



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF ENVIRONMENTAL QUALITY

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2026-198.1**

**Summary**

Implementing House Bill 923 (2025), which provides an exemption from background nitrogen sampling for wastewater discharges in areas where ground water is absent or at great depth; implementing Senate Bill 532 (2025), which allows 15-day expedited review for deviations from certificates of subdivision approval for adding an accessory dwelling unit (ADU) to a lot with existing public water and wastewater service that has capacity for the ADU; implementing House Bill 180 (2025), which allows the department to approve divisions of lots that have drainfield mixing zones on other people's lots, under certain circumstances; and implementing House Bill 629 (2025), which directs the department to instruct county and municipal water and sewer systems to allow proposed subdivisions to connect to the systems under certain circumstances.

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**Hearing Date and Time**

Tuesday, July 7, 2026, at 11:00 a.m.

**Hearing Information**

Wilderness Room at 2401 Colonial Drive, Helena, Montana

**Virtual Hearing Information**

Interested parties may also attend the hearing electronically in the following ways:

Please click the link below to join the webinar:

Join from PC, Mac, iPad, or Android:

<https://mt-gov.zoom.us/j/87075909576?pwd=DjPAsLWIK6hPHcbCartGkVfdNVTWD7.1>

Passcode:514253

Phone one-tap:

+12063379723,,87075909576#,,,,\*514253# US (Seattle)

+12133388477,,87075909576#,,,,\*514253# US (Los Angeles)

Join via audio:

+1 206 337 9723 US (Seattle)

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Webinar ID: 870 7590 9576

Passcode: 514253

International numbers available: <https://mt-gov.zoom.us/j/kc5kMI4nXW>

Join from an H.323/SIP room system:

H.323: 144.195.19.161 (US West) or 206.247.11.121 (US East)

Meeting ID: 870 7590 9576

Passcode: 514253

SIP: 87075909576@zoomcrc.com

Passcode: 514253

## **Comments**

Comments may be submitted using the contact information below. Comments must be received by Tuesday, July 7, 2026, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, June 26, 2026, at 5:00 p.m.

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## **Contact**

Legal Unit

(406) 444-1388

DEQMAR2026-198@mt.gov

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY

(1) through (7) remain the same.

(8) Notwithstanding (4)(c)(iii) of this rule, a wastewater discharge that otherwise meets the criteria of this rule may be reviewed for nonsignificance without a background nitrogen sample required in (4)(c)(iii) in settings where ground water cannot be sampled due to the absence or great depth of the ground water.

(9) For purposes of (8), ground water will be considered:

(a) absent if, as of the date that a person applies, the Groundwater Information Center (GWIC) database does not list a water well in the section of land, as used in the Public Lands Survey System (PLSS), containing the person's site or in any of the eight PLSS sections adjacent to the PLSS section containing the person's site;

(b) at great depth if, as of the date that a person applies:

(i) all water wells listed in GWIC in the PLSS section containing the person's site, or in any of the eight PLSS sections adjacent to the PLSS section containing the person's site, are entirely below a depth of 300 feet under the ground surface; and

(ii) no groundwater is noted at a depth of less than 300 feet under the ground surface in the lithological log of any water well listed in GWIC in the PLSS section containing the person's site or in any of the eight PLSS sections adjacent to the PLSS section containing the person's site.

**Authorizing statute(s):** 75-5-301, 75-5-303, MCA

**Implementing statute(s):** 75-5-303, 75-5-317, MCA

#### Reasonable Necessity Statement

House Bill 923 from the 2025 legislative session directed the department to amend this rule to allow review of a wastewater discharge without a background nitrogen sample where ground water is absent or at a great depth. To accomplish this, the bill directed the department to

adopt specific language in (8). Thus, the department proposes to amend the rule using that specific language.

The bill directed the department to use the phrase “absence or great depth of ground water” but did not define the terms “absence” or “great depth.” To provide clarity to the public, the department proposes to describe how those two terms will be interpreted.

To interpret the term “absence,” the department proposes to look to the Groundwater Information Center (GWIC) database for a lack of ground water wells. If neither the 640 acres (a section) in which the wastewater discharge will occur nor the 5,120 acres (eight sections) around the wastewater discharge have a water well listed in GWIC, the department proposes to consider ground water absent for purposes of this rule.

In normal practice, reviewers often accept background samples from wells that are some distance from the proposed action if there are no wells on site. Generally, the reviewer will accept wells that are up to half a mile from the proposed site, and in some cases up to a mile if the applicant can provide evidence that the sampled well is in a similar hydrogeological setting and likely to be completed in the same aquifer as that underlying the site. By establishing absence of wells in adjacent sections, any locations that could potentially be acceptable have been shown to be without wells. Using the section-based approach rather than a set radius allows applicants to easily search the GWIC database to a consistent area

To interpret the term “great depth,” the department proposes to look to GWIC (1) for whether any water wells in the 640 acres (a section) in which the wastewater discharge will occur or the 5,120 acres (eight sections) around the wastewater discharge are below 300 feet under the ground surface, and (2) for whether ground water has been documented at a depth of less than 300 feet under the ground surface of the 640 acres (a section) in which the wastewater discharge will occur or the 5,120 acres (eight sections) around the wastewater discharge.

Ground water nondegradation is run to the shallowest water below a drainfield. Wastewater constituents have been found in water wells at a depth of 245 feet. (Source: Race AS, Spoelstra J, Parker BL. Wastewater contaminants in a fractured bedrock aquifer and their potential use as enteric virus indicators. *Appl Environ Microbiol.* 2024 Feb 21;90(2):e0121323. doi: 10.1128/aem.01213-23. Epub 2024 Jan 17. PMID: 38231263; PMCID: PMC10880619). To be conservative, the department selected 300 feet under the ground surface as the maximum depth sewage can infiltrate. If ground water is not found until 300 feet under the ground surface, it is unlikely that a relatively surficial drainfield will impact the nitrogen concentration in the aquifer. Although not all well logs note the presence of ground water above the completed depth, using the lithologic descriptions on drillers’ logs provides consistency and uses readily available data.

### **17.36.112 REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES**

(1) through (7) remain the same.

- (8) A person qualifies for 15-day expedited review to deviate from a certificate of subdivision approval if the only deviation is to add an accessory dwelling unit, as defined in 76-2-345, MCA, to a parcel that has existing public water and wastewater services, that have rated capacity, as defined in 75-6-130, MCA, for the accessory dwelling unit.

**Authorizing statute(s):** 76-4-104, MCA

**Implementing statute(s):** 76-4-104, 76-4-125, MCA

#### **Reasonable Necessity Statement**

Senate Bill 532 from the 2025 legislative session made it temporarily easier to get county and department approval for certain accessory dwelling units (ADUs). The bill also directed the department to temporarily expedite review, to within 15 days, for adding an ADU to a lot that connects to existing public water and wastewater services that have capacity for the ADU. Those provisions in the bill terminate on September 30, 2029.

The department thus proposes to amend this rule to authorize the 15-day expedited review. The department also proposes to define “capacity” as “rated capacity” as defined in 75-6-130, MCA, to ensure consistency with how the department already considers the capacity of public water and wastewater systems under the Sanitation Act.

### **17.36.122 OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS**

(1) through (5) remain the same.

- (6) Proposed drainfield mixing zones and proposed well isolation zones, as those terms are defined in 76-4-102, MCA, must be wholly within the boundaries of a lot as provided in this section. This rule applies to all subdivisions subject to review under Title 76, chapter 4, MCA, including new subdivision applications, subdivision rewrites, revised lot layouts, and minor deviations, except as provided in (c). For purposes of this rule, a setback envelope or provisional mixing zone is equivalent to a drainfield mixing zone.

(a) and (b) remain the same.

(c) This rule does not apply to the following:

- (i) remains the same.
- (ii) lots created before October 1, 2021, and excluded from review pursuant to 76-4-125, MCA; or
- (iii) changes to an existing well isolation zone or mixing zone that was previously approved under Title 76, chapter 4, MCA, if the changes would not increase the size, location, or boundaries of the existing isolation or mixing zone;
- (iv) drainfield mixing zones that were approved under Title 50, chapter 2, MCA, before October 1, 2025; or
- (v) drainfield mixing zones that were approved under Title 50, chapter 2, MCA, after October 1, 2025, if the local governing body has adopted rules that prohibit construction of a subsurface wastewater treatment system if the associated mixing zone would encroach onto adjacent property, except as allowed in 76-4-104(7)(i), MCA.

**Authorizing statute(s):** 76-4-104, MCA

**Implementing statute(s):** 76-4-104, MCA

### **Reasonable Necessity Statement**

As background, under the Sanitation Act, the department does not allow the division of a lot that has a drainfield mixing zone to that which extends onto another person's lot, with certain exceptions. However, local boards of health have allowed the practice.

House Bill 180 from the 2025 legislative session prohibited local boards of health from allowing the practice, starting October 1, 2025. The bill also authorized the department to allow the division of older lots, allowed by local health boards before October 1, 2025, that have drainfield mixing zones on other people's lots. From October 1, 2025, neither the department nor local health boards will allow the practice, pursuant to the bill.

The department thus proposes to amend this rule and ARM 17.36.918 to comply with the bill. Specifically, the department proposes to amend this rule to allow the division of older lots, allowed by local health boards before October 1, 2025, that have drainfield mixing zones on other people's lots. The amendments to this rule do not make any other changes to the rule.

### **17.36.123 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS**

(1) through (4) remain the same.

(5) A municipal water or sewer system, or a county water and/or sewer district system, shall provide a connection to a proposed subdivision if:

(a) the proposed subdivision requests the connection;

(b) the boundary of the subdivision is within 501 to 1,000 feet of any component of the public system; and

(c) the public system meets the requirements of (2)(a) and (b).

(5) remains the same but is renumbered (6).

**Authorizing statute(s):** 76-4-104, MCA; Section 1, ch. 328, L. 2025

**Implementing statute(s):** 76-4-104, MCA; Section 1, ch. 328, L. 2025

#### **Reasonable Necessity Statement**

House Bill 629 from the 2025 legislative session directed the department to amend this rule to require a county or municipal water or sewer system to allow a proposed subdivision to connect to the system under certain circumstances. The department proposes to amend this rule with the exact language in the bill.

### **17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS**

(1) through (5) remain the same.

(6) On and after October 1, 2025, the department will approve a proposed drainfield mixing zone only if the proposed drainfield mixing zone meets the requirements of ARM 17.36.122(6)(a).

**Authorizing statute(s):** 75-5-201, MCA

**Implementing statute(s):** 75-5-305, MCA

## Reasonable Necessity Statement

As background, under the Sanitation Act, the department does not allow the division of a lot that has a drainfield mixing zone to that extends onto another person's lot, with certain exceptions. However, local boards of health have allowed the practice.

House Bill 180 from the 2025 legislative session prohibited local boards of health from allowing the practice, starting October 1, 2025. The bill also authorized the department to allow the division of older lots, allowed by local health boards before October 1, 2025, that have drainfield mixing zones on other people's lots. From October 1, 2025, neither the department nor local health boards will allow the practice, pursuant to the bill.

The department thus proposes to amend this rule and ARM 17.36.122 to comply with the bill. Specifically, the department proposes to amend this rule to provide that, starting on October 1, 2025, proposed drainfield mixing zones must be fully within the boundaries of a lot, with certain existing exceptions. The amendments to this rule do not make any other changes to the rule.

## 17.38.106 FEES

(1) through (6) remain the same.

(7) When a resubmitted set of plans and specifications contains substantial changes in the design that require the plans and specifications to be reviewed again, the department may require an additional review fee. The additional fee will be calculated in the same manner as the original fee and based on those parts of the standard that must be reviewed again due to the change in design. The department shall give notice and provide for appeal as specified under 75-6-108~~(5)~~(6), MCA.

**Authorizing statute(s):** 75-6-108, MCA

**Implementing statute(s):** 75-6-108, MCA

## Reasonable Necessity Statement

House Bill 40 from the 2025 legislative session established a new account for fees related to asking the department to review changes to a public water supply system. The bill also separated that new account from the account for other fees related to public drinking water. Those changes renumbered former (5) of 75-6-108, MCA, to new (6). The proposed rule change just updates a reference to current 75-6-108(6), MCA, and does not materially change the rule.

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## Small Business Impact

ARM 17.30.716: The department has determined that a small number of businesses may benefit by not having to collect a nitrogen sample or by being able to complete nondegradation requirements by using a less-detailed categorical exclusion than a complete nondegradation review. Analysis of a nitrogen sample costs approximately \$25, saving \$25 per file. Fees paid by consultants for completing this categorical exclusion instead of a full nondegradation review are estimated to be two-hours of time instead of four hours of time, saving two hours of consultant time. At an average rate of \$100 per hour, this saves \$200 per file. There is no difference in DEQ review fees for categorical exclusions versus nondegradation review.

There is a low percentage of land being developed in Montana where groundwater is greater than 300 feet deep. Some exceptions are along the Hi-Line and parts of Eastern Montana. An analysis of 2024 – 2025 files submitted to DEQ for review, resulted in two businesses that could have potentially qualified for this categorical exclusion. One business was a wedding venue. One was an equipment sales building. DEQ estimates that each small business that qualifies for the categorical exclusion and does not have to submit a nitrogen sample will save a total of \$225.

ARM 17.36.112: There will be no difference in review fees assessed by the department. The applicant may be able to get accessory dwelling units approved in 15 days instead of 55 days. DEQ is unable to estimate the number of properties this may apply to. No applications have been submitted to date. Estimating ten properties per year, and assuming two months of rent at \$1000 per month could be generated in the intervening time, approximately \$20,000 may be saved by small businesses.

ARM 17.36.122: This rule change will only allow a shortened review period for new accessory dwelling units with the impacted businesses being long-term and short-term rental owners, some of which may be small businesses. This shortened review period may provide economic benefits to the owners, though those benefits are outside DEQ's scope of activity and cannot be quantified by the department.

ARM 17.36.123: These rule changes would require municipalities and county water and sewer districts to accept a connection, but only if the connection is authorized by the parent system. DEQ does foresee any impacts to costs for small businesses from this rule change.

ARM 17.36.918: The vast majority of lots that require local health, but not Sanitation Act review are those that are over 20 acres. In most cases, the lot is large enough so a mixing zone can stay within the parcel boundaries. This change would allow the property to later be developed without having to move the existing drainfield. DEQ estimates that this change would allow 10 commercial properties, which may or may not be small businesses, per year to be developed without having to move the drainfield. A new drainfield can cost from \$7,500 for a standard gravity system to \$10,000 for a pressure dosed drainfield. DEQ estimates this

change will save approximately 10 commercial properties, which may or may not be small businesses, \$75,000 to \$100,000 per year, collectively.

ARM 17.38.106: This rule change solely updates a statutory citation to align with changes to the law in House Bill 40 (2025). DEQ does not propose to change any fees and does not foresee any economic impacts for small businesses.

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### **Bill Sponsor Notification**

The bill sponsor was contacted on June 26, 2025.

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### **Interested Persons**

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 for which program the person wishes to receive notices. 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 the contact above or may be made by completing a request form at any rules hearing held by the department.

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### **Rule Reviewer**

Jonathan Morgan

### **Approval**

Sonja Nowakowski, Director