



MONTANA
ADMINISTRATIVE
REGISTER



DEPARTMENT OF ENVIRONMENTAL QUALITY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-85.1

Summary

Amend subdivision and public water supply rules to address readability and authority

No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

The estimated number of persons directly affected by the proposed rulemaking is 1,124, which includes 664 persons from the Public Water Supply interested persons list and 460 persons from Subdivision's interested persons list.

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, August 21, 2026, at 5:00 p.m.

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 Tuesday, August 11, 2026, at 5:00 p.m.

Contact

Legal Unit
(406) 444-1388
DEQMAR2026-85@mt.gov

General Reasonable Necessity Statement

As part of the Governor's Red Tape Relief Initiative, the department is proposing to address agency rules that are currently written at a high reading level. This review focuses on streamlining rule language, replacing out-of-date terminology, and repealing unnecessary or redundant rules. With this initiative, the department's goal is to improve the public's ability to understand the department's rules while maintaining rule language necessary to implement statute. Through this effort, the department will be proposing these changes through rulemaking efforts within each agency program, instead of a department-wide rulemaking. These changes specifically lower the reading level to make the rules easier to understand by all. The content of the rules is not changed.

Rulemaking Actions

AMEND

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

17.35.101 GENERAL

- (1) Construction The Clean Vessel Act of 1992 encourages construction of vessel pumpout facilities at watercraft terminals located on or adjacent to state waters is encouraged by the Clean Vessel Act of 1992, which is contained in. This law is codified at PL-92-587. Proper construction, operation, and maintenance of these facilities will protect water quality and reduce the potential for the spread of water-borne diseases.
- (2) Boaters are encouraged to learn how to use marina pumpout stations.

Authorizing statute(s): 23-2-522, MCA

Implementing statute(s): 23-2-522, MCA

17.35.107 PORTABLE SANITATION DEVICES

- (1) Pumpout facilities designed to receive waste from portable marine sanitation devices should:
 - (a) have a unit opening of a minimum of 12 inches in diameter; and
 - (b) be equipped with a water tight cover that completely covers the receiving unit.

Authorizing statute(s): 23-2-522, MCA

Implementing statute(s): 23-2-522, MCA

17.36.102 APPLICATION--GENERAL

- (1) To initiate review of an application under 76-4-114 or 76-4-134, MCA, a person must submit a complete application to the department. The application must be signed by all owners of record of the property or properties. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.
- (2) A subdivision application must be on a form provided by the department. ~~Copies of the application form may be obtained from~~ A person may request a copy:
 - (a) by written request to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901;
 - (b) by visiting the department's website at <http://www.deq.mt.gov>; or
 - (c) from the local reviewing authority.
- (3) ~~A copy of the complete application, including all supporting information supplied to the reviewing authority, and all resubmittals of the application,~~ must be submitted concurrently to the local health officer having jurisdiction for purposes of reviewing compliance with local laws and regulations, as provided in ARM 17.36.108. The copy must be accompanied by all supporting information submitted to the reviewing authority. All resubmittals to the reviewing authority must also be provided to the local health officer.

- (4) To resume review of an application that has been inactive for more than one year after the issuance of a denial letter by the reviewing authority, the applicant shall reapply and submit fees as required by subchapter 8, ~~unless~~. This requirement does not apply if the file is inactive due to ground water monitoring, or other requirements imposed by the reviewing authority or another agency.
- (5) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.
- (6) In addition to meeting the requirements of this chapter, parcels designed for the placement of mobile homes or recreational camping vehicles may be subject to the requirements of ARM Title 37, chapter 111, subchapter 12.
- (7) If an application includes facilities for onsite wastewater treatment or disposal, including gray water irrigation, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.
- (8) The application procedures and requirements for previously approved facilities are described in ARM 17.36.112.

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

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

17.36.121 REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS

- (1) The requirements in this rule apply to systems for which plans and specifications must be submitted to the department by a professional engineer under ARM 17.36.117(1) and (2), 17.36.310(2), or 17.36.320(2).
- (2) The applicant shall ~~submit documentation~~ document in the application ~~indicating their~~ commitment to retain a professional engineer to. The professional engineer shall provide certification that the system was built in conformance with the plans and specifications approved by the reviewing authority.
- (3) A person may not commence or continue the operation of the system, or any portion of the system, until a professional engineer has certified by letter to the department that the system, or portion of the system constructed, altered, or

extended to that date, was completed in substantial accordance with the plans and specifications approved by the department ~~and~~. The letter shall further certify that there are no deviations from the design standards of the applicable circulars, other than those previously approved by the department.

- (4) Within 90 days after completion of construction of the system, a set of certified "as-built" drawings must be signed by a professional engineer and submitted to the department.
- (5) If construction of the system is not completed within three years after the department has issued its written approval of the plans and specifications, the approval is void ~~and plans~~. Plans and specifications must be resubmitted to the department with appropriate fees, for review and approval. If the original conditions of approval, applicable rules, and design standards have not changed since the department approved the system, the department shall reissue the approval to allow an additional three years to complete construction.

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

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

17.36.124 SUBDIVISIONS ADJACENT TO STATE WATERS

- (1) Where the department has determined that the disposal of sewage from a proposed subdivision may adversely affect the quality of a lake or other state waters, the department may require additional information and data concerning such possible effects. Upon review of such information, the department may impose specific requirements for sewage treatment and disposal as are necessary and appropriate to ~~assure~~ ensure compliance with the following:
 - (a) the Water Quality Act, Title 75, chapter 5, MCA; ~~and~~
 - (b) water quality and non-degradation standards; established in ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12.

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

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

17.36.125 CONDOMINIUM CONVERSIONS

- (1) Except as provided in (2) and (3), condominiums, including those to be constructed on parcels of land that are exempted from review under the provisions of Title 76, chapter 3, MCA, ~~and including conversion of existing structures into condominiums,~~ are subject to review under the requirements of this chapter. This requirement includes conversion of existing structures into condominiums.
- (2) Conversions of existing structures into condominiums are not subject to this chapter where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in 7-1-4111, MCA.
- (3) ~~Where the~~ The water or sewage disposal system in an existing building to be converted into condominiums is not subject to review under this chapter if:
 - (a) it has already been approved under either department requirements; or
 - (b) it has been approved by the local health department under local requirements; ~~such water or sewage disposal system is not subject to review under this chapter.~~

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

Implementing statute(s): 76-4-111, 76-4-125, MCA

17.36.322 SEWAGE SYSTEMS: SITING

- (1) Gravity-fed subsurface sewage treatment systems may not be used if natural slopes are greater than 15 percent. A pressure-dosed sewage treatment system with a design flow of 5000 gallons per day or less may be used on slopes greater than 15 percent and up to 25 percent, if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.
- (2) The department may grant a waiver, ~~pursuant to ARM 17.36.601 and after consultation with the local health department,~~ to allow pressure-dosed subsurface sewage treatment systems on slopes greater than 25 percent and up to 35 percent if. For the department to grant such a waiver, a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 ~~submits~~ shall submit adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system. Prior to granting such a waiver, the department shall consult with the local health department.

- (3) Subsurface sewage treatment systems may not be installed on unstable landforms;
~~as defined in ARM 17.36.101.~~
- (4) ~~No~~ Unless it is designed to accommodate such conditions, no component of any sewage treatment system may be located under structures or driveways, parking areas ~~or, under~~ other areas subjected to vehicular traffic, or other areas subject to compaction, ~~except for those components of the system designed to accommodate such conditions.~~ Drainfields must not be located in swales or depressions where runoff may flow or accumulate.
- (5) Pursuant to 76-4-104(6)(i), MCA, a proposed drainfield mixing zone must meet the requirements of ARM 17.36.122(6).
- (6) For lots two acres in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than two acres in size, the department may require the applicant to physically identify the drainfield location.
- (7) The department may require the applicant to show detailed lot layouts on a contour map if the department determines that there is a question about suitability of the drainfield location.

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

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

17.36.801 PURPOSE

- (1) The purpose of this subchapter is to establish a schedule of fees to be paid to the department for the local and state review of subdivision applications. The schedule consists of three sections relating to the collection of fees for the review of:
 - (a) divisions of land;_i
 - (b) condominiums;_i and
 - (c) areas providing permanent multiple space for recreational camping vehicles and mobile homes.
- (2) The fees are based on the complexity of the subdivision, ~~including.~~ Factors determining complexity include:
 - (a) the number of lots;_i
 - (b) the type of water system to serve the development;_i

- (c) the type of wastewater disposal to serve the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

Authorizing statute(s): 76-4-105, MCA

Implementing statute(s): 76-4-105, MCA

17.38.104 SIGNIFICANT DEFICIENCY

- (1) For the purposes of this rule, "significant deficiency" means:
 - (a) any defect in design, operation, or maintenance of a public water supply system or public sewage system; or
 - (b) a failure or malfunction of the system, that the department determines causes, or has the potential to cause, the introduction of fecal, chemical, or other contamination into a drinking water supply or a source of ice; or
 - (c) ~~The term also includes~~ practices and conditions that hinder the determination of the source or potential source of contamination, such as improper sample locations or sample taps.
- (2) If the department determines that a significant deficiency exists with a public water supply system or a public sewage system, the department shall provide written notice to the system owner. The system owner shall correct the deficiency in accordance with a plan and timeframe approved by the department.
- (3) If the department has reason to believe that a significant deficiency or sanitary defect may exist with a public water supply system or a public sewage system, the department may request the system owner to provide additional information to assist the department in making a final determination. The system owner shall provide the department with the requested information. If the system owner fails to supply the requested information, the department may make a determination based on available information about the potential risk of contamination from the system to drinking water or a source of ice, ~~and the~~. The department may require the system owner to take measures that the department determines are appropriate to prevent contamination.

Authorizing statute(s): 75-6-104, 75-6-112, MCA

Implementing statute(s): 75-6-104, 75-6-112, MCA

17.38.201 PURPOSE

- (1) The purpose of this subchapter is:
 - (a) to ~~assure~~ ensure the safety of public water supplies with respect to bacteriological, chemical, and radiological quality; and
 - (b) to promote efficient operation of public water supply systems through control tests, laboratory analyses, operating records, and reports.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.202 DEFINITIONS

In this subchapter, the following terms have the meanings indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-6-102, MCA. In addition, the department adopts and incorporates by reference the definitions in 40 CFR 141.2, except for the following terms: "clean compliance history," "person," "public water supply system (PWS)," "ground water under the direct influence of surface water (GWUDISW)," "special irrigation district," and "state." The terms "person," "public water supply system," "ground water under the direct influence of surface water," and "state," as used in this subchapter and in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, have the meanings defined below.

- (1) "Act," except as used in the portions of 40 CFR Part 141 referenced in this subchapter, means Title 75, chapter 6, part 1, MCA.
- (2) "Approved laboratory" means a laboratory licensed and approved by the Montana Department of Public Health and Human Services to analyze water samples from public water supply systems to determine their compliance with maximum contaminant levels (MCLs) and other monitoring requirements of this subchapter.
- (3) "Ground water under the direct influence of surface water (GWUDISW)" has the same meaning as adopted and incorporated by reference from 40 CFR 141.2, except that GWUDISW determinations for regulatory compliance purposes are made in accordance with the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, ~~as~~ This circular is adopted and incorporated by reference in ARM 17.38.209.

- (4) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.
- (5) "Public water supply system (PWS)" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.
- (6) "State," as used in the portions of 40 CFR Parts 141 and 142 adopted and incorporated by reference in this subchapter, means:
 - (a) the Montana Department of Environmental Quality with respect to regulation of public water supply and wastewater systems for compliance with this subchapter; and
 - (b) the Montana Department of Public Health and Human Services with respect to certification of laboratories for performing water sample analyses for public water supply systems as required in 40 CFR Part 141.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

- (1) The department adopts and incorporates by reference 40 CFR 141.61(a), 141.61(c), 141.64(a) and (a)(1), 141.64(b)(1)(i), and 141.64(b)(2)(i), ~~which set forth. These~~ federal rules establish maximum contaminant levels for synthetic organic contaminants, volatile organic contaminants, and disinfection byproducts.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

- (1) The department adopts and incorporates by reference 40 CFR 141.13, 141.73, 141.173, 141.550, and 141.551, which set forth maximum contaminant levels for turbidity, except for the following changes:
 - (a) The terms "one turbidity unit" and "1 NTU" mean 1.0 nephelometric turbidity unit, and the terms "five turbidity units" and "5 NTU" mean 5.0 nephelometric turbidity units for the purposes of this subchapter.
 - (b) The following replaces 40 CFR 141.73(a) (1): "For systems using conventional filtration or direct filtration, the turbidity level of representative samples of the system's combined filtered water must be less than or equal to 0.5 NTU in at least 95% of the measurements taken each month, and may not at any time exceed 1.0 NTU."
 - (c) The following replaces 40 CFR 141.73(a) (2), and is also added at the end of 40 CFR 141.173(a) (1) and 141.551: "For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's effluent from individual filters, measured at a point prior to mixing with effluent from other filters or other sources, may not exceed 0.5 NTU in at least 95% of the measurements taken each month, and may not at any time exceed 5.0 NTU. This requirement is not violated if the turbidity reading for the effluent from each individual filter is the first reading of the month that exceeds 0.5 NTU and the individual filter is taken off-line within 24 hours after the sample analysis that shows the exceedance."
 - (d) The first sentence in 40 CFR 141.551 is replaced with the following sentence: "Your system must meet three strengthened combined filter effluent turbidity limits."
- (2) The department may invalidate a turbidity measurement if it determines that the measurement was not indicative of true water quality. This determination shall be based on documentation that demonstrates the exceedance was caused by turbidimeter performance difficulty or sample site location problems ~~and that the measurements were not indicative of true water quality.~~ If the department invalidates the turbidity reading on one of these bases, the turbidity reading may not be included in the 95% compliance calculations required under this rule.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.206 MAXIMUM RADIOLOGICAL CONTAMINANT

- (1) The department adopts and incorporates by reference 40 CFR 141.66(b), (c), (d), (e), and (f), ~~which set forth.~~ These federal rules establish maximum contaminant levels for radiological contaminants.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

- (1) The department adopts and incorporates by reference 40 CFR 141.63(a), 141.63(b), 141.63(c), and 141.63(d), ~~which set forth.~~ These federal rules establish maximum contaminant levels for microbiological contaminants.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.209 GROUND WATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER DETERMINATIONS

- (1) The department adopts and incorporates by reference the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, 2022 edition, ~~which sets forth.~~ This circular establishes the standards for making ground water under the direct influence of surface water determinations.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.211 GROUND WATER RULE

- (1) The department adopts and incorporates by reference 40 CFR Part 141, subpart S, except for 40 CFR 141.402(a)(2)(iv), ~~which sets forth.~~ This federal rule establishes the requirements to ensure that systems using ground water sources are adequately protected.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.212 INITIAL DISTRIBUTION SYSTEM EVALUATIONS

- (1) The department adopts and incorporates by reference 40 CFR Part 141, subpart U; ~~which sets forth.~~ This federal rule establishes the requirements for determining monitoring locations and other requirements for subpart V compliance monitoring.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.213 STAGE 2 DISINFECTION BYPRODUCTS REQUIREMENTS

- (1) The department adopts and incorporates by reference 40 CFR Part 141, subpart V; ~~which sets forth.~~ This federal rule establishes the requirements for monitoring and ~~other requirements for achieving compliance~~ complying with maximum contaminant levels based on running annual averages for disinfection byproducts.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.214 ENHANCED TREATMENT FOR CRYPTOSPORIDIUM

- (1) The department adopts and incorporates by reference 40 CFR Part 141, subpart W; ~~which. This federal rule establishes or extends treatment technique requirements~~ in lieu of maximum contaminant levels for cryptosporidium.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NONCOMMUNITY SUPPLIES

- (1) The department adopts and incorporates by reference 40 CFR Part 141, subpart Q; ~~which sets forth. This federal rule establishes~~ public notification requirements for drinking water violations.
- (2) The department adopts and incorporates by reference 40 CFR Part 141, Subpart O; ~~which sets forth. This federal rule establishes~~ requirements for consumer confidence reports.
- (3) The department adopts and incorporates by reference 40 CFR Part 141.85; ~~which sets forth. This federal rule establishes~~ the public education and supplemental monitoring requirements for exceedances of the lead action level.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.249 CERTIFIED OPERATOR AND DESIGNATED CONTACT PERSON

- (1) The owner of a community or nontransient noncommunity public water supply or wastewater treatment system shall retain a certified operator, as defined in Title 37, chapter 42, MCA, ~~to. The certified operator shall~~ perform monitoring and reporting in accordance with the requirements of this subchapter. The certified operator must be in responsible charge of the public water supply or wastewater treatment system in accordance with Title 37, chapter 42, MCA.
- (2) ~~The~~ Within 30 days of a written request by the department, the owner of a public water supply or wastewater treatment system shall provide, ~~no later than 30 days after the issuance of a written request by the department,~~ the name, address, and

telephone number of a designated person who shall be responsible for contact and communications with the department ~~in matters relating to~~. The designated person shall be responsible for matters related to system alteration, extension and construction, monitoring and sampling, maintenance, operation, record keeping, notification, and reporting.

- (3) The owner of a public water supply or wastewater treatment system shall report any change in certified operator or designated person to the department within 30 days after the change.
- (4) Any communication or notice made by the department to a person designated under (2) is deemed to be adequate communication or notice to the owner of the public water supply or wastewater treatment system.
- (5) The department ~~hereby~~ adopts and incorporates by reference Title 37, chapter 42, MCA, ~~which~~. These statutes establishes requirements for operators of public water supply systems and wastewater treatment plants. A person may request a copy may be obtained from the Department of Environmental Quality, by:
 - (a) calling (406) 444-2544;
 - (b) visiting the Department of Environmental Quality's website; or
 - (c) written request mailed to P.O. Box 200901, Helena, MT 59620-0901.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

17.38.511 WATER SUPPLY

- (1) Water to be hauled must be taken both from:
 - (a) a department-approved community public water supply system; and
 - (b) ~~from~~ a department-approved water loading station that meets the requirements of Department Circular DEQ-1.
- (2) Water haulers shall collect bacteriological samples from the water hauling equipment at least once per month for each approved public water supplier the hauler uses that month.
- (3) If a water hauler's public water supplier is in compliance with the monitoring and maximum contaminant level requirements set forth in ARM Title 17, chapter 38, subchapter 2, the water hauler is not required to duplicate the entry point sampling

of the supplier ~~unless specifically required to do so by the department.~~ However, the department may require the hauler to perform entry point sampling.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

Small Business Impact

The department has determined that the amendments of the above-referenced rules will not significantly and directly impact small businesses. Since there were no substantive changes to the rules with amendments to the language for readability and making them easier to understand, there is no impact to small businesses whether they are public water systems or a customer to a public water system.

The department has the documentation of the small business impact analysis available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

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.

Rule Reviewer

Jonathan Morgan

Approval

Sonja Nowakowski, Director