

Executive Summary for Informal Discussion

This executive summary provides an overview of the major changes included in the draft copy of new circular DEQ-20 and is being provided to facilitate informal discussion as DEQ prepares the new circular for formal notice and comment. The new circular is currently in draft form, and DEQ will make changes to it as the agency prepares it for formal notice and comment. DEQ encourages stakeholder participation over the coming weeks and may incorporate suggestions into the draft circular. Please note that comments provided during this informal review will not be part of the official record of the formal rulemaking. Following informal stakeholder review and discussion, a full description of the final proposed changes will be included with the statement of reasonable necessity in the formal notice of proposed rulemaking.

DEQ proposes to adopt new department circular DEQ-20 to set forth design criteria for individual, shared, and multiple-user water systems. Requirements for such systems are currently scattered among Title 17, chapter 36, subchapter 3, of the Administrative Rules of Montana (ARM); department circular DEQ-3; department circular DEQ-11; and department circular DEQ-17. The proposed new circular DEQ-20 would consolidate those requirements in a single circular, with the intent of making the requirements easier for the public to understand and faster for DEQ to review. The primary purpose of creating a single circular to address individual, shared, and multiple-user water systems is that these water system types are all regulated under the Sanitation Act, separate from public water supply rules and circulars, and should have a common location for referencing design criteria. Applicants and sanitarians that submit or review non-public water systems will benefit from the proposal to have one reference location for this information.

By consolidating requirements in a single circular, DEQ also intends to remove the requirements from their existing locations by amending circular DEQ-3 and repealing circulars DEQ-11 and DEQ-17, as well as the following administrative rules: ARM 17.36.330, 17.36.331, 17.36.332, 17.36.333, 17.36.334, 17.36.335, and 17.36.336.

Multiple-user water systems were added to circular DEQ-3 in 2006, but experience in administering these rules has led DEQ to propose removing these standards from current circular DEQ-3 to include them in the proposed circular DEQ-20. Multiple-user systems should have a greater degree of review since they serve a greater number of people and have a higher potential to have adverse effects on public health if not built with adequate protections. However, multiple-user systems differ from public systems, particularly in the fact that DEQ has no long-term relationship with multiple-user water systems for operation, sampling, or inspection. Multiple-user water systems should be approached from the standpoint that such systems will have less operation oversight throughout the life of the infrastructure. Such systems should not be reviewed and approved with high levels of complexity and required monitoring and therefore should have separate design standards. Multiple-user water system design criteria are included in chapter 4 of the proposed new circular.

DEQ is also proposing some stylistic changes to the existing requirements. These stylistic changes (including, for example, new numbered lists, simplified language, changes in confusing terminology, etc.) are proposed to make the requirements easier to understand and administer.

The following table highlights the proposed rule transfers:

| Transfer table from current ARM 17.36 rules to DEQ-20 | | |
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| ARM 17.36 Section | DEQ-20 Section | Topic |
| 106 (2) (b) (iv) | 1.3 | water supply general |
| 106 (3) | 1.3.3 c | PWS reference |
| 112 (6) | 1.5 | re-review existing systems |
| 314 | 1.4 | PE requirements |
| 330 (1) | Chapter 1 | adequate, MCL |
| 330 (2) | 1.2 | submittal info |
| 330 (3) | 1.3.2 | stake well |
| 330(4) | 1.2.2 | restrict volume |
| 330 (5) | 1.3.2 | 100-ft well protection zone |
| 331 (1) | 1.2.3, 2.1.2, 3.1.2, 4.2.2 | water quality |
| 331 (2) | 1.1, 1.3.3, 1.5 | PWS reference |
| 332 (1) | 1.2.2, 2.1.1, 3.1.1, 4.2.1, 4.2.4 | water quantity |
| 332 (2) | 2.1.1, 3.1.1 | testing methods |
| 332 (3) | 2.1.1, 3.1.1 | pump testing on individual and shared wells |
| 332 (4) | 1.2.2 | may restrict volume |
| 332 (5) | 2.1.1, 3.1.1 | irrigation ditch recharge |
| 332 (6) | 2.1.1, 3.1.1, 4.2.1 | waiver for production with storage |
| 332 (7) | 1.2.2, 4.2.5 | dependability |
| 332 (8) | 1.6, 5.5, 6.1 | means other than wells |
| 332 (9) | 1.2.4 | water rights for wells or springs |
| 333 (1) (a) | 2.1.3, 3.1.3, 4.2, 4.3 | well drillers ARM 36.21.6 rules |
| 333 (1) (b) | 4.3 | Multiple-user well construction |
| 333 (1) (b) (i) | 1.4, 4.3 | 6 connection PE design |
| 333 (1) (b) (ii) | 1.3.3 | connect more than one multiple-user systems |
| 333 (1) (c) | 2.1.3, 3.1.3 | may require more than 36.21.6 |
| 333 (2) | 1.3.3, 1.5 | PWS MCA 75.6 |
| 334 (1) | 4.1 | Operation and maintenance |
| 334 (2) | 1.3 | 75-6-126 MCA |
| 334 (3) | 4.1 | Multiple-user may require a Homeowners Association |
| 334 (4) | 1.2.6, 4.2.3 and new 17.36.122 rules | easements |

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| 334 (5) | 1.2.5, 1.2.6 and new 17.36.122 rules | user agreement |
| 335 (1) | 1.3.3, 1.5 | PWS MCA 75.6 |
| 335 (2)(a) | 2.1.4, 3.1.4 | setbacks |
| 335 (2) (b) | 2.1.3, 3.1.3 | well construction |
| 335 (3) | 1.5, 2.1.2, 3.1.2 | existing system criteria |
| 336 (1) | 1.3.3, 1.5 | PWS MCA 75.6 |
| 336 (2) | 5.1 | only if GW not acceptable |
| 336 (3) | 1.6 | alternate system criteria |
| 336 (4) | Chapter 5 | springs |
| 336 (5) | Chapter 5 | spring testing |
| 336 (6) | Chapter 6 | cisterns |

Additionally, DEQ proposes to make several substantive changes to the existing requirements for individual, shared, and multiple-user wells. The most significant of these include the following:

- In section 1.2.1 Design Report, DEQ proposes a design report as a new submittal item which allows the applicant to convey water system specifics.
- In section 1.2.4, DEQ proposes allowing entities other than DNRC to provide verification of water rights within reservation boundaries.
- In section 1.3.1, DEQ proposes to outline a consistent procedure for evaluating ground water under the influence of surface water (GUDISW) for existing and proposed wells based on the current version of Department Circular PWS-5. This section provides consistency for the applicant and reviewer and provides more consistent protection from giardia and other waterborne illness related to GIUDSW.
- In section 1.3.2, DEQ proposes to update the language to reflect changes to section 76-4-104(6i-7) MCA.
- In section 1.5, DEQ proposes to allow existing systems to use the rules in place at the time they were approved when existing sources are proposing the decrease the number of connections. An example of this issue would be when a well is changing use from a multiple-user well to a shared well.
- In sections 2.1.1 and 3.1.1, DEQ proposes modified criteria to allow the use of a cistern and a lower producing well without a deviation, this change is in response to feedback from both consultants and reviewers.
- In sections 2.1.2 and 3.1.2, DEQ proposes adding arsenic as a new required testing parameter. Arsenic is prevalent in groundwater in many locations throughout the state. Arsenic analysis was quoted as costing \$15 per sample (March 2020). This small investment would protect public health by allowing the reviewing authority to provide information about the health effects of arsenic to the applicant and protect consumers by requiring treatment in the COSA. For individual and shared systems, point of use or point of entry systems are often installed for aesthetic treatment, and the economic impact

would be minimal when compared with the overall cost of land development. Information about elevated arsenic levels in the water system and the cost of centralized treatment would be helpful information if the water system considered expanding in the future to become a public system.

- In section 2.1.3 and 3.1.3, DEQ proposes to allow a lesser amount of grout without a deviation in specific situations.
- In section 2.2 and 3.2, DEQ proposes that alternate water supplies no longer be required to demonstrate that a well cannot be used. Wells are the preferred source in terms of cost and convenience. Experience in administering this rule has shown that applicants generally do not request alternate water supplies unless well sources are not feasible.
- In section 2.3 and 3.3, DEQ proposes treatment standards are new for individual and shared wells. Treatment for individual and shared water systems is not preferred. Although treatment for shared wells has been allowed in the past in certain circumstances, it has not been specifically outlined in rule or circular. Consistent treatment guidelines provide simplified requirements based on the standards listed in current circular DEQ-3 Chapter 4. These requirements will allow the flexibility to develop less than ideal individual and shared water sources.