, dose tanks, and septic tanks.~~ Sealed components must meet the requirements of ARM 17.36.322(4).

Footnotes (2) through (16) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: Table 2 in ARM 17.36.323 contains setback requirements for water and sewer facilities in proposed subdivisions. The proposed amendment to Footnote (1) is necessary to limit the required setbacks to those not already addressed under drainfields/soil absorption systems. Deleting the reference to Chapters 4 and 5 is necessary to avoid conflicts between effluent distribution systems addressed in Chapter 4 and the minimum setback of ten feet between sealed components and drainfields. Applicable components in Chapters 4 and 5 are listed individually in the footnote definition of sealed components rather than referencing the general chapters of the circular.

The proposed amendment to Table 2 adds footnote (4), which allows waivers, to the setback between the wells and the floodplain. This is necessary to allow, through the waiver process, consideration of special construction or siting circumstances that minimize the potential for commingling between flood waters and a water supply.

The proposed amendments also add footnote (4) to storm water ponds and ditches and would allow waivers from the setbacks from storm water ponds and ditches to drinking water wells, sealed components, and other components and drainfields/soil absorption systems. Special circumstances can affect whether these setbacks are necessary. The waiver process will provide a method for considering these circumstances on a case-by-case basis.

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 in one of the following forms:~~

~~(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. The user agreement must be signed by all users when the lots are sold. Shared uUser agreements must be in a form acceptable to the department.~~

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments change 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 Department Circulars 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 setbacks requirements in ARM 17.36.323 apply, but 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), 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 provisions for 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). The reference in this rule to the holding tank waiver is necessary to identify provisions applicable to existing systems.

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS (1) If a proposed subdivision includes a public or multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the ~~multiple-user~~ systems will be adequately operated and maintained.

(2) through (5) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.334(1) deletes the reference to multiple-user systems in the second sentence. As recently amended, (1) applies to both public and multiple-user systems, so the limitation in the second sentence to multiple-user systems is erroneous.

17.36.802 FEE SCHEDULES (1) An applicant for approval ~~of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces, and tourist campgrounds~~ under this subchapter shall pay the following fees:

UNIT  
UNIT COST

(a) type of lots:	
(i) subdivision lot <del>lot/</del> or parcel	\$ 125.00
(ii) condominium/ <u>townhouse</u> /trailer court/recreational camping vehicle campground unit/ or space	\$ 50.00
(iii) resubmittal fee - previously approved lot, boundaries are not changed <u>per</u> lot/ or parcel	\$ 75.00
(b) type of water system:	
(i) individual or shared water supply system (existing and proposed) <u>per</u> unit	\$ 85.00
(ii) multiple-user system (non-public):	
(A) - <u>each</u> new system <del>each</del>	\$ 315.00 (plus \$105.00/hour for review in excess of four hours)
(B) - new distribution system design <u>per</u> lineal foot	<del>\$0.50</del> <u>0.25</u>
(C) - connection to distribution system <u>per</u> lot/ or unit	\$ 70.00
(iii) public water system:	
(A) new system per <del>DEQ-4</del> component	per ARM 17.38.106 fee schedule
(B) - new distribution system design <u>per</u> lineal foot	<del>\$0.50</del> <u>0.25</u>
(C) - connection to distribution system <u>per</u> lot/ or structure	\$ 70.00
(c) type of wastewater disposal:	
(i) existing systems <u>per</u> unit	\$ 75.00
(ii) new gravity fed system <u>per</u> drainfield	\$ 95.00
(iii) new <u>gravity-dosed, siphon-dosed, or</u> pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:	
(A) <u>per</u> design	\$ 190.00 (plus \$105.00/hour for review in excess of two hours)
<del>new pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems</del>	
(B) <u>per</u> drainfield	\$ 50.00
(iv) <u>gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems.</u> <del>This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost unit</del>	\$ 95.00 (plus \$105.00/hour in excess of two hours)
(v) multiple-user wastewater system (non-public):	
(A) - new collection system design <u>per</u> lineal foot	<del>\$0.50</del> <u>0.25</u>
(B) - connection to collection system <u>per</u> lot/ or unit	\$ 70.00

(vi) new public wastewater system per DEQ-2 component	per ARM 17.38.106 fee schedule
(A) - new collection system design per lineal foot	<del>\$0.50</del> <u>0.25</u>
(B) - connection to collection system per lot/ or structure	\$ 70.00
(d) other:	
(i) deviation from circular per request or per design	\$ 200.00 (plus \$105.00/hour for review in excess of two hours)
(ii) waiver from rule per request	\$ 200.00 (plus \$105.00/hour for review in excess of two hours)
(iii) reissuance of original approval statement per request	\$ 60.00
(iv) review of revised lot layout document per request	\$ 125.00
(v) municipal facilities exemption checklist (former master plan exemption) per application	\$ 100.00
(vi) nonsignificance determinations/categorical exemption reviews:	
(A) - individual/shared systems per drainfield	\$ 60.00 <u>(plus \$105.00/hour for review in excess of two hours)</u>
(B) - multiple-user non-public systems per lot/ or structure	\$ 30.00 <u>(plus \$105.00/hour for review in excess of two hours)</u>
(C) source specific mixing zone per drainfield	<u>\$ 200.00</u>
(D) - public systems per drainfield	per ARM 17.38.106 fee schedule
(vii) storm drainage plan review:	
(A) - plans exempt from Circular DEQ-8 per lot	\$ 40.00
(B) - plans subject to Circular DEQ-8 review:	
(I) per design	\$ 180.00
(II) per lot	\$ 40.00 (plus \$105.00/hour for review in excess of 30 minutes per lot)
(viii) preparation of environmental assessments/environmental impact statements	actual cost

AUTH: 76-4-105, MCA  
IMP: 76-4-105, ~~76-4-128~~, MCA

REASON: The proposed amendments clarify that all reviews addressed by this subchapter are covered by these fees. Reviews are not limited to a division of land into one or more parcels, condominiums, mobile home/trailer courts, and recreational camping vehicle campgrounds, but may include amendments to existing subdivision approvals and reissuance of approvals.

The proposed amendments add the review of townhouses to the unit fee charged for condominiums, mobile home/trailer courts, and recreational camping vehicle campgrounds. The proposed amendment is necessary to clarify that a townhouse is different than a condominium, but, due to the similarities in function, both are reviewed under the same fee structure. The department estimates that the change in fee structure will affect approximately ten applicants. The department has historically charged the same fee for townhouses as it has charged for condominiums. There will be no impact to the public from this change.

The proposed amendments delete the reference in public water supply systems to Department Circular DEQ-1. Public water supply systems may be reviewed under either Department Circular DEQ-1 or DEQ-3.

The proposed amendments reduce the existing fee for review of a water or sewer main extension for both multiple-user and public systems from \$0.50/lineal feet to \$0.25/lineal feet. The amendment is necessary because the review of these facilities is identical under both the Sanitation in Subdivision Act and the Public Drinking Water Act and to provide consistency with ARM 17.38.106. The department estimates that the change in fee structure will affect approximately 35 applicants a year with an approximate savings of \$600 per application.

The proposed amendments clarify a program policy that the fee for the review of "gravity-dosed" and "siphon-dosed" systems is the same as the fee charged for the review of "pressure-dosed" applications. This is necessary because all dosed designs require the same level of review. The department estimates that the change in fee structure will affect approximately 150 applicants a year. Since current program policy charges both gravity- and pressure-dosed systems using the same fee structure, there will be no impact to the public from this change.

The proposed amendments add a fee for the review of holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, and experimental systems. The fees are necessary to ensure system compliance with Department Circular DEQ-4. The department estimates that the change in fee structure will affect approximately ten applicants per year. The department has historically charged for the review of these systems at the lowest fee charged for the review of a wastewater treatment system. The proposed rate is consistent with what the department has been charging. There will be no impact to the public from this change.

The proposed amendment deletes the statement that gray water reuse systems will be reviewed at the unit cost. This statement is unnecessary because the fees are based on either a unit cost or an hourly rate.

The proposed amendments delete the reference in public wastewater systems to Department Circular DEQ-2. Public wastewater systems may be reviewed under either Department Circular DEQ-2 or DEQ-4.

The proposed amendments add an hourly fee to the nonsignificance review

rate for complex applications. A new fee has been added for the review of source specific ground water mixing zones as defined in ARM 17.30.518. These reviews require additional time and resources above those for standard mixing zones as each drainfield is evaluated for:

- (a) quantity, toxicity, and persistence of the pollutant;
  - (b) water-bearing characteristics of subsurface materials;
  - (c) rate and direction of ground water flow;
  - (d) pollutant migration;
  - (e) volume of ground water and area available for mixing;
  - (f) concentration of pollutants within the mixing zone;
  - (g) length of time pollutants will be present;
  - (h) proposed boundaries of the mixing zone;
  - (i) potential impacts to water uses;
  - (j) compliance monitoring;
  - (k) contingency plan if pollutants migrate beyond the mixing zone at concentrations greater than the allowed limits; and
  - (l) specific explanation as to why the proposed mixing zone is the smallest practicable size and why it will have a minimum practicable effect on water users.
- It is anticipated that this will affect fifty applications per year with an average charge of \$200.00 per application.

17.36.804 DISPOSITION OF FEES (1) The department shall use the fees collected pursuant to ARM 17.36.802 to fund the following functions:

- (a) through (d) remain the same.
- (e) subject to 75-1-205, MCA, preparation of an environmental impact statement pursuant to ARM 17.4.615 through 17.4.629, including costs of analysis, printing, distribution, and hearing costs, and excluding the costs of information and data gathering which are subject to fee assessment pursuant to 75-1-202, MCA;
- (f) through (4) remain the same.

AUTH: 76-4-105, MCA

IMP: 76-4-105, ~~76-4-128~~, MCA

REASON: The proposed amendment to ARM 17.36.804 adds a reference to statutory provisions for uses of environmental impact statement fees. The reference is necessary to identify other requirements that may be applicable to fees for the preparation of environmental impact statements.

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., January 21, 2016. 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/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State, December 14, 2015.